S. Hrg. 105–487

THE EXPLODING PROBLEM OF TELEPHONE SLAMMING IN AMERICA

HEARINGS

BEFORE THE

PERMANENT
SUBCOMMITTEE ON INVESTIGATIONS
OF THE

COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

FEBRUARY 18, 1998 (PORTLAND, MAINE)
UNAUTHORIZED LONG DISTANCE SWITCHING "SLAMMING"

AND APRIL 23, 1998

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UNAUTHORIZED LONG DISTANCE SWITCHING "SLAMMING"

WEDNESDAY, FEBRUARY 18, 1998

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 9:37 a.m., at Portland City Hall, 389 Congress Street, Council Chambers, Portland, Maine, the Hon. Susan M. Collins, Chairman of the Subcommittee, presiding.

Present: Senators Collins and Durbin.

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. Good morning. The Permanent Subcommittee on Investigations will now come to order.

Let me begin today by taking the opportunity to welcome Senator Richard Durbin of Illinois, a Member of the Subcommittee who has been a real leader in the fight against fraud. Senator Durbin is, however, perhaps best known for his successful effort to ban smoking on airplanes, something that I thank him for every weekend when I fly home to Maine. I was pleased to join Senator Durbin in another effort last year when we teamed up to repeal an outrageous $50 billion tax break for the tobacco industry. Senator Durbin has introduced legislation pertaining to the issue before us today, and it is indeed a great pleasure to welcome him here to Maine. I do wish we had had a little bit better weather for him, he had a very difficult time getting here last night, but he persevered and we're very pleased to have him here.

The focus of our hearing this morning is the exploding problem of "slamming," the unauthorized switching of a consumer's long distance service. Slamming victimizes the local telephone company, which must handle thousands of calls from customers angry about a problem the local telephone company did not create. It victimizes the consumer's chosen long distance company, which unfairly loses a valued customer, and, most of all, it victimizes the consumer, who must spend time and energy to remedy the problem. Even worse, some consumers do not even realize that they have been slammed, which may cause them to pay higher charges or to lose out on valuable premiums, such as frequent flyer miles, offered by the long distance carrier of their choice.

Now, how does slamming happen? Deceptive telemarketers may use fraudulent techniques to trick an unsuspecting consumer into switching long distance carriers. Other times a carrier may send a

so-called welcome package that actually requires the consumer to return a postcard rejecting the change in long distance service which otherwise goes into effect. Some particularly unscrupulous long distance providers will simply change a customer's carrier without any contact with the customer at all.

To be fair, there are some cases of slamming that may be caused by electronic error or perhaps by customer confusion during a telemarketing call. However, there is absolutely no excuse for intentional slamming and the huge number of slamming incidents that are occurring each year. Consumers all over the country, including here in Maine, are increasingly the target of unscrupulous telephone service providers who use deceptive marketing techniques or outright fraud to change long distance carrier selections without the consumer's consent.

I was first alerted to the problem of slamming last fall. My State offices began to receive numerous complaints from small businesses and from consumers who called to express their outrage at having been slammed. In further examining this problem, I learned from Bell Atlantic, our local telephone company, that more than 1,500 Maine consumers had complained that they were slammed last year. Slamming cases in Maine range from an elderly woman in Houlton, to a beauty shop in Bath, to a family in Blue Hill whose teenager was deceived into authorizing a change in service.

Nationwide, the number of slamming incidences has increased significantly. The Federal Communications Commission, the government agency that is responsible for regulating the telecommunications industry, received a record number of slamming complaints from consumers in 1997, over 20,000. In fact, slamming is the No. 1 consumer complaint to the FCC.

Since many consumers, indeed most consumers, do not report slamming to the FCC, this number, 20,000, actually greatly understates the real problem. The National Association of State Utility Consumer Advocates estimates that as many as one million consumers each year are fraudulently transferred to a long distance carrier which they have not chosen.

Victims of slamming are frustrated. They do not believe that they should spend their time and energy resolving problems that are not of their making. People rely on their home and their business long distance telephone service, and they should be able to choose their long distance carrier without fear that their decision will be changed without their consent. Deliberate slamming is like stealing and it should not be tolerated.

Moreover, as the statistics demonstrate, this problem is not getting better; it is getting worse. In Maine, Bell Atlantic reported a 100 percent increase in slamming complaints from 1996 to 1997. This disturbing trend raises two important questions about the Federal Government's response to this problem. First, are the enforcement efforts by the FCC effective and aggressive enough to control deliberate slamming? Second, do current penalties provide an adequate deterrent, or are fines that are imposed simply viewed as a cost of doing business by unscrupulous providers? Our goal in this hearing is to find effective regulatory and legislative solutions to halt the escalating problem of slamming.

We will hear from three panels of witnesses this morning. Our first panel will consist of three victims of slamming, two residential telephone customers and one small business owner. These victims will testify about their personal experience with being slammed.

Our next panel will be the Director of the National Fraud Information Center of the National Consumers League and the Director of Governmental Affairs at Bell Atlantic. The witnesses will provide information about the prevalence of slamming, describe their roles in assisting consumers, and advise consumers on how they can better protect themselves from being slammed.

Our final witness this morning will be the Hon. Susan Ness, Commissioner of the FCC. She will describe what the FCC is doing to control slamming, and discuss and provide advice to us on what additional regulatory and legislative changes could and should be made to reduce the number of slamming incidences.

