

1 about this. But, you know, there seems to be a concern
2 about intent to slam versus occurring, the slam occurring.
3 And I think the view of -- I know the view of the Commission
4 has always been it really doesn't matter if there has been
5 an unauthorized change. It is a slam. And so to the extent
6 that a slam has occurred, the liabilities attach.

7 To the extent that the LEC makes the error, the
8 LEC is the executing carrier, and the LEC had -- what is it,
9 a fat finger, and put a couple of more folks over in its
10 change? I think that that is ripe grounds for action by the
11 IXC against the LEC for failing to execute its
12 responsibilities. That is not, however, from the
13 perspective of the Commission -- the liabilities would
14 attach to the long distance carrier in that context. And
15 that is because from the perspective of the consumer, there
16 has been an unauthorized switch. And so the liabilities
17 attach to the IXC.

18 To the extent that, again, you have a cause of
19 action because you can establish that the LEC was
20 responsible for that, that is a carrier to carrier
21 responsibility and action. From the regulator's
22 perspective, the remedy needs to be -- the remedy attaches
23 and the consumer needs to be made whole.

24 MS. MILLER: Let me address number two. Again,
25 earlier, at the beginning of the session, we mentioned that

1 there will be a tremendous amount of coordination with the
2 states. And we will know -- and that is part of what our
3 working group is working on now. I mean, there are going to
4 be case numbers assigned to the complaint so that the state
5 will know if we are processing our complaint from Mrs. Jones
6 in Boise, Idaho. Is there a Boise, Idaho? I guess it is.

7 So Idaho will know that we have a complaint. Even
8 if Idaho hypothetically opts not to participate, we are
9 going to let the state now that we have a complaint from
10 Mrs. Jones from Boise. So we are going to close that loop
11 between us and the state, so there is not going to be a gap.

12 Again, with our consumer education efforts tied
13 with the states, the consumer will know which states have
14 opted in. And we are going to keep it updated. We suspect
15 that as we get going with this, we are going to -- we are
16 making every effort to bring on 50 states. And as these
17 states join in, we are going to keep it updated on our web
18 site, and we'll keep our consumer information -- we're going
19 to do some things jointly with the states so that it will be
20 FCC and NARUC and the public utility commissions jointly
21 putting out information who has opted in, so the public will
22 know.

23 We're not going to try to hide this. This is not
24 an effort for the consumer to have to hunt to find out who
25 has opted in and who hasn't. We are going to make this

1 information readily available to the consumer, even to the
2 extent that if they happen to call our consumer centers,
3 either here, at portals, or at Gettysburg, our KEMS
4 (phonetic) will be able to tell the consumer instantly, you
5 know, if you are from Ohio, then you should contact your
6 Ohio PC. People will know how to -- who has opted in and
7 who is not in. And we are going to make that readily
8 available, I assure you.

9 MR. GILLIS: Thank you. Comments from the
10 audience or on the phone? Have we wore everybody out at
11 this point? Okay. Go ahead and identify yourself on the
12 phone when he opens the line here.

13 OPERATOR: Ms. Barker, you have the floor now.

14 MS. BARKER: Thank you. This is Bev Barker from
15 Idaho, and I appreciate the reference to working with the
16 FCC. I'm sure the folks in Boise will certainly appreciate
17 it. And I think that the comments that were made are
18 exactly right. We will be working with the FCC closely in
19 terms of being clear on what procedures we use and also in
20 terms of what the state is --

21 MR. GILLIS: Thank you, Bev. Any other comments
22 from the phone? No more from the phone. How about from the
23 table? Oh, I'm sorry.

24 MS. RONES: Hi. I'm Julie Rones from USTA again.
25 I think that what this forum has really illustrated is that

1 there are a lot of questions from the industry as well as
2 state regulators and federal regulators. And to the extent
3 that USTA can be helpful in maybe taking some of the
4 questions that you may have and posing it to our members
5 that would better help to achieve an understanding, we do
6 have a slamming working group. And so we can target and get
7 a very efficient, effective responses from our members. So
8 I just wanted to point that out to you. Thank you.

