

April 12, 1999

Secretary of the Commission  
Federal Communications Commission  
Washington, DC 20554

To the Secretary:

Enclosed is a corrected version of VoiceLog's comments in response to the Further Notice of Proposed Rulemaking in the Commission's recent Report and Order regarding slamming. (CC Docket 94-129). The first submission had an erroneous title on the title page and stated that VoiceLog began automated third party verification in 1993. The correct date was 1996. There are also minor grammatical corrections. This filing is a complete replacement for the original filing.

If there are any questions regarding these comments, they can be delivered to James Veilleux, VoiceLog LLC, 9509 Hanover South Trail, Charlotte, NC 28210, by fax to 704-543-1458 or by e-mail to [veilleux@voicelog.com](mailto:veilleux@voicelog.com).

Thank you for your attention.

Sincerely

/S/ James Veilleux

James Veilleux  
President  
VoiceLog LLC

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

**Comments of VoiceLog LLC**

As part of its Report and Order in CC 94-129, the Commission requested comments regarding the comparative benefits of automated Third Party Verification (“TPV”) as well as general comments on improving the verification process in general. These comments are in response to the Commission’s request for those comments.

Summary: In these comments, VoiceLog LLC argues that automated TPV, at least as provided by VoiceLog, can provide a more reliable and effective means of preventing slamming than current live operator TPV practice. VoiceLog describes the current state of automated TPV practice, demonstrates how it has evolved since it was introduced by VoiceLog in 1996, and shows the advantages of automated TPV, both in enhancing competition and preventing slamming.

I) Background of Automated Third Party Verification

A) Description

Automated Third Party Verification (“TPV”) is a relative newcomer to the TPV services marketplace. As such, it has been, and is, in a state of evolution.

The central concept of Automated TPV is to replace some or all of the function of the live operator in the TPV process with an automated process. Across the range of Automated TPV solutions, the automated system could provide (1) recording and documentation of the order, (2) asking the verifications questions of the customer, (3) determining whether the customer provided valid answers to the verification questions. In addition, VoiceLog has developed other techniques that provide slamming protection not normally available through live operator TPV.

The first Automated TPV service was offered by VoiceLog in 1996 and consisted of a relatively simple process that might best be described as “remote recording”<sup>1</sup>. Essentially, this process

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<sup>1</sup> This is the service VoiceLog first referred to as “live-scripted” in its earlier filings to the FCC. See: “In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 94-129 SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING”, Released December 23, 1998, at 84.

involved a Voice Response Unit (“VRU”) that recorded the customer’s telephone number, played an announcement, then recorded the subsequent conversation. A telecommunications carrier using the service for TPV would start with the customer on the telephone, then set up a 3-way call by adding the VoiceLog System. The VoiceLog System would then do the following:

- 1) Answer;
- 2) Request the customer’s telephone number, entered using the touch tone keypad of telephone;
- 3) Play an announcement that the purpose of the call was to document a transaction and that the rest of the call would be recorded;
- 4) Begin recording;
- 5) Play a transaction identification number.

After the announcement, the telecommunication sales representative would ask the customer a series of questions confirming the customer’s request for a carrier change and that conversation would be recorded. The representative would press the “#” key on the telephone and the system would stop recording and play an identification number for future retrieval. Recordings could then be retrieved by telephone number, identification number, and, when necessary, by date, time and client.

Since that first service offering, Automated TPV has evolved considerably. VoiceLog now provides over thirty different processes for capturing the verification of a customer’s carrier change order. In most of these processes, the system, rather than the sales representative asks the relevant questions regarding the customer’s identity, their authority to change carriers, and their agreement to the carrier change. For some clients, VoiceLog has human operators review each recording. For some clients, the customer is immediately given a return call to the affected telephone number, in order to re-verify the order. There are processes in which a human operator is used, in case a customer requires assistance or may be served best by a human operator, rather than the automated system. VoiceLog has also implemented and plans to expand the use of speech recognition and speaker verification technology, statistical quality controls and other forms of fraud detection and quality assurance.

## B) History

VoiceLog introduced Automated TPV in the fall of 1996. Since that time, VoiceLog has been enthusiastically accepted by the telecommunications industry, with over 150 clients and a cumulative total of more than 2.6 million verifications.