It is now my pleasure to recognize the distinguished Member from Illinois, Senator Richard Durbin, for any statement that he may wish to make, and again, Senator, welcome.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you very much, Madam Chairman, Senator Collins, I'm glad to be here in Maine. This is almost a matter of retracing political groups. The first man that I ever worked for in politics was a Senator from Illinois named Paul Douglas, who was born in Maine and a graduate of Bowdoin College, so I'm coming at least back to the origins of my political career, and it's a pleasure to be with you. And I didn't expect to find this weather in Maine; I expect to find it in Chicago, but we've been blessed for the last few months with very mild weather.

I'm glad we're having this hearing on the important topic of telephone slamming. This matter came to my attention and I believe it came to your attention because of constituent mail, people who came to our office, wrote a letter or dropped by and said we've got a problem here. In fact, I recall one particular business woman in the Chicago area who was stunned to find that her long distance carrier had been changed, that her bill had gone up dramatically, and she had virtually no recourse as a result of it. She inspired me to look into it a little more, and as I did I found it to be a problem that is virtually universal.

Yesterday I was at the New York University Law School at a seminar on another topic, and the leading law professor there, constitutional law professor Bert Newborn, asked me why I was going to Maine, and I said it was on the issue of telephone slamming and Senator Collins was having a hearing. He said, "I have been victimized three times in the last year; they have changed my long distance carrier." It seems like every time you bring up this issue you find people who have been victims of this. So I am glad you are having this hearing. It is timely; it is important that the Senate and House respond this year with legislation that at least tries to address this problem.

As you mentioned, it is the No. 1 source of consumer complaints at the FCC, and in my home State of Illinois it is the No. 1 consumer fraud complaint to the State Attorney General. The *Los Angeles Times* says that what we've seen of slamming is only the tip

of the iceberg. Maybe that's apropos in this era of the Titanic movie, but they estimate that more than a million American telephone consumers have been slammed in the last 2 years. Some say that estimate is far too conservative, and one of our witnesses, Susan Grant, Vice President of the National Consumers League, will tell about a survey that was taken that suggests the problem is even more widespread.

Slamming was most egregious in the Chicago area, according to some survey where 36 percent of adults said that they or someone they knew had been slammed. Moreover, slammers appear to be targeting people of color, 39 percent African-Americans, 42 percent Latinos, as compared to 28 percent of the white population. I think we will also find that many seniors have been victimized by these scams as well. It is a serious problem that goes beyond inconvenience. It can be expensive, and in one case I know of a business in the Chicago area that virtually went without long distance service for a period of time because of slamming.

As I got into this and started thinking about ways to address it, I stumbled on another problem, which I think we should consider as we get into this. It is euphemistically known as cramming. You know how you used to receive your telephone bill and it would be one little sheet with three little lines and it was from the same company that your mom and dad and grandparents used, and now you receive a bill that is five or ten pages long maybe from more than one company and page after page of computer printouts? Well, you ought to read carefully because people who have been crammed find that they have charges on there that they never asked for and didn't believe that they were paying for. And a few dollars a month times all the people in Portland and all the people in Maine and all the people in Illinois turns out to be an enormous profit for these companies providing, "services you didn't ask for, cramming them into the bill." Well, we have to address all of these.

The Telecommunications Act wanted to bring competition to this field so that we'd have more choices as consumers, but certainly we have to be mindful as consumers that there are people in the marketplace trying to take advantage of us.

I put a bill in which I think might be a step in the right direction on this issue of slamming. First, it gives those who have been victimized the opportunity to sue the slammer in State or Federal court. Right now you are limited to Federal court. Now, how many of us are going to go file a lawsuit in Federal court because of 1 or 2 months of high telephone bills? It is not likely. You are not going to hire an attorney and you are not going to file a complaint, but if you have a recourse in State court and if you realize that there is a minimum statutory damage of $2,000 that you can recover, it may be worth it. If you go to small claims court and say, "I want to recover what I lost and the $2,000,"—$6,000, incidentally, under my bill if it was done willfully and knowingly.

Some States, and I am not sure of the situation in Maine, some States allow the State attorney general to bring suits against slammers on behalf of all the citizens of the State, these are class action suits. We do it in Illinois. It is effective. And I am glad that our attorney general does it. But some State supreme courts have decided that that is an authority which a State does not have. We

ought to clarify that once and for all, and this legislation would say every State attorney general can bring a class action suit against the slamming telephone company on behalf of the consumers who were victimized.

And, finally, we know there are repeat offenders out there. This just is not a nuisance; this is a source of great profit for these slammers. They end up switching hundreds if not thousands of people and make a lot of money in the process. If they continue to do that willfully, knowingly, and repeatedly, I think they should be subject to criminal penalty as well. This is as serious as any theft that we talk about.

Finally, let me conclude by thanking you for having this hearing. I am looking forward to your witnesses, having explored this issue in Illinois and in Washington. I think we are building a case for Federal action, and your leadership today is going to help. Thank you.

Senator COLLINS. Thank you very much, Senator. It is my hope today that prior to adjournment we will have the opportunity for some of the people who have come to attend the hearing today to share with us their personal experiences with slamming. We will limit those informal statements, which will be after the formal testimony, to 3 minutes each, to keep to our schedule, but I do hope to have an open mike session at the very end.

In addition, we've received a number of written communications and testimony. When people learned that I was having this hearing, my State offices overnight received numerous faxes from people who have been slammed, and we have put those in the hearing record.

In addition, prior to the hearing, I sent letters to several of the long distance companies that provide service to the majority of Maine consumers inviting them to provide written statements and several have done so. And without objection I will ask that those statements be included in the hearing record.

