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April 27, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
TWA-325
Washington, D.C. 20554

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Re: CC Docket 94-129; FCC 98-334

Dear Ms. Salas:

Enclosed for filing in the above-referenced proceeding, please find an original and four copies of the Reply Comments of the National Association Of State Utility Consumer Advocates.

I am enclosing an additional copy which I request that you receipt stamp and return to me in the enclosed stamped, self-addressed envelope.

Pursuant to the Commission's rules, we are also filing a diskette containing this document with Ms. Kimberly Parker.

Should you have any questions regarding this submission, please do not hesitate to contact me.

Very truly yours,

Theresa V. Czarski

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Assistant People's Counsel

TVC/mcm
Enclosure

cc: Ms. Judy Boley, Federal Communications Commission
Mr. Timothy Fain, OMB Desk Office
All Parties Of Record

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**REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF
STATE UTILITY CONSUMER ADVOCATES**

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

**IMPLEMENTATION OF THE SUBSCRIBER CARRIER SELECTION CHANGES
PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996; UNAUTHORIZED
CHANGES OF CONSUMERS' LONG DISTANCE CARRIERS**

FURTHER NOTICE OF PROPOSED RULEMAKING

CC DOCKET 94-129; FCC 98-334

Federal Register, vol. 64, at 7763-7770 (February 16, 1999)

In its Second Report and Order in this proceeding, the FCC adopted final rule changes governing the minimum procedures that must be followed to ensure proper customer authorization of a change in a primary telephone provider and proposed further changes for public comment. Comments were due on March 18, 1999 and Reply Comments due April 2, 1999, later extended to May 3, 1999. The National Association of State Utility Consumer Advocates (NASUCA) filed Direct Comments. These Reply Comments now respond to certain issues and proposals contained in the Direct Comments of other interested parties concerning the Commission's Further Notice of Proposed Rulemaking on its slamming rules.

NASUCA is an association of 42 consumer advocates in 39 states and the District of Columbia. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts.

Slamming is a fraud and an unfair and deceptive practice by a telecommunications provider. This practice leads to a purported contractual relationship between a customer and a provider that is based on misrepresentation, deceit, and, in some cases, forgery. When an unauthorized switch occurs, the customer does not know or understand that his or her telephone provider has been changed. A customer who has been slammed has been deprived of the contractual benefits associated with the authorized provider and will suffer losses in time and aggravation to set the matter straight. Companies who practice slamming or tolerate its results make money. Customers who are their victims suffer direct and indirect damages and losses. NASUCA continues to propose that the overall objective of the FCC rules and enforcement policy should be to hold the customer, who has been the victim of a fraud, harmless.

In reviewing the Direct Comments filed by other parties, several general themes emerged:

First, the incumbent local exchange carriers have generally taken positions that, if adopted, will enhance their roles as incumbents and make the process of changing primary carriers for intraLATA toll and local exchange service, or avoiding a primary carrier freeze, more difficult or administratively time consuming for consumers. These proposals are usually made under the rubric of “consumer protection.”

Second, the interexchange carriers who offer long distance services and seek to enter local markets for toll and basic exchange service want to make the process of carrier change simple, automated, and “customer friendly.” These entities are more interested in switching

procedures that consumers can implement quickly, but these same entities (viewed from the perspective of either an “unauthorized carrier” or an “authorized carrier” in the FCC rules), oppose efforts to complicate their role in the enforcement of the federal rules. Many particularly oppose the burden of re-rating calls and seeking funds from an “unauthorized carrier” that must be turned over to the consumer victim of a slam.

Third, the comments by state public utilities commissions and other public advocates demonstrate that many jurisdictions already provide a more customer-oriented remedy than that set forth in the FCC’s rules and accomplish this goal with less complexity or cost than the FCC approach. We urge the FCC to respond to the state experience with their own anti-slamming rules by adopting federal procedures that complement and endorse this experience.

NASUCA continues to urge the Commission to view the substantive and procedural aspects of its current and proposed rules from the perspective of the consumer. While remedies and procedures to prevent slamming and respond to slamming once it has occurred must be practical and cost effective, in the final analysis the rules must put the consumer first and hold the consumer harmless from this insidious and fraudulent practice.

I. Executive Summary

Our key points in these Reply Comments:

- The FCC’s remedies should focus on reimbursement to the consumer for any charges paid to a slamming carrier. The consumer should owe nothing to a slamming carrier.

- Resellers should be tracked by means of a numbering or identification system. If the CIC option is not feasible, the Commission should consider this issue in light of its proposal to implement a registration system for all interstate carriers. Of primary importance is that the customer's carrier, whether a reseller or facilities-based, be identified on the customer's bill.

- The Commission should adopt specific standards and disclosures that should accompany the third party verification process.