In addition to VoiceLog, a number of other automated TPV providers have emerged. By VoiceLog’s count, at least seven other companies have offered automated TPV services since 1996. Included in that number are two of the three largest competitive live operator TPV providers<sup>2</sup>. VoiceLog continues to provide more than 50% of the total automated TPV services in the US, but it is clear that automated TPV has now become firmly established as a viable alternative to live operator TPV for slamming control.

Although the majority of telecommunications companies who have selected Automated TPV have been smaller resellers and carriers, at least three Regional Bell Companies have used Automated TPV as verification for one or more products. In addition, some of the larger long distance carriers have either used or have expressed an interest in Automated TPV and VoiceLog believes that the Commissions new rules will spur increased interest in Automated TPV.

## C) Variations of Automated TPV

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<sup>2</sup> In its market analysis, VoiceLog distinguishes between those companies, such as Telequest and J.C. Penney, which are aligned with a specific client, such as MCI or AT&T, and competitive providers, such as VoiceLog and Teltrust, who serve a number of clients.

Since the original relatively simple VoiceLog service, a large number of variations have been developed by VoiceLog and others.

As described above, the original VoiceLog service simply recorded the conversation between the sales representative and the customer. This is the variation that VoiceLog described as “live-scripted” in an earlier filing to the Commission. This service offers the advantages of flexibility and relative customer-friendliness, although it is also the service which is most open to abuse by sales representatives.

The second variation developed by VoiceLog involves the use of the system to “ask” the consumer the verification questions by playing those pre-recorded questions in sequence and recording the consumer’s answers. This system is arguably more “independent” since it is the system, and not the representative who asks the questions. As implemented by VoiceLog, the recording can be augmented by either telephone touchtone-based responses or voice recognition technology to allow the system to determine whether the customer’s response – especially to the carrier change – is positive or negative.

A third variation developed by VoiceLog provides for live operator review of the resulting recordings generated by the system. Operators can listen to the recordings and determine (1) if the customer responded appropriately to the questions, (2) if the sales representative spoke during any part of the verification session, and (3) whether the representative’s comments were misleading or may have resulted in a slam. Techniques developed by VoiceLog result in efficiencies that preserve most of the cost advantages of automated verification while adding extra slamming protection.

One other variation that VoiceLog has developed involves the use of automated callbacks. In this process, the telephone number that is the subject of the carrier change is called, usually immediately after the verification session. A message is played that describes the order to be confirmed and asks the person answering the telephone to re-confirm the carrier change. This process adds the benefit of verifying the number being changed, which is usually not verified in a traditional live operator verification session.

There are many other anti-slaming techniques that VoiceLog has developed or is experimenting with. Since many of these are proprietary trade secrets, we will refrain from describing them here, but would be glad to offer details to the Commission on the understanding that such details would be provided on a confidential basis.

In addition to its anti-slaming techniques, VoiceLog has also been actively pursuing the integration of automated and live operator verification. For example, a customer who wanted additional information or was having difficulty navigating the automated system, could press “0” and be connected to a live operator. VoiceLog is also actively engaged in the development of a process by which customers can be selected for automated or live operator TPV, depending on certain statistical predictors, in order to match the TPV method best suited for that particular consumer. (This technique is also proprietary, but available to the Commission on a confidential basis.)

#### D) Value in competitive marketplace

The value of Automated TPV to the competitive telecommunications marketplace should be clear. Automated TPV provides at least eight distinct advantages to the telecommunications marketers who choose to use it:

- 1) Cost savings. VoiceLog charges are generally 50% to 75% lower than those charged by live operator TPV companies. The average rate changed by VoiceLog across all of its clients is

between \$0.50 and \$1.00 per verification attempt, vs. a live operator TPV average charge of \$2.00 to \$3.00.<sup>3, 4</sup>