Finally, I've also received an excellent written statement from Richard Hulsey, who is a principal in a telecommunications firm based in Lewiston. He is also on the board of the Maine Telephone Users Group, a working group of businesses formed to discuss telecommunications issues. His testimony is very insightful, and I believe he may be here today and may speak to us at the end of the hearing, but in any event, his statement will be included in the record.

I would now like to call our first panel of witnesses. It includes three victims of slamming, two individuals and one small businessman. With us this morning is Susan Deblois, Pamela Corrigan, and Stephen Klein of Mermaid Transportation Company. I would note that Mr. Klein runs a shuttle to Logan Airport, so if worse comes to worse today he's offered to bail any of us out that may need assistance.

We look forward to hearing from each of you today, and I very much appreciate your willingness to come forward and tell your personal story. It has been hearing your personal experience that we in Congress will be able to do a better job of shaping appropriate legislation. It also gives you an opportunity to have a Fed-

eral Communications Commissioner listen firsthand to your experience, and I think that's valuable as well.

Pursuant to the rules of the Subcommittee, all witnesses who appear are required to be sworn in. So I would ask that you each stand right now and raise your right hand.

[Witnesses sworn.]

Senator COLLINS. We will make your written statements a part of the hearing record, and we are going to ask that you limit your oral presentations to 5 minutes each.

And I do want to say that it is totally coincidental that every single panel today has someone named Susan on it. And we will start with Susan Deblois. Susan? If you would also explain a little bit about your background as well as what happened to you with slamming.

TESTIMONY OF SUSAN DEBLOIS,[1] PRINCIPAL, ALBERT S. HALL SCHOOL, WATERVILLE, MAINE

Ms. DEBLOIS. I am a principal at the Albert S. Hall School in Waterville, Maine, and we are on school break and so I was able to come down and be here.

I want to say good morning. My name is Susan Deblois. I live in Winthrop, Maine, and it is a pleasure to be here this morning and to tell you about my experience with telephone slamming, which was not pleasant.

I was slammed in early 1997 by a company from Texas called Excel Telecommunications. At the time I had my long distance service provided by MCI and was very satisfied with their service. I had been with Excel Telecommunications earlier but switched to MCI and had used their service for about 2 months. Excel may have slammed me because they had my name and number as a previous customer.

I learned that I had been slammed when MCI called and asked why I had switched. I was both shocked and surprised as I had not authorized any change in my long distance service. In fact, I told MCI that I didn't want anyone to be able to change my phone service. I never received a call or a notice asking me or telling me about any of the changes in my phone service.

I was very upset that I was slammed because I had an 800 number and a calling card. I had one daughter in college in New York and a senior home with me, and they used those numbers to call home and make other long distance calls. In addition, my husband and I travel frequently and had there been an emergency with my daughters or while my husband and I had been traveling, none of our family would have been able to make a long distance call using our MCI numbers. While my daughters would have been able to call home collect, if they had reached my answering machine, they would have been unable to leave a message.

It was difficult for me to get switched back. I was able to return to MCI after calling them and explaining the situation. I did pay Excel the money for their bill, and I had to pay some extra fees to MCI because I had not stayed with them for the 3 months, both of which I probably should have contested but I am one of those

[1] The prepared statement of Ms. Deblois appears in the Appendix on page 87.

consumers that when they said we can give you a number, I guess it is a PIC freeze number and this will never happen again, I just let it drop. I was in graduate school at the time and was very busy with my job, and I just wanted to get the problem resolved and just sort of get on with it.

I hope that my experience with slamming is of assistance to you in your efforts to stop this grievous problem.

Senator COLLINS. Thank you very much.

Ms. Corrigan.

TESTIMONY OF PAMELA CORRIGAN,[1] WEST FARMINGTON, MAINE

Ms. CORRIGAN. Thank you, Senator Collins, Senator Durbin.

I currently reside in Farmington, Maine. This incident happened to me when I lived in Bridgton last summer.

In June of 1997 I received a certified return receipt letter from Minimum Rate Pricing, Incorporated, and found typical advertising propaganda inside. Because I receive so much of this type of unsolicited mail, I read only the opening paragraph of the letter, which began with a greeting thanking my household for beginning to use Minimum Rate Pricing's telephone services. My family customarily tasks me with the responsibility of searching out the best long distance service carrier, but just to be sure, I checked with my husband and my son to verify that neither one of them had spoken to a telephone representative recently. When they confirmed that they had not authorized any change in our telephone service, I became irritated with the dramatic return receipt tactics of the letter; but I figured since we really hadn't signed up with the company that the correspondence was of little consequence. Usually I would toss such literature in the trash, but I had been waiting for a friend to send me information about another long distance carrier, Unidial, so I had held on to the Minimum Rate Pricing letter until I could check with my friend to be sure if there was any connection between the two companies.

My son left for college in late June, and I got serious about changing our long distance carrier to Unidial because they provide an attractive calling card service for students. When I contacted my local telephone carrier to switch from our long-time long distance carrier, AT&T, to Unidial, I was informed that I had been changed several weeks earlier to Minimum Rate Pricing. I asked who changed the service, and they explained Minimum Rate Pricing had made the change. And my response was, they can't do that. The very polite customer service representative explained to me that companies which switch your—can switch your service without any written authorization. She further explained to me that it was possible to place a lock on my service through my local carrier, which would require that any future changes be made by me personally. So I proceeded to change my long distance service to Unidial and placed a lock on my service.