- The Commission should proceed cautiously in the use of the Internet to transmit a customer's authorization in light of the extensive history of abuse in this industry. If the Commission authorizes the use of the Internet as a form of customer authorization, any customer "signature" should be verified by an independent third party, either orally or electronically.

- The Commission's rules should defer to the state definition of "subscriber" if the carrier seeks to bill its customers by means of a state-regulated local exchange carrier.

- NASUCA strongly supports regular reporting of slamming complaints, as well as other specific consumer complaints by all carriers, to the FCC.

- All interstate carriers should be subject to a registration requirement with the Commission. This registration program should be linked to the FCC's emerging efforts to create a body of consumer protection regulation of interstate carriers in lieu of price controls.

II. Specific FCC Proposals

A. **Recovery of Additional Amounts from Unauthorized Carriers.** NASUCA continues to strongly recommend that in addition to any remedy provided in the rules between the authorized carrier and the unauthorized carrier, that the rule explicitly provide a remedy to the consumer by absolving them of any payment to a slamming carrier. We support the comments of the Florida Public Service Commission: “We believe the focus should be on the consumer.” Fl. Comments at 2. The Commission’s remedy should require the offending carrier to make the consumer whole and only secondarily focus on reimbursing the customer’s authorized carrier. Several carriers, including GTE Service Corporation (GTE), SBC Communications, Inc. (SBC), raised both legal and fairness arguments in opposing the FCC’s approach that requires the authorizing carrier to seek recovery of excess charges from the unauthorized carrier and remit certain charges to the consumer victim. Although we suspect the motivation for our concerns may differ, NASUCA agrees with GTE that “...unauthorized (slamming) carriers should bear any costs associated with enforcing the FCC’s slamming rules.” GTE Comments, March 18, 1999, at 3. Furthermore, a number of commenters stressed that the local exchange provider (LEC), who has issued the bill to the customer on which the slamming carrier’s charges appear, often credits any charges paid by the customer to the unauthorized carrier and recourses those charges back to the unauthorized carrier through billing and collection agreements. Ameritech Comments, at 4. The consumer has been made whole and Ameritech

then suggests that the FCC permit the authorized carriers to recover from the slammer all amounts billed by the slammer for calls placed during the 30 days following the slam, not merely the difference between the authorized carrier's rates and those charged by the slamming carrier. This proposal is administratively more feasible and straightforward than the approach recommended by the Commission and also provides a significant deterrence to a slamming carrier to avoid this behavior in the future.

B. Identification of Resellers. Most resellers resisted the development of a numbering system, probably due to the costs imposed on them as a result of any new system. Ameritech proposed that the use of the Carrier Identification Code (CIC) system was not necessary, but recommended that the IXCs transmit the identity of the customer's carrier by means of the Customer Account Record Exchange (CARE) record. Ameritech comments at 5-9. Whether the Commission relies on the use of the CIC or CARE system, NASUCA strongly supports the development of a unique numbering system for resellers so that their actions in soliciting and billing customers for their services can be easily identified and tracked for regulatory oversight. This numbering or identification system should be coordinated with the Commission's proposal to adopt a registration requirement for all interstate carriers. Whatever method the Commission chooses to use should result in the clear identification of the carrier that has the contract with the customer to provide services on the customer's monthly bill.

C. Independent Third Party Verification Procedures. Most commenters did not provide specific recommendations for further Commission regulations in this area. Many of the interexchange carriers urged the Commission to adopt flexible standards and not to adopt specific script requirements. Interexchange carriers also urged the Commission to approve automated verification procedures and to allow the carrier's sales representative to remain on the call. We endorse the recommendations of the Florida Public Service Commission (Comments at 4) and the New York State Department of Public Service (Comments at 6-7) in this regard. While it may not be necessary for the Commission to set forth a specific script, it is vital that more specific guidelines and standards be incorporated in the formal rules to allow for more streamlined enforcement. NASUCA also objects to the presence of the sales representative on the TPV call because of the obvious potential for intervention, coaching, and provision of misleading information.

While we do not recommend that the Commission specify the exact language that must be used, we urge the Commission to adopt the following requirements, many of which are contained in state regulations and our Direct Comments:

- that any script used by the third party for this verification be read in the language used to make the underlying sales transaction;

- that the evidentiary record of the third party verification include the time and date of the call;
- that the script used by agents must use words and phrases easily understood by individuals with an 8th grade education;
- that the entire conversation with the customer be recorded so that evidence of a customer's assent can be reviewed and investigated if a subsequent complaint is filed;
- that the script and conversation with the customer proceed in a normal conversational speed and that the name of the company to which the customer is being switched is given in its entirety and in the same form used to register the provider with the FCC;
- the verification agent should be required to state clearly after the company's name that the company is a provider of the specific service for which customer assent is being verified. As required by the FCC, each presubscribed service should be clearly identified and a separate verification obtained for each;
- the customer's understanding and agreement that the call is being recorded;
- the recording should reveal that the person whose authorization for a provider change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telephone account on behalf of a subscriber, whether that subscriber is an individual or a business, and the telephone number on the account; and

- any use of a name for the purposes of trickery or to obtain a customer's assent based on confusion or inability to understand the import of the name of the company and the services offered should be prohibited.