- 2) Availability twenty-four hours per day, seven days a week. Although live operator TPV could theoretically be available around the clock, the relatively few orders taken by telecommunications companies late at night and on weekends makes the use of live operator TPV inefficient, and hence, too expensive for all but the largest carriers. With the Commission's new requirements that all orders be verified, the accessibility of Automated TPV is especially important.
- 3) Speed of answer. Because live operators are expensive, there is a tendency among live operator TPV providers to staff to the average demand level for verifications. Unfortunately, during the day, demand for verifications fluctuates considerably, and when demand is above average there are periods in which no verification operator is available. Live operator TPV companies manage this fluctuation with an automatic call distributor (ACD) which puts calls in a queue when no operator is available. Delays of thirty seconds or longer are not uncommon and the result is that the customer, impatient with the process, hangs up, and the sale is lost. Because the cost of access facilities – or ports – on an automated platform is relatively inexpensive, VoiceLog can afford to provide as many or more ports than are required for peak verification demand, resulting in no delays. This results both in improved service for the customer, who no longer has to wait, and higher net sales for the telecommunications company.
- 4) Support of any language. VoiceLog's TPV practice attests to the value of this feature. At the request of clients, VoiceLog now supports verification in twenty-two different languages. Although the Commission's rules do not require that the language of the TPV script be translated into the language used by the sales representative, common sense and the Commission's similar requirement for Letters of Agency suggest the importance of supporting verification in the native language of the customer<sup>5</sup>. Again, while in-language support by live operator TPV is theoretically possible, the cost of such support is very high, especially for relatively obscure languages. Charges of \$5.00 or more per verification attempt in Korean, Cantonese, Mandarin and other languages are very common. By contrast, VoiceLog charges no premium for in-language support, other than the initial translation and recording of system prompts. In fact, VoiceLog has plans to support automated verification for TTY devices used by the hearing impaired, again at no premium charge.
- 5) Ability to manage large variations in verification volumes. For those telecommunications marketers who use television, radio and direct mail advertising, in-bound sales often come in bursts of activity, commonly referred to as "call spikes". These call spikes are a major challenge for live operator verification since they require operators to be available when the spikes occur, but leave the operators idle for large amounts of time before and after these spikes. There are also associated costs for recruiting and training large numbers of new operators whose tenure is potentially very short.

In contrast, automated TPV can be available to handle call spikes with relative ease, since the cost of an idle port on an automated TPV system is much less than the cost of an idle

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<sup>3</sup> In these comments, VoiceLog will be quoting base prices without accounting for volume discounts. Volume discounts are common in the TPV market and larger carriers will generally pay lower prices than those quoted here.

<sup>4</sup> See: Third Party Verification Market Report and Forecast, 1998, MultiMedia Publishing Corp. at 40. This study shows 40% of TPV users reporting their verification costs at \$2.00 or more per transaction. The same study concludes that VoiceLog users have an average TPV cost of \$1.45 per transaction, but VoiceLog's own internal data show an average price per transaction below \$1.00.

<sup>5</sup> Id. page 43. 11% of telecommunications marketers reported selling in a language other than, or in addition to, English.

operator. The VoiceLog system, for example, can be easily configured to manage at least 20,000 TPV attempts per hour, and can be expanded to manage many more calls with about six weeks of advance notice.

Given the Commission's requirements that in-bound sales be verified, this ability to manage spikes is an important advantage of automated TPV.

- 6) Instant retrieval for dispute resolution. Because each VoiceLog TPV session is digitally recorded and stored on a computer hard drive, the recording is available for instant retrieval and can be easily played for the customer, carrier customer service personnel, investigating previous carrier, or regulatory and enforcement personnel. Producing a recording is as simple as the recording process, and only requires bringing the VoiceLog system on-line with the other parties through a three-way call. With the Commission's new rules on dispute resolution, a carrier's ability to quickly retrieve and provide evidence of the verification will be especially helpful.
- 7) 100% consistency in question presentation. Although a live operator verifier has the potential to outperform an automated system, it is also very possible for a live operator to be rude, badly trained, difficult to understand, or careless. The variability of human operators is compounded in an economy with record low unemployment, forcing live operator TPV providers to either pay relatively high wages or settle for lower quality workers. Automated TPV suffers no such problem. Because the questions can be recorded once and played over and over again, VoiceLog can afford to use high-energy, clear speaking voices. The system is therefore always polite and provides 100% consistency in the presentation of disclosures to the customer and asking the verification questions.
- 8) Enhanced sales fraud control. As these comments will demonstrate later, there are a number of techniques that can be employed to reduce the risk of slamming on the part of sales representatives, when using an Automated TPV system. These techniques include operator review, callbacks, speaker verification technology, and statistical process control. While all of these processes could theoretically be provided in a live operator TPV environment, they add significant cost to a process that is already as much as 10% of a telemarketer's sales cost.