Angered by the unauthorized change, I searched through my unfiled documents to find the letter from Minimum Rate Pricing, and I read the whole thing this time. I found mixed in with the

[1] The prepared statement of Ms. Corrigan appears in the Appendix on page 89.

various pages of information a 3 by 5 card with a place to request additional information. And at the very bottom of that card was an option to cancel the order. I felt I had been tricked. I wondered how it was possible for a company to change your telephone service simply because you did not respond within a specified amount of time telling them that you didn't want their service. How could it be that the burden was on the customer to respond in order for the customer to keep the service which he or she had so carefully selected?

Few things in life make my blood boil, but for days after learning that companies can unilaterally make such changes, the feeling that I had been violated had not subsided. I wrote to the FCC, stating that I felt it should be illegal for companies to change long distance carrier service without changing the customer's—without the customer's expressed permission. Second, I suggested that if an unauthorized change is made the guilty company should be responsible to pay the original telephone carrier for all the costs associated with making the change back.

When I sent the letter to the FCC I had never heard of phone slamming, and I thought the FCC would be much too busy to respond to this isolated issue. To my surprise I received an acknowledgeable letter from FCC and later received copies of correspondence from my local carrier and Minimum Rate Pricing, the originals of which had been sent straight to FCC. The local carrier's response was simply a history of what changes had been made and on what dates. Minimum Rate Pricing's response asserted that it had followed all required procedures, including the independent verification process, whereby they claimed to have recorded my husband's voice when he gave authorization during the verification process to change the service. My husband and I chuckled at their response because we both know how rude and abrupt he is to all telephone solicitors. Even if he had experienced a brief spell of patience, he never would have endured the solicitation through to the verification process, and in fact he never recalled ever receiving any telephone call from a telephone carrier in the period in question.

Telephone slamming not only affects households; it affects municipalities and businesses. The phone service for my employer, the Town of Farmington, was changed from AT&T to World Tel in mid-January of this year without the proper authorization. It is difficult to track the history behind this type of changeover in large organizations, but we believe that World Tel made the change based on a vague conversation with one of the town's recreation department staff who is not authorized to make a change for the entire town. It is imperative that telephone companies making such changes be required to obtain written permission before obligating such an organization.

In summary, my story is not sensational, it is not newsworthy, it is not even particularly interesting to outsiders, but I can't help but wonder how many others are experiencing similar frustrations. Because the practice of phone slamming is quiet and seemingly innocuous, it receives little attention, and the unscrupulous companies continue to get away with this form of stealing.

I applaud Senators Collins and Durbin for bringing this issue to light. From what I have learned since I was telephone slammed, this is only the tip of the iceberg, and I hope that the Senators succeed in bringing about legislation which prohibits such practices. It is an honor to testify here, and thank you for your time.

Senator COLLINS. Thank you very much, Ms. Corrigan. I want to tell you that your testimony was indeed very interesting and I am sure it was to your husband as well, if he heard your comments this morning.

Mr. Klein, would you please give your testimony?

TESTIMONY OF STEPHEN KLEIN,[1] MERMAID TRANSPORTATION SERVICE, PORTLAND, MAINE

Mr. KLEIN. Thank you, Senators Durbin and Collins.

My name is Stephen Klein. Mermaid Transportation is a small Maine owned and operated business that was established in 1982. Our primary business is our five daily trips from Portland, Maine, to Boston's Logan Airport and back. We also have an extensive charter business that caters to business and private groups. Virtually all of our business is conducted over the phone.

Our business was slammed on Friday, October 3, sometime after business hours. All our phone lines were slammed by Business Discount Plan, a Long Beach, California, company that had acquired our name from AT&T. All four of our lines were stolen without authorization.

We were completely unaware of this seizure until sometime the next day when an office staff member thought our in-State lines were out of order because we could not access them by dialing a 1–700 code. The condition continued the next day, Sunday. By Monday, October 6, we realized after calls were made to Bell Atlantic and OneStar, the carrier who handles our in-State and out-of-State service, that our lines had been slammed.

The seizure disrupted our business, which is dependent upon making and receiving long distance calls and intrastate calls, for 4 days and required hours on the phone with Bell Atlantic and our carrier OneStar to rectify the matter.

When I asked Bell Atlantic how this could happen and who could have given AT&T our numbers they could not respond with an intelligent answer. Furious and frustrated, I was about to put this matter behind us when I received a phone call from AT&T wanting to know why we had switched from them back to our original carrier. I immediately asked for the supervisor, who would then not give me his name nor the department at AT&T he was calling from. He then came up with another number at AT&T that he said would help us. It turned out to be Small Business Billing, which had nothing to do with this matter whatsoever.

I told AT&T the details and the solicitation call from AT&T from an anonymous department manager, and they looked up the numbers and said yes, they did sell blocks of time to outside carriers who slam these numbers. When asked just who they sold our numbers to, they said they could not reveal that information. I feel that

[1] The prepared statement of Mr. Klein appears in the Appendix on page 91.

AT&T is certainly not off the hook, pardon the pun, just because they sold the time to somebody else who acted unlawfully.

With some further investigation I was able to find out that Business Discount Plan was the party that seized our lines. I called them for an explanation, and they insisted that a woman in our office had authorized the switch back in July. I said that was impossible because I knew that she would not have allowed this to happen and that she did not have authorization in her job capacity to do that. The person from Business Discount Plan said he had a tape. I told him that I would be delighted to listen to it. He said he would have it in a few days and play it for me. That was in November and I have still never heard that tape.

Slamming is unfair and I believe infringes upon individuals' and businesses' privacy. If electronically they can steal your phone lines, why couldn't they tap or play havoc with your incoming and outgoing calls? I also believe they are preying upon the elderly with deceptive mail or just unauthorized slamming. Unfortunately, the elderly sometimes don't understand what is going on and they just feel they cannot change the situation.