D. Use of the Internet for Verification. NASUCA does not object to the use of the Internet by a customer to select a telecommunications provider. We remain concerned about the potential for fraud and abuse if such a selection operates as the equivalent of a Letter of Agency without further verification. While many commenters, particularly the emerging competitors and resellers, urged a significant expansion in the use of the Internet for customer verification and proposed a number of safeguards in the use of customer identification methods, we urge the Commission to go slow with respect to wholesale changes at this time. It is perfectly appropriate for the Commission to allow the use of an Internet method of LOA by means of a waiver request from individual parties for the purposes of experimentation and data gathering. If the Commission does approve the use of the Internet as a means of customer authorization, such authorization should be accompanied by an independent third party verification, which could occur orally or electronically.

E. Definition of "Subscriber." Most commenters urged the Commission to defer to the state definition of "subscriber" for its Slamming Rules and we continue to urge this approach.

Most of the executing carriers are LECs regulated by the state commissions in which the tariffs or commission rules define the term “subscriber” and thereby prohibit the LEC from executing bill changes from someone other than a subscriber or the authorized agent of the subscriber. The current practice of most LECs to accept change orders on the account from the named person on the bill and those the billing customer has authorized (typically the spouse or other adult in the household) should be allowed by the Commission’s rules. The Commission should not adopt proposals to allow any adult with the capacity to contract for services to authorize a change order that will appear on a local exchange provider’s phone bill without determining whether that adult is a “customer” on the local telephone bill. Of course, this restriction may not be necessary for a provider that bills a customer directly or via a credit card account. In those situations, any adult can consent to a contractual relationship and assume responsibility for payment directly or any cardholder on the account can authorize payment. However, if the resulting contract between the provider and the customer is to be billed by means of a third party billing mechanism, only a customer on the other billing system can authorize charges to that account.

F. Submission of Reports by Carriers. NASUCA continues to urge the Commission to require all carriers that are registered to provide interstate services to retail residential and small commercial customers to file annual reports of customer complaints on all topics, including slamming, cramming, service quality, and other issues that should be specified in a uniform

reporting format. This data should be incorporated in the Commission's evaluation of service quality and provide a basis for further action by the Commission with respect to whether the carrier should retain its registration. Most carriers who objected to this requirement were concerned that the definition of "complaint" be made specific and that the complaints filed with the LEC concerning slamming were reported by means of the carriers against whom the customer made the allegation. These seem reasonable requests.

G. Carrier Registration. Alone among the commenters, NASUCA suggested specific regulatory provisions that should accompany the Commission's implementation of a registration requirement for interstate service providers. We urge the Commission to adopt specific filing, review, and revocation and suspension requirements based on proven practices that have been adopted at the state level. The proposals by some commenters that the Commission rely on other reporting mechanisms already in existence, such as the Telephone Relay Service annual filings (See U.S. West comments at 30), fail to grasp the importance of a separate registration process that would allow the Commission to screen entry into the market on the basis of consumer protection and financial stability criteria and then remove from the market "bad actors" with a pattern or practice of violations. Most interexchange carriers either opposed registration or suggested that it be simple and easy to administer, by just filling out a form. These same carriers have completed a registration or certification process in most states to offer intrastate services

and appear to do so without any severe business or financial consequences. We also support the recommendation of several parties, including the New York State Consumer Protection Board, that facilities-based carriers should be required to determine whether prospective resellers are registered before allowing them access to the transport system. NYSCP Comments at 23. This registration system may also provide a substitute method of identifying resellers if the CIC approach proves infeasible in the short run. That is, the carrier's registration number and name (which should include all forms of names used by the carrier, such as d/b/a) should be used to identify carriers on customer bills. This same proposal was made by SBC Communications. Comments at 6.

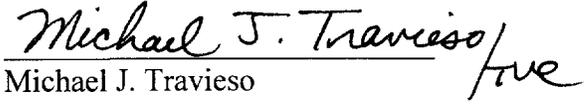
H. Third Party Administrator for Carrier Changes and Carrier Freezes. On March 30, 1998, a consortium of long distance providers, both facilities-based and resellers, filed a Joint Petition of Waiver to respond to the Commission's invitation for the creation of a third party administrator. NASUCA is concerned about the requested delay in the implementation of the Commission's rules and the requested waivers. We will respond to this proposal in due course.

III. Conclusion.

NASUCA recommends that the Commission act promptly to adopt the proposals we have recommended in these comments. Our comments are designed to make the Commission's

initiatives more effective based on the many years of experience we have had with state slamming regulations and carrier registration procedures.

Respectfully submitted,


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For The National Association Of State
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