Because of the lower cost of Automated TPV and the efficiencies that VoiceLog has built into the process, the incremental cost of many of these fraud control techniques is marginal and many clients are willing to pay the additional cost because the basic cost of VoiceLog's service is so much lower than the live operator alternative. Indeed, VoiceLog offers a service called "Total Slamming Control™" that provides the full battery of VoiceLog's anti-slamming measures at a price - \$1.65 per verification attempt - that is lower than the most basic service offered by most live operator companies. VoiceLog is so convinced of the slamming control power of these techniques that it guarantees to the telecommunications client that they will not be fined, and, if they are, VoiceLog will pay the fine, up to \$5,000.

The collective power of these advantages to competitive telecommunications providers is obvious from VoiceLog's acceptance in the marketplace. Within three years of its introduction in the marketplace, VoiceLog served 22% of all competitive telecommunications marketers, the highest penetration of any TPV provider - live or automated<sup>6</sup>.

In addition to its acceptance in the marketplace, VoiceLog users generally rate VoiceLog higher than the marketplace average on TPV characteristics. The MultiMedia Publishing study, Third

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<sup>6</sup> Id. p.38.

Party Verification Market Report and Forecast, shows VoiceLog rated higher by its users than the users of other TPV providers rate their companies on the following characteristics <sup>7</sup>:

- Price
- Speed with which the verifier answers the telephone
- Quality of the verification personnel
- Reliability in accessing the verification process
- Percentage of sales which result in a verification
- Ability to integrate with sales processing system
- Reliability in answering the telephone
- Providing quick and easy access to verification recordings

II) Automated Third Party Verification can be more effective in slamming prevention

The effectiveness of Automated TPV in preventing slamming is a function of its implementation by the carrier who chooses to use it. This is also true for live operator TPV and for Letters of Agency. For example, a carrier whose interest is only in obtaining the lowest possible cost for live operator TPV can find a supplier with no recording equipment, poorly trained and equipped operators, and relatively lax documentation procedures. Such a TPV provider may meet the minimum requirements of the Commission's rules but do a poor job of actually preventing slamming. Likewise, the use of LOAs can be abused, and has been. Some of the largest slamming cases that the Commission has investigated involved fraudulent or sloppy use of LOAs.

A) Elements of slamming prevention

To understand how a given slamming prevention method may be effective, VoiceLog suggests that the elements of slamming prevention be examined individually. We believe there are four distinct elements in how a verification method can work to prevent slamming: deterrence, customer education, preventive screening, and pro-active control of invalid orders.

1) Deterrence

In VoiceLog's experience, deterrence applies largely to sales representatives who may be tempted to slam a customer. Deterrence depends on the perceived risk of getting caught for slamming and the perceived consequences of getting caught. Because there is significant turnover among sales representatives, the speed with which a slamming problem becomes known is also important.

2) Customer education

One of the largest types of slamming complaints is misrepresentation, in which the consumer is misled about the nature of the transaction to which he or she is agreeing. In one study, 73% of state regulatory personnel ranked this as one of the most prevalent types of slamming<sup>8</sup>. The ability of the verification method to communicate the nature of the transaction effectively to the consumer is, therefore, very important. Both automated and live operator TPV can perform this function by telling the customer what they are agreeing to, although frequently in highly abbreviated terms. LOAs present the nature of the transaction to the customer in a written format.

3) Preventive screening

A third element in slamming prevention is screening – simply the separation of customers who refuse to provide authorization from those who do. This is an important element in

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<sup>7</sup> Id, p.49 Other characteristics not related to the automated nature of the TPV service (e.g. “Knowledge of FCC and state regulations regarding sales order verification”) are not cited here, although VoiceLog was generally ranked higher on those as well .

<sup>8</sup> Id. p.85.

evaluating automated TPV and LOAs. It is possible, for example, for a carrier to accept orders without actually examining either the automated TPV record or the Letter of Agency. VoiceLog is aware of carriers who have accepted orders on the representation of their sales agents, only to find that the record of the verification was flawed. We know of instances of this both in the use of automated TPV and of Letters of Agency.