In January, I again received a call from Business Discount Plan to check and see if certain charges had been removed from our bill, which they had. I asked the person on the line about the tape that never surfaced, and she replied that her office was separate from Business Discount Plan's office and that she worked for a telemarketing firm.

Back in October I did contact the FCC and the Maine Public Utilities Commission about this. But the FCC wants names and other information that we cannot get because these people will not identify themselves. In fact, they are representing themselves as AT&T. Frankly, I think this is a Federal matter because these infractions are coming from out of State. Something must be done to penalize these unauthorized break-ins. It seems now that the perpetrators are making a lot of money and getting a slight slap when caught, at best, and the victims are required to put the pieces back together, which is time and money consuming.

Thank you.

Senator COLLINS. Thank you very much, Mr. Klein. I want to thank all three of you for coming forward today and sharing your personal experiences. As I was listening to your testimony, I was struck by the fact that slamming really does affect people in all walks of life. We've talked about the impact on senior citizens, and here we have before us today a school principal, a town manager, and a small business owner. If it is any comfort to you, I, too, have been slammed twice, and I must say that my reaction was very typical in that I didn't know what to do about it. I was very unsure of where to go.

I would like to start with you, Ms. Deblois, by asking you, were you aware that you could contact the FCC for assistance in this matter?

Ms. DEBLOIS. No, I wasn't aware.

Senator COLLINS. In talking to other people who have been slammed, do most—I would like to ask each of you this question: Do you think that people know what to do or are they unsure? Ms. Corrigan.

Ms. CORRIGAN. No, I've talked to several people in my own office that were slammed, and they just let it go because they had no idea where to send a notification to.

Senator COLLINS. Mr. Klein.

Mr. KLEIN. I don't think they know what to do.

Senator COLLINS. I believe that a lot of consumers' reactions are very similar to Ms. Deblois's, which is you just paid the bill; is that correct?

Ms. DEBLOIS. Yes.

Senator COLLINS. So you actually incurred higher costs, not to mention the fact that you were concerned about the ability of your two teenagers to contact you in the event of an emergency using the telephone card; is that correct?

Ms. DEBLOIS. Right.

Senator COLLINS. Ms. Corrigan, I think you mentioned very briefly at the end of your testimony that the Town of Farmington was slammed?

Ms. CORRIGAN. That's right.

Senator COLLINS. Could you tell us a little bit more about that and what was done, how it was discovered and what was done to remedy this situation.

Ms. CORRIGAN. In doing research it was a little difficult to track down how it happened. I believe they received some sort of notification or correspondences that said thank you for changing and they went back and tried to find out who the company spoke with. And there was some reflection of a number that only goes into the recreation department, and I—we believe they may have tried to make contact with the payables clerk or maybe even the town clerk and maybe got sent away and continued to call other numbers within the town until they found somebody who said yes to a certain number of questions and took that as a yes for a change.

Senator COLLINS. And you mentioned that the company that slammed you claimed that they had a tape of your husband authorizing it. And your husband absolutely had no contact with this company; is that correct?

Ms. CORRIGAN. To the best of his recollection he cannot remember any telephone company calling during that period of time.

Senator COLLINS. And, in fact, as you very amusingly described to us, he usually hangs up on telemarketers?

Ms. CORRIGAN. It would have been a short conversation.

Senator COLLINS. Mr. Klein, it is my understanding that you have been slammed a second time with a fax line; is that correct?

Mr. KLEIN. Yes, they—in fact, it was Business Discount Plan again that came back and did that, and I would like to raise a question that we have got our recent bill from Bell Atlantic in response to this business about cramming. On the bill there is something called Business Discount Plan, and it would—if you look at it quickly you say, well, it must be some special thing that they put together for businesses, and it is not. It has no relevancy at all except for the fact that they are billing you. And then there is a disclaimer here that says, this portion of your bill is provided as a service to Business Discount Plan. There is no connection between Bell Atlantic and Business Discount Plan. I cannot believe that

they are just printing that and being a collection agency; they have to be involved. So this disclaimer does not seem to be true.

I, also, yesterday at home got a check from AT&T for a hundred dollars for—to switch. And they are getting a little better, I must say, with the asterisks are a little bigger, you look at the small print, but the fact is that it is very, very deceptive and this cramming is an issue. I mean, this is 1 month's long distance bill that we go through; it is rather lengthy.

Senator COLLINS. Mr. Klein, I think you raise a really good point on that because a lot of people do not look that carefully at their phone bills; they simply pay them each month. And if they had been switched they may not know it for several months. In fact, one of the purposes of this hearing is to encourage consumers to take a hard look at their phone bills, because I bet there are a lot of people out there who have been slammed and do not even realize it. They are just writing that check each month because, after all, they are writing the check in most cases to the local telephone company, which is acting as the billing agent. And for a business which has a lengthy telephone bill, that's even more important.

Mr. KLEIN. Absolutely, you are entirely correct.

Senator COLLINS. Ms. Corrigan, I have the so-called welcome package that you received, and it is amazingly deceptive. One of the things that struck me about it is it looks like you are not changing telephone service but, rather, that you subscribed to a service that is simply giving you information on pricing. For example, one of the pages says, thank you for subscribing to Minimum Rate Services, comparing network pricing of AT&T, MCI, and Sprint. So if I had received this in the mail I wouldn't think that it had anything to do with my choice of long distance carriers.

Could you talk to us about whether you found this to be informative? I know you have already said that the postcard was way at the end which would have required you to send it back to not switch service. Could you describe the packet and what you thought you were getting when you received it?