9 MR. GILLIS: Great. Thank you.

10 MR. BUTLER: Anthony Butler from Excel. On
11 question three, how will the industry know who opted in for
12 the states, we'll start on September 5th. Is there going to
13 be a list that is communicated to the carriers or how will
14 you --

15 MS. ATTWOOD: It doesn't start --

16 MS. WALTERS: Before Lorraine answers, September
17 5th is hypothetically -- hypothetically, the earliest point
18 at which these rules could take effect. But the fact is
19 that some of the -- some of the things that need to happen
20 have happened, but some things have not have happened.
21 There was the stay in the D.C. Circuit of the old liability
22 rules, and that stay was lifted, so that obstacle is down.
23 We have got publication of a summary of the rules in the
24 Federal Register, and that has occurred, and that is what
25 you are keying the September 5th date off.

1 That in fact the Office of Management and Budget
2 has to approve almost all of these rules because they
3 contain information collections. And that is something we
4 are still working on. So there is going to be some -- it is
5 not going to happen by September 5th. Then beyond that, the
6 Commission promised in the order -- I believe it is --

7 MS. ATTWOOD: But can I just say, please start
8 giving folks as much of their remedies right now.

9 MS. WALTERS: Oh, yes.

10 MS. ATTWOOD: You don't need our rules to start
11 that.

12 MS. WALTERS: They don't have to be officially in
13 effect. But then finally, just as a note which gets to the
14 point that you have asked, we are going to put out a notice
15 of the effective date in the Federal Register, in advance of
16 that effective date. We promised to do so in footnote 74,
17 and I think maybe in another place, so that states who have
18 not already done so will file their letters of notification
19 with the Consumer Information Bureau. So just to sort of
20 set the stage, and then I'll let Lorraine --

21 MS. MILLER: And since those notices will come to
22 me and to Magali (phonetic), the secretary, we will issue a
23 public notice. You will know. We are going to make it
24 available far and wide the public who has opted in. So
25 again, we don't want you to have to figure out what states

1 have opted in because as soon as we know, we are going to
2 let you know. It doesn't serve any purpose for us to hide
3 that or keep that closeted. So we'll -- you know, if we
4 have to stand on top of the building and wave the banners,
5 we'll -- short of that, we'll do that. Whatever we need to
6 do to make sure you know. As quickly as we know, we will
7 instantly turn it around.

8 MR. BUTLER: Just as a quick follow-up, September
9 5th won't be the effective date. Is there a feel, general
10 feel, for when the effective date will be?

11 FEMALE SPEAKER: It's after 1B.

12 MS. WALTERS: It's soon. It is coming. But I
13 just -- I can't tell you when. I mean, you know --

14 MR. BUTLER: And the communication that will tell
15 us when, is there like a 30 day period from the time that
16 you communicate it or --

17 MS. WALTERS: We are going to give people advanced
18 notice. I don't think that we have pinned ourselves down to
19 the exact time frame, but there will be --

20 MS. ATTWOOD: We'll give you something.

21 MS. WALTERS: Some.

22 MS. ATTWOOD: Fourteen days, something like that,
23 you know.

24 MR. BUTLER: Just one follow-up question.

25 MS. ATTWOOD: It has been only about three years.

1 (Laughter)

2 MR. BUTLER: You had mentioned we could start
3 giving the remedies now. And I do have one clarification.
4 Let's say we have -- and I think the young lady from one of
5 the Dakotas, either South or North, had mentioned, the
6 bottom line is either you authorize the PIC or you didn't.

7 And with that in mind, if we had a scenario where someone
8 has alleged a slam, and we feel very good that we have a TPV
9 tape or an LOA that supports that PIC -- no, let me reverse
10 that. Let's say we don't. We know that we don't. We're
11 guilty. We give remedy to the customer, 100 percent of what
12 he was billed. The customer still has the right to come
13 back and file that complaint through the FCC or the PUC.

14 If they do, would will be looking at providing the
15 agency the net amount of what we have already remedied the
16 customer to come up to the 150 percent, or even though we
17 have remedied the customer, we turn around and still be
18 liable 150 percent through the rules?

19 MS. ATTWOOD: We're not interested in double
20 payment.

21 MR. BUTLER: So it would be a net.

22 MS. ATTWOOD: I don't -- a net. I think if you
23 provide satisfaction and full remedies to that customer,
24 there is no net. If you provide less than that, you know,
25 that's a problem.