4) Pro-active control of invalid orders

Finally, slamming control can go beyond the simple separation of verifications that appear to confirm the order from those that do not. In the use of LOAs, for example, there are ways for a carrier to detect forged signatures. Likewise, TPV providers may be able to identify and eliminate fraudulent verifications, as in the case when an associate of a sales representative poses as a customer.

These are the elements of slamming prevention that VoiceLog has identified.

B) Automated vs. Live TPV

In evaluating the effectiveness of Automated TPV compared to live operator TPV in preventing slamming, we discuss how each can approach the elements described above.

1) Deterrence

Both automated and live operator TPV have the potential to deter sales representatives from slamming, dependent on the implementation of the methods used. Live operator TPV is especially good in deterring an obvious slam when the customer simply says “no”, since the operator can quickly determine the customer’s wishes. Sales representatives are unlikely to attempt to verify a sale when the customer is unwilling to provide authorization.

Automated TPV can provide a similar function in a number of different ways. For example, the use of speech recognition in the automated system can distinguish whether someone said “yes” or “no” to the authorization questions. Alternatively, live operator review of verification recordings – conducted in as little as a few hours after the transaction – can determine the customer’s answers. In addition, as we will explain below, special techniques in the operator review process can detect certain types of fraud more effectively than live operator verification, enhancing the deterrence effect.

One advantage that Automated TPV offers is in its inherent audio recording of the process. Such a recording has a deterrent effect unto itself, as noted by these telemarketing professionals<sup>9</sup>:

“...I found [tape recording calls] useful in several ways, one as a deterrent to your agent staff...to ensure they give you the best quality and say things to customers that you feel are appropriate. Second, as quality assurance...we could also monitor by use of the tapes.” Gary Ramirez, former VP and Manager, On-line Customer Service, Premier Customer Service, Wells Fargo Bank

“It’s extremely important to our business as a service agency to promote ethical behavior and the utmost quality over the telephone...monitoring, taping and daily coaching and counseling on calls are how I ensure the delivery of quality services for our client base. Taping our workforce helps the team focus on script adherence, true customer service, and ethical salesmanship.” Tom Rocca, Board Member, American Telemarketing Association, President-Elect, Society of Consumer Affairs Professionals, President, PROTOCOLL

“When a telemarketing rep knows they’re being monitored and/or recorded...they are absolutely on their best behavior.” Terry Campbell, Vice President of Legislation for Northern California Chapter, Regional Chair for National Legislation, American Telemarketing Association, independent TM consultant

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<sup>9</sup> Personal interviews with James Veilleux, President of VoiceLog, conducted Summer and Fall, 1997.

As we have noted, audio recording is also possible with live operator TPV, but there is no requirement for it in the Commission's rules and the cost is prohibitive for some users. In addition, the nature of the recording system used by many live operator TPV providers does not allow for the rapid retrieval of recordings available through VoiceLog.

## 2) Customer education

Informing the customer of the nature of the transaction is a critical element in slamming prevention. Automated TPV can outperform live operator TPV in this function in three distinct ways:

Because the disclosures and questions are professionally recorded in a clear, easily understood voice, there is little opportunity for customer misunderstanding as a result of poor voice quality, accents, and misspoken words on the part of a live verification operator;

Because VoiceLog can support any language, the verification can match the language of the sale, further ensuring the customer's understanding of the transaction;

Because the system is automated, we can ensure that the disclosures of the transaction are always read to the customer, with no chance for human error.

VoiceLog notes that the Commission requires relatively little in the form and content of TPV scripts, in contrast to its rules on LOAs, and that the effectiveness of any disclosures is a function of the script used. While VoiceLog would not support detailed scripting requirements by the Commission, we do support the Commission's added language that the "content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change" and would suggest a language requirement, similar to the rules regarding LOAs, as well.

The Commission notes that one commenter – Quick Response – asserts that live operator TPV allows the consumer to ask questions and suggests that feature as superior to automated TPV. We would note that most live TPV operators are trained NOT to answer questions, but, instead to turn any questions over to the sales representative<sup>10</sup>. At any rate, VoiceLog can provide the ability to route the call to a live operator to answer questions, if necessary.