Ms. CORRIGAN. I do not believe I found it very informative because I did not read it very thoroughly the first time around, and the second time I read it I was so mad that I really was not listening to what they were trying to tell me about their services. So it was presented in such a way that there was a lot of verbiage and the important stuff did not jump off the page. I think that's the point that comes to mind.

Senator COLLINS. I would like to get your suggestions, each of your suggestions, before I turn to Senator Durbin for his questions, on what we can do to better protect consumers against slamming. And let me ask your advice on three specific proposals.

First of all, this welcome package that Ms. Corrigan received, which switches the service unless you return the postcard rejecting the switch. Should companies be able to do this, Ms. Deblois?

Ms. DEBLOIS. Absolutely not.

Senator COLLINS. So you would recommend that the FCC ban——

Ms. DEBLOIS. Yes.

Senator COLLINS [continuing]. The so-called welcome package. What about you, Ms. Corrigan?

Ms. CORRIGAN. I agree.

Senator COLLINS. Mr. Klein.

Mr. KLEIN. I do, too. In fact, I would go so far as to say even magazine subscriptions, anything where it is incumbent on you to stop them from doing something. You never asked for it so why should you have it. It should be the other way around.

Senator COLLINS. In studying this issue I found out that more than 86 percent of the orders to switch telephone service, the long distance telephone carrier, come from long distance carriers. They do not come from the consumer, 86 percent come from the long distance company. Do you think it would be helpful to change the regulations so that only the consumer can authorize a change in service? You can't have a third party, a company, authorize the change in service? Ms. Deblois.

Ms. DEBLOIS. Absolutely.

Senator COLLINS. Ms. Corrigan.

Ms. CORRIGAN. I believe when you establish your service originally if they want to ask for mother's maiden names or something as a way to verify who it is, either request that that information be given when a change is given or request that the change be made in writing.

Senator COLLINS. Mr. Klein.

Mr. KLEIN. I think it should be made in writing. I think what you might need here is an authorization form that's standard for the industry that has to generate from the user to the company and has to have notarized signatures from both ends, two forms, one the company keeps and one you keep, and those signatures authorized—notarized that says I authorize ABC to take over my interstate lines or whatever it is.

Senator COLLINS. And, finally, what's most disturbing to me are the fact that some companies slam consumers over and over again, they clearly know they are doing it, it is intentional. And my friend and colleague, Senator Durbin, has introduced legislation that in such cases would impose criminal penalties.

Ms. Deblois, what's your reaction to that? Should it be a crime if a company deliberately slams consumers and is a repeat offender?

Ms. DEBLOIS. Yes.

Senator COLLINS. Ms. Corrigan.

Ms. CORRIGAN. I definitely do. Except I think it is very difficult and very costly to go through that process. I think that a more effective means is for the public to be aware and to know how to protect themselves against this. Unfortunately, a lot of people I have talked to feel that, well, yes, it was an inconvenience but it only happened to me once before I learned about the lock. Well, if it happens to every consumer only once, these companies are going to be making a heck of a lot of money off us. So I would advocate some sort of notification in the local carrier's—local service provider's bill that tells you how to go about putting that lock on.

Senator COLLINS. Mr. Klein, should there be criminal penalties for repeat offenders?

Mr. KLEIN. Absolutely.

Senator COLLINS. So we should send the slammers to the slammer, right?

Mr. KLEIN. And let them also pay heavily, I mean, really put a stiff fine on it, without question.

Senator COLLINS. I think that is the key. I think right now that a lot of these unscrupulous providers just view this as a cost of doing business. If they get fined, the fine is pretty mild compared to the amount of money that they've made. We've got to make slamming not pay. We've got to have stiffer fines and real penalties.

Senator Durbin.

Senator DURBIN. Thank you. Each of these companies that were holding out to be your new long distance carriers at some point in time suggested that you had authorized it, either you or someone in your family or your business. Did any of these slamming companies provide to any of you any written evidence of that authorization or a tape recording, which is the form that's often used? And, Ms. Corrigan, we often hear that, when they do it over the phone, they keep the tape recordings, if there is ever any question later, they can play it back. Have any of you ever heard what has been purported to be that authorization from you or your company?

Ms. DEBLOIS. No. The only reason that I knew it was because MCI called me and asked me why I had switched, and I said, what do you mean, switched. I am with you. I have your latest bill in my, where I keep my bills, and that was the only reason I knew. They said you had switched. Because within that month's time that had happened to me. So I had no idea.

Senator DURBIN. And obviously, Ms. Corrigan, from what you testified you did not hear your husband say I would be glad to switch.

Ms. CORRIGAN. And I was tempted to ask them for the tape because I was just aghast that they would say that. And as I learned more about slamming after that I chose not to ask for the tape because I have heard that it is a practice where they would ask a number of questions and get you to say yes and then superimpose the yes over a valid question that you may or may not have answered, so.

Senator DURBIN. And, Mr. Klein, I guess they suggested an employee in your office did this. Did they ever give you the name of the employee?

Mr. KLEIN. They gave us the name. They never produced the tape, they never produced anything written, and we are still waiting.

Senator DURBIN. And you spoke to that employee?

Mr. KLEIN. Yes. And she said I never gave them authorization to do anything like that. We know that to be true, too.

Senator DURBIN. Ms. Corrigan, I have to tell you that I was very impressed that you would receive what you characterized as unsolicited mail and then put it on file so you could find it.

Senator COLLINS. That's good. Most of us throw that away.

Ms. CORRIGAN. A hazard of my vocation, my job.