1 MS. WALTERS: I think actually -- I think net is
2 right. I mean, it is not something we have specifically
3 decided. But I think if it does become an adjudicated slam,
4 then there is an additional portion to go to the authorized
5 carrier.

6 MS. ATTWOOD: Well, right. That is a separate
7 question from the customer, but --

8 MS. WALTERS: I think what he meant was to come up
9 to the 150 percent.

10 MR. BUTLER: Right. So roughly you're saying that
11 is intent.

12 MS. ATTWOOD: Yeah. Roughly, it is. I was
13 reacting to -- I would hate to see you give 80 percent to
14 the customer and hope that the customer thought that was
15 okay, and only have us respond and say, okay, well, I guess
16 the customer gets another 20 percent. My point was if that
17 is a business practice, I think we would have problems with
18 that, and you would be facing a bit more than the
19 20 percent. If in fact you are talking about just getting
20 the full -- you know, the additional 50 percent and the
21 carrier compensation issue, that's correct. And none of us
22 are trying to double recover.

23 MR. RAMSAY: But recognize that there could be
24 additional state penalties and remedies on top of that.

25 MS. ATTWOOD: Right. That's absolutely correct.

1 MR. RAMSAY: So your final liability, depending on
2 the state your in, could be significantly higher if it goes
3 to a complaint proceeding.

4 MS. ATTWOOD: Correct.

5 MR. BUTLER: Thank you.

6 MR. GILLIS: Additional comments? Any final
7 thoughts from the folks at the table?

8 MR. RAMSAY: I just want to get a list of the five
9 states. I haven't spoken to those five states because I'm
10 actually kind of baffled with this entire argument. The
11 only limitation on state authority, state sui generis
12 authority, extends to interstate transactions. The only
13 limitation is in the federal act. And in this particular
14 case, 258 specifies that the states have authority to
15 enforce at least the federal minimum standards.

16 So I'm curious as to why there is this -- even
17 discussion between inter and intra and inter, et cetera. I
18 don't see it there. The only place where there could be a
19 problem would be in the enabling statute. And I don't think
20 that's a problem anywhere.

21 So if you have got the five state names, I just
22 need to talk to them because I haven't spoken with them yet.

23 I have had this conversation with a couple of states. And
24 after it has been explained, they haven't had a problem.

25 MR. MOORE: (Off mike.)

1 MR. RAMSAY: Was that Jim Strong? Who was that up
2 in Delaware you were talking to?

3 MR. MOORE: I was talking to -- regulatory folks.

4 MR. RAMSAY: Oh, okay.

5 MR. MOORE: (Off mike.)

6 MR. GILLIS: Okay. This would be, I think, a good
7 discussion to have offline. But it also underscores what I
8 would like to say in closing, is -- oh, I'm sorry. Question
9 on the phone.

10 OPERATOR: Hello?

11 MR. GILLIS: Hello.

12 OPERATOR: Yes, Ms. Stall, you have the floor. Go
13 ahead.

14 MS. STALL: Thank you. This is Carol Stall, North
15 Carolina. I have appreciated listening to all of the
16 comments today, and I am really appreciative of everybody
17 organizing it. But I do have a question. The reference has
18 been made, and some of the questions have been deferred into
19 something called the workgroup. Is there a key person that
20 I should talk to with that workgroup and a contact number or
21 e-mail or some method of contacting that person?

22 MR. GILLIS: Yes. Either Vickie Elliott or Bev
23 DeMello.

24 MS. DeMELLO: Carol, we'll get back with you on
25 that. This is Bev. Okay?

1 MS. STALL: Hi, Bev. Thank you.

2 MR. GILLIS: Okay. Any other comments from the
3 phone?

4 (Pause)

5 MR. GILLIS: Brad has reminded me that we haven't
6 recognized yet in the audience when we did our initial
7 introductions, that it was my oversight, that we have
8 Jessica Zufolo from our legislative staff, central NARUC
9 office; and Gretchen Dumas from California; and Bill Moore
10 (phonetic) from South Dakota. So we have had strong
11 representation from the states throughout and interest in
12 this topic. And that is what I would like to underscore, is
13 that this is a very important issue to the states. We are
14 very pleased to work with our federal colleagues in
15 eliminating slamming.