## 3) Preventive screening

Although Automated TPV can match live operator services in its ability to identify whether a customer says "yes", there are some advantages to live operator services in performing this function. For one thing, the operator's reaction to the customer's response is immediate, unlike Automated TPV which, if dependent on operator review, is delayed a few hours. Speech recognition can provide an immediate response to the customer's responses, but is generally considered only 97% accurate, and cannot screen out imposter customers. In addition, the screening function is inherent in live operator services, while VoiceLog's clients may or may not choose to use either the speech recognition or operator review capabilities.

VoiceLog is in the process of speeding up its review process and it now only a few months away from providing near real-time review of verification recordings. Combined with some proprietary implementations of speech recognition and speaker verification technology, we believe we can offset much of the advantage that live operator verifiers have in this area.

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<sup>10</sup> See, for example, the scripts submitted by FCC and AT&T in CC docket 91-64. In addition, VoiceLog personnel routinely agree to change long distance carriers in order to sample other companies TPV services. We have yet to find a live verification operator who would answer questions about the rates, services, sales incentives or other aspects of the transaction being verified.

#### 4) Pro-active control of invalid orders

Automated TPV offers some very unique advantages over live operator TPV in the detection and elimination of fraudulent orders. A few examples should suffice:

One source of slamming occurs when a sales representative recruits an associate to pose as a customer. Since the live operator verifier has no way of knowing whether the person on the line is the customer or not, the live operator cannot, generally speaking, prevent this type of fraud. However, many times when an imposter is posing as a customer, the imposter poses not as one customer, but frequently a number of customers, one at a time. By reviewing each sales representative's verification recordings in sequence using the same reviewer, VoiceLog can greatly increase the chance of identifying this type of fraud, since the voices on the recordings will be the same and can be recognized as such by the reviewer. In contrast, the probability of a live operator verifying multiple orders with the same imposter is much less.

A second method for detecting fraudulent customers is the automated callback. Using an immediate callback to the affected number, VoiceLog plays a single re-verifying question to the customer. This technique has the unique advantage of verifying the number, insuring that someone at the affected number has agreed to the order. This technique will also help protect the carrier from orders intended to defraud. Since the Commission's new rules absolve the customer of paying their first month's bill, it is conceivable that consumers may recruit others to pose as themselves, place an order, then claim that they were slammed – using the carrier's own recording against them, since the voice on the recording will not be the subscriber's for that telephone number.

The callback not only confirms the number to prevent slamming by the sales rep, it prevents a consumer from later claiming that they did not place the order.

### III) Automated TPV is more effective in slamming dispute resolution and enforcement

Preventing slamming and enforcing the anti-slamming rules are, of course, highly interrelated, but they have different elements, so we have broken those related to enforcement and dispute resolution here. We see four different elements to dispute resolution and enforcement: documentation, review and retrieval, audit trail, and tampering control. For each of these elements, we compare automated TPV to live operator TPV and, in some cases, to LOAs and Electronic Verification.

#### A) Documentation

One central question is the form of documentation or evidence that is created by the verification process. Unless a TPV provider is recording the verification sessions with customers, the only "evidence" that is produced is the call record and notations of the verification operator. Since turnover in live operator verification providers is often as high as 100% per year, there will be many occasions in which the verifier is not available to attest to his or her notations. Even if the operator were available, the odds of that person remembering the details of a particular verification are miniscule.

In contrast, VoiceLog records the entire verification session, including the questions that are asked and the answers provided by the consumer. This not only provides a complete record of what was said, but some important additional information about the customer's state of mind and understanding of the transaction.

From the perspective of the legal system as a whole, there is an important substantive advantage to the use of audio recordings as evidence. To the degree that an audio recording offered in evidence presents a fair and accurate aural record, it improves the overall means by which information is

communicated to the trier of fact. In other words, it permits the trier of fact to directly experience a nearly exact, electronically recorded, representation of those sounds, whether speech or otherwise, which are deemed relevant and admissible. Thus, the trier of fact's direct exposure to the voice characteristics and response-time patterns of those whose voices are recorded represents a vast increase in both the quantity and quality of information communicated when compared to a witness recalling what he or she heard... As one court wrote, "Human nature and memories being what they are, the tape would ordinarily be the most accurate evidence of what occurred in the conversation."<sup>11</sup>

The acceptability of audio recordings as evidence is well established in the law:

Audio recordings, unlike video recordings, have long been regarded as independent, substantive evidence, and those recordings that are a fair representation of a transaction, conversation, or occurrence are generally admissible. In principle, therefore, there is no reason why audio recordings might not be used as substantive evidence in virtually every type of legal context, including, but not limited to criminal and civil lawsuits, administrative hearings, arbitrations [sic], and local government hearings.<sup>12</sup>

It is important to understand that not every automated TPV provider will provide a recording of the entire session. VoiceLog has heard of providers who record only a fraction of the actual verification session and can only produce fragments, such as a recording of the customer's name and their answers to certain questions.