Senator DURBIN. Well, it paid off—it certainly paid off in this instance. And I take it that this came to you, this welcome whatever it was, and appeared to be just more what we characterize as junk mail, unsolicited, here it is, an offer too good to be true.

Ms. CORRIGAN. Except that it scared me a bit. It came by certified return receipt, and I have never received good news by certified return receipt. So—and a card came in my mail later in the week, I was unable to pick it up until the following Monday, so it really did cause some stress over the weekend wondering who's sending me this important document, and then I was just really miffed when I opened it up and thought it was advertising.

Senator DURBIN. And the approach they appear to be using is the same as we discussed when Senator Collins bought it up, same used by many book clubs, if you do not return the card saying no the answer is yes. And that is a new one on me. I have heard a lot of different slamming techniques, but that certainly does put us at a disadvantage when we have an unfamiliar name of a company and we are most likely to throw it away and if we do we have now signed up for a new carrier. Their creativity never ceases to amaze me on this.

I would like to put the analogy here when we talk about serious penalties. What if you came to learn next month that someone had changed the bank that you had your home mortgage with and that the terms had been changed at the same time? It would be an outrage to think that somebody would try to do that. Because telephone bills are not as large, usually, as mortgage, except perhaps in your case, Mr. Klein, then I think we view this as a lower-level offense but when we add it up in total it becomes serious.

Let me talk about one aspect of this that is—we have to deal with and try to balance. We all like to have flexibility in our decision making. We would all like to be able to say, OK, I just checked it all out and it is time for me to change my long distance carrier, here's the 800 number I have to call, whatever it happens to be, I am going to save some money for my family or my business, and we want to do that without going through hiring a lawyer. We would like to do that in a way that is sensible and easy to do. And this raises questions about how far we are willing to go to protect ourselves and to put in some verification of this decision being made as against the whole question of convenience.

We now know that most of our telephone numbers and certainly our names are public knowledge. They are in the telephone directory or can be obtained very easily from city directories, so that information, name, address, telephone number, is out there for the world to see in most instances. What can we put into this process that is somewhat personal in nature that really does reflect our personal decision. Many of the people with ATM cards here in the audience know that you have to have a PIN number, so even if somebody finds your ATM card there is still another number that protects you if they try to misuse it. And this has been suggested by some groups that each of us as families or individuals be thinking about PIN numbers that have to be part of this process. You mentioned your mother's maiden name. That, too, may be public record if somebody wants to go so far to find it, and in this computer age it may not be as difficult as it sounds.

But what are your thoughts about that? Because we have a balancing act here. On the one hand, we want to make sure we are protected; on the other hand, we do not want to create this into a legal process. It is too complicated and expensive.

Ms. Deblois.

Ms. DEBLOIS. Well, I think one of the pieces that I heard here today is that a number be put on your bill so that you can call and make sure that telephone slamming cannot happen to you. So your own PIC freeze number and you can call——

Senator DURBIN. You call it a PIC freeze number?

Ms. DEBLOIS. That's what I have heard it called, a PIC freeze number.

Senator DURBIN. Is it like a PIN number?

Ms. DEBLOIS. It is just a number that must have been given to my telephone company so that this would not happen again, because when it happened I said, how can this never happen to me again because I don't want to deal with it, and they said we will give you this number. Now, I did not have the number. They just sent the number in so that it would not happen again.

Senator DURBIN. So this is a number provided to you by your long distance carrier that basically has to be surrendered to the new carrier before it is changed. I might say to you in our hearings in Washington on the subject there were those who complained that that was just a way for the incumbent carrier to protect their own business and to not give the consumers flexibility to change, so that's how the debate follows in Washington over this consumer rule on this issue, but it is—when we are talking about protection that's where we start this balancing.

Ms. Corrigan, do you think a PIN number is a way to approach this?

Ms. CORRIGAN. I can see where it has some pros and cons, but I would like to go back to basics where you need to sign on the dotted line in order to commit yourself.

Senator DURBIN. So you have a written signature involved.

Ms. CORRIGAN. I think that would be the best way.

Senator DURBIN. In the city of Chicago we have neighborhood fairs, much like county fairs and town picnics, and they go around and offer people opportunity to sign up for a raffle for a vacation, and the fine print suggests they have just changed their long distance carriers, so they have their signatures and dates, everything looks very formal, but nobody reads the fine print. They just hope they get a trip to Maine.

Mr. Klein, how about yourself, what kind of protection would you suggest?

Mr. KLEIN. Well, I think that the phone—these operators have violated the regular course of business. I don't think they should be allowed to verbally do anything on the phone. I think it needs to be written. And why can't they do business the way the rest of us do business? If somebody wants to sell you clothing or a car or service, they put it in writing, they send it to you. They do not hide it behind a trip to Europe or Maine or wherever or a raffle or a check. And they just say, look, I would like to do business with you, here is how I can do better than somebody else. If you want more information call us, if you want to sign up here is the form, we look forward to being of service to you. Simple as that. I do not like PIN numbers. I have got enough PIN numbers already, and I do have something here about a PIC thing if you want to see that. But I

just think let's just do business normally, and the people who won't do business normally have something to hide.

Senator DURBIN. I also think PIN numbers are the subject of age discrimination because I get older and forget my PIN numbers and the ATM machine starts rejecting me. It starts to think I am some sort of a bandit.