16 And I hope if nothing else, we conveyed that we
17 are pragmatic and goal oriented here, that we are flexible,
18 and this is a true federalist approach of states and the
19 federal entities working together to be pragmatic and solve
20 a problem.

21 MS. MILLER: As the kind of new kid on the block
22 here, I would like to acknowledge the presence of Brad, our
23 deputy bureau chief for enforcement. We have a strong
24 enforcement presence here. We have had -- the folks in this
25 room have spent an inordinate amount of time going through

1 this order and trying to figure out what they like, what
2 they don't like. And I hope that you get the point that I
3 think Commissioner Nelson made early on at the beginning.
4 Or maybe she made it earlier this morning. But we're not
5 about managing slamming. We want to eliminate it.

6 So we would hope that you would spend as much time
7 among yourselves trying to figure out how we eliminate this
8 phenomenon so that we won't be here. That's the whole
9 purpose here. We're not interested in managing this. We
10 want to eliminate it. And if you would put as much energy
11 and brainpower in trying to interpret this thing, put some
12 of that resources to try to figure out how we solve this
13 completely. I think us and the consuming public would be
14 much better off. End of sermon.

15 MR. GILLIS: Any other final comments? Dorothy?

16 MS. ATTWOOD: Actually, one small comment. I
17 think the gentleman before said -- or I guess it was USTA
18 that said what they heard today was a lot of questions. I
19 guess I would say that what I heard today was a lot of
20 questions, but a lot of answers, too. And I would try to
21 underscore that for too long that I have been at the
22 Commission, I have heard the various efforts of this
23 Commission to come up with slamming rules have been met with
24 this is very hard, we don't do it this way, we haven't done
25 it this way, we have got legacy systems, we have

1 relationships that make it impossible.

2 In this last order, we have made every effort to
3 minimize the burdens faced by those that were not slamming
4 or not engaged in behavior that was concerning to the
5 Commission. But -- and therefore, we have tried to
6 operationalize as closely as we can getting at the root of
7 the problem and the bad carrier. But there will have to be
8 changes. Those changes will have to occur because what has
9 happened to date has not worked.

10 And so we're not real receptive to comments that
11 say, it means we have to change something. We're receptive
12 to comments that say, we can't change something; it is
13 physically impossible or technically impossible to change.
14 And we think we have addressed that in the new order. But I
15 think that the mindset, it would be greatly encouraged --
16 and we would be greatly encouraged -- and I hear that
17 through a lot of the comments, is that in fact it is going
18 to be -- it is not business as usual. Business as usual
19 hasn't worked, and it is business that can improve. And
20 that would be, you know, a real effort to work to improve
21 that.

22 MR. GILLIS: Commissioner Nelson, do you have any
23 final comments?

24 MS. NELSON: Well, I guess I think this has been a
25 great experience. The meeting gave everybody an

1 opportunity. I think it is refreshing to see that we are on
2 the same page, and we all understand where we are going.

3 And the major intent here was to eliminate slamming and to
4 get consumers' needs met in the most efficient way possible.

5 And I think the new slamming order will go in that
6 direction.

7 I would like to think that it won't be necessary
8 because this rule is so good and that you all won't slam.
9 And that would be -- make everybody happy.

10 MR. GILLIS: We have somebody on the phone?

11 Hello?

12 OPERATOR: Ms. Barker, go ahead, please.

13 MS. BARKER: This is Bev Barker. I would just
14 like to note the comments of the gentleman about the
15 switchless reseller problem. That is a probably a topic for
16 either this afternoon's discussion or later on. But I think
17 it is a critical problem. And it has been a huge problem in
18 Idaho. So I don't want to conclude this meeting without
19 saying that I guess underlying carriers in my mind at least
20 aren't totally absolved of responsibility for slamming
21 problems.

22 MR. GILLIS: Okay. It's on the list. Thank you,
23 everybody.

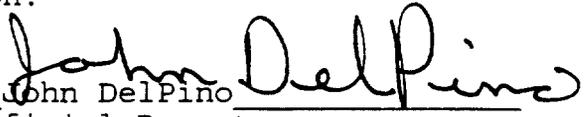
24 (Whereupon, at 11:57 a.m., the meeting was
25 adjourned.)

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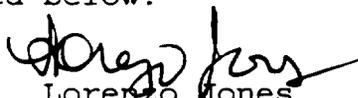
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