Of course, LOAs suffer the same problem as other written records. There is no record of what was said to the customer in order to get them to sign the LOA. This means that the signature on the LOA, even when it conforms exactly to the Commission's requirements, may be a poor gauge of customer intent, especially for consumers with literacy problems<sup>13</sup>. The California Senate made exactly that conclusion prior to passing their anti-slamming bill.

The majority of slamming occurs when a customer unknowingly signs a document providing written consent to change long distance companies, either through misrepresentation or deception by the long distance company.<sup>14</sup>

#### B) Retrieval and review

A second element in dispute resolution and enforcement is the ability of the verification method to retrieve the evidence that is available and make it available for review. Even those live operator TPV providers with recording capability will frequently use older analog recording equipment or a type of digital voice recorder, known as a "voice logger", which stores the recording on audio tape. Retrieval of recordings from such systems often requires twenty-four hours or more and is not 100% reliable. Last, in order to produce the recording for review, the recording must frequently be copied to an audio tape and mailed to the reviewer.

In contrast to these recording methods, VoiceLog maintains all recordings on computer hard disk storage for 120 days or more, depending on the client. Records that are on-line can be retrieved within a few seconds, using either the customer's telephone number or a unique transaction identification number assigned to each record. Recordings can be retrieved over the telephone and played to others in a three-way call or retrieved over the Internet using a web-browser and multi-media PC. Within a few months, VoiceLog will have also developed a means of sending the recording by electronic mail.

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<sup>11</sup> Gruber, Poza & Pellicano, "Audio Recordings: Evidence, Experts and Technology", *Am Jur Trials*, 48:1, 164-165

<sup>12</sup> Gruber, Poza & Pellicano, "Audio Recordings: Evidence, Experts and Technology", *Am Jur Trials*, 48:1, 139-140.

<sup>13</sup> The size of the US literacy-impaired population is estimated at 44 million adults (see "Survey of adult literacy", *Society*, Jan-Feb 1994 v31 n2 p2(2)). For these consumers, an oral process is clearly superior.

<sup>14</sup> Bill Analysis, SB 1140, California Senate Rules Committee, 7/8/96, p.3

All of these advantages are critical in dispute resolution and enforcement. Because recordings can be retrieved instantly, unfounded consumer complaints can be resolved quickly. Given the Commission's new rules on dispute resolution, the customer's old carrier will be able to conduct a "reasonable and neutral investigation of the [customer's slamming] claim<sup>15</sup>" much more quickly and with less administrative effort.

C) Audit trail

In resolving a slamming dispute, it is sometimes important to have more than just the recording or the call record. All VoiceLog verifications capture the date and time of the verification, the telephone number dialed for the verification service, the telephone number or numbers being verified, the keystrokes entered during the verification and the audio data. In addition, an extensive audit file keeps track of any changes to the record and the database manager prevents certain fields (such as the telephone number of the customer) from being edited at all.

While other verification services could be built with these safeguards, there is no guarantee that they are. So, for example, a carrier using Electronic Verification may find that their records have been altered, or, worse, the records may be altered without any sign of foul-play. LOAs may also be subject to alteration without much record of their processing.

D) Tampering control

Of course, one advantage of third party possession and production of the TPV records is that neither the carrier nor the customer has access to those records in a way that allows them to edit critical data. All VoiceLog data is maintained in a physically secure environment, and those parts of the VoiceLog system that are accessible to clients are password and firewall protected. In addition, all VoiceLog data is copied to a magnetic tape back up. Even in those circumstances in which a client is given copies of the verifications for internal storage, VoiceLog maintains its own copies for a minimum of 36 months.

With the advances in current audio technology, it is possible to digitally "splice" a recording to simulate a customer agreeing to a transaction they have no knowledge of. While the technology is expensive, the cost of that technology is decreasing every year. Third party possession and control of the data is an important element in preventing potential sources of fraud.

LOAs, of course, are subject to forgery and this is one of the major sources of slamming complaints, as the Commission well knows. It is simply very easy for an LOA to be filled out and signed by someone other than the customer.

Even Electronic Verification is potentially subject to tampering, although that would require a corporate intent to slam, rather than the actions of individual sales representatives. The result of Electronic Verification is simply a computer record, with no audio recording. A file of fraudulent verifications could easily be constructed by someone who knew the appropriate file formats.

In short, Automated TPV's inherent recording of every transaction, its ability to retrieve audio recordings quickly, and to control the retrieval process to expose fraud provide unique anti-slamming capabilities not available in live operator TPV. We conclude that automated TPV has the potential to be more effective than any other form of verification in the enforcement of anti-slamming rules and in the resolution of slamming disputes.

IV) The Commission should promote innovation in slamming prevention

VoiceLog's emergence as one of the leading providers of third party verification demonstrates the power of a competitive marketplace in both promoting slamming control and obtaining efficiencies in slamming control. The Commission should use the experience of VoiceLog as a

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<sup>15</sup> CFR 64.1180 (c)

valuable learning experience. We would suggest that the Commission use the following guidelines in developing further anti-slamming measures:

A) Focus on the objectives

Rather than specifying particular means of verification, we believe the Commission's next area of focus should be in requiring that carriers limit their slamming and that the definition of slamming be made very clear. Specific areas of clarification include which members of a household or business can provide authorization for a carrier change or freeze, whether there should be some minimum of understanding – either by customer or in aggregate – of the nature of the transaction, and whether terms and conditions, such as pricing, are parts of the element of a slam. Once the definition of slamming has been made very clear, there is an opportunity to develop quantitative measures of performance.

B) Allow flexibility in meeting the objectives

Unlike what some states have done, the Commission should not develop specific scripts, or require particular language in verification. Rather, with a focus on objectives, the type of verification used can be measured by its ability to determine a customer's wishes and carry them out accurately. Verification methods that fail this standard should be rejected, while innovative methods that do not meet the specific requirements of the current rules but still result in accurately determining and following a customer's wishes should be allowed. It is entirely possible that the Commission's original verification rules could have precluded automated TPV, and may yet be stifling some other innovative approach with similar or better results.

Missouri has an interesting rule that requires quarterly statistical quality audits of TPV transactions<sup>16</sup>. This auditing requirement has, we believe, a focus on the results of the verification process, rather than the process itself, and we suggest the Commission consider something similar.

C) Require quantitative measures of slamming prevention

Once slamming can be defined clearly, quantitative standards should be developed that accurately identify slamming violation levels that go beyond industry norms. Such standards should have the following characteristics:

- 1) Be based on marketing and sales activity. As some commenters have noted, slamming measures that focus on total violations or complaints ignore the vastly different size of carriers. Measures that look at slamming as a percentage of total revenue or other total size measure penalize smaller, growing carriers. The only fair measure of slamming is that which is based on a measure of sales activity, such as new customers, new lines, or revenue growth.
- 2) Avoid complaints as a basis for measurement. While complaint levels may have some value in early problem identification, raw complaints are no basis for fines or other penalties. Especially with the new rules that absolve customers of charges when they allege slamming, there may be many complaints which are unfounded, and require investigation and proper resolution.

D) Hold third party verifiers accountable for their results.

Although we would be loathe to suggest additional bureaucracy, such as licensing of TPV providers, there ought to be some mechanism for eliminating some TPV providers who are either colluding with carriers or whose services are simply too poor to effectively prevent slamming complaints. Massachusetts has adopted a registration requirement in order to track complaints by TPV provider. Presumably a TPV provider who is responsible for a large number of complaints could be de-listed if they could not improve their record of slamming prevention. While ultimate responsibility for slamming control must stay in the hands of the carrier – unless the Commission

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<sup>16</sup> See "Anti-Slamming Rules Report" VoiceLog Winter 1998-99, at [www.voicelog.com](http://www.voicelog.com).

wants to radically overhaul the anti-slamming rules – there is no reason not to require some responsibility on the part of TPV providers.

Respectfully submitted,

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