The point that you made that I want to ask the FCC is worth following, too. Is there any compensation to the local billing phone company from the long distance carrier for billing, for example, in other words, does your local carrier, in our case it would be Ameritech, in yours I believe Bell Atlantic, you read the disclaimer there and suggested that it may not be all together complete in its disclosure, that there may be a financial interest for Bell Atlantic in billing it or in who the long distance carrier might be, and I do not know the answer to that question. We could find out later on. But usually they have argued, the local carriers have argued—we are just pass-throughs. We receive this information from the long distance carrier, we assume it is true, and we send it without any verification. We change the long distance carrier because they tell us you, the customer, have authorized it. So that is their defense in most cases.

And then to add another element to this, if we were going to ask them to verify it is going to add to the cost of the process and probably slow it down. That is an element which we can bring up with the FCC. I am glad you raised that.

Mr. KLEIN. I don't think they are doing this just because they are good guys, putting it on their bill. They must be somehow compensated as a collection agency; if nothing else, they should know who they are doing business with.

Senator DURBIN. Thank you very much.

Senator COLLINS. Thank you very much. I want to thank you very much for your testimony this morning. It was extremely helpful because each of you were slammed in a different way, and it will help us better forge a solution to this problem, so thank you very much for taking the time and being with us today.

Our second panel this morning includes Susan Grant, the Director of the National Consumers League National Fraud Information Center, and Dan Breton, the Director of Governmental Affairs for Bell Atlantic in Portland. These witnesses will testify about the growing problem of slamming, their roles in educating consumers about slamming, and what consumers should do if they discover they have been slammed.

I would note that Ms. Grant is no stranger to the Subcommittee. She testified just recently at our hearing on Internet fraud, and her organization does a great deal of good work to help consumers deal with telemarketing slams and scams.

Pursuant to Rule 6 all witnesses who testify are required to be sworn, so I will ask that you stand and raise your right hand.

[Witnesses sworn.]

Senator COLLINS. Ms. Grant, I am going to have you go first.

TESTIMONY OF SUSAN GRANT,[1] VICE PRESIDENT, PUBLIC POLICY AND DIRECTOR, NCL'S NATIONAL FRAUD INFORMATION CENTER

Ms. GRANT. It seems like we are doing a scam a week, Madam Chairman.

Madam Chairman, Senator Durbin, the National Consumers League, the oldest consumer organization in the United States, is pleased to have the opportunity to present you with more insight about the dark side of telecommunications competition, slamming. The rising incidence of slamming, unauthorized carrier switching, not only poses a nightmare for consumers but it also threatens to undermine the benefits of telecommunications competition. The National Consumers League has advocated for fairness in the marketplace since its founding in 1899, but slamming is not fair. It robs consumers of the right to choose their own carriers for telephone service. In 1997 our National Fraud Information Center, which is a hotline through which consumers can ask for advice about telemarketing solicitations and report suspected fraud, received 810 consumer reports about carrier switching. And here they are; I lugged them with me to Maine to show you. Most of these are about resellers of telephone service who buy service in bulk from the major carriers and resell it, although we also do have a small percentage of slamming complaints against the major carriers as well.

We know that, even though carrier switching was the fifth most frequent subject of reports to our National Fraud Information Center in 1997, that this is just a tiny fraction of the actual problem. In our written testimony we presented you with statistics from Ameritech for 1997 showing the incidence of slamming reported to that company in the five States in the Midwest that it covers. It received a record 115,585 slamming complaints, more than double what it had received in 1996. In fact, the regional telephone companies are really the best sources for statistics about slamming, because they are the ones who under contract and for a fee provide switching and billing services for the long distance and local telephone companies, local toll companies.

However, we know that even the numbers from the regional Bell companies are probably not the whole picture because not all consumers complain, that in fact not all consumers may even realize that they have a problem. And as noted in our written testimony and referenced by Senator Durbin, we conducted a Louis Harris survey in the Midwest in September of 1997 to see how consumers were faring in the new telecommunications marketplace. Overall, nearly a third of the consumers had either been slammed themselves or knew someone else who had, and in Chicago the incidents were higher, 36 percent of those consumers. And as has been referenced before, not only were minorities hit higher with slamming but also, the higher your monthly telephone bill is, the more attractive a target you are for slamming. I can testify to this personally because in Washington I share a house with a couple of other people. Last summer we got a new housemate from India who makes frequent calls home, and he was not in the house for more than a

[1] The prepared statement of Ms. Grant appears in the Appendix on page 94.

month when we got slammed by another company. We were obviously a much more attractive target.

In preparing for this hearing, I read all 810 carrier switching complaints that we received last year, and as I did so, I got angrier and angrier. And at the risk of exceeding my time, I just want to read you some of the ways that consumers are tricked and deceived.

Here is a woman from Dover-Foxcroft, Maine, got a call from a company purporting to be NYNEX saying that they were going to place all of her bills on one piece of paper. She agreed but said she did not want her long distance service switched. They switched her anyway. She called to dispute and they claimed to have no control over the telemarketers that they used. They were not NYNEX, by the way.

A man from Illinois, this company switched his long distance carrier without his permission. They told him that his wife had signed a card giving permission to switch. He received a copy of the signature. Not only was it not his wife's signature but it was not even her name.

Here is a person from Minnesota, long distance switched again, company claimed her husband filled out a form to authorize the switch. They sent her a form that had been filled out in somebody else's handwriting, and when they continued to question it the company said that the company would require proof that this was not his signature.

Tyler, Texas, woman has a freeze on her line, a PIC freeze, but was slammed anyway.

Seattle, Washington, company claimed to be U.S. West offering billing consolidation. As I said in my testimony, this is the most common ploy that is used, and it is because consumers are just so tired of all those different pages of their bill that it sounds attractive, I think. This was a company. The office assistant who answered the phone said no but the service was switched anyway. When they questioned the switch they were played the tape. The tape was only a segment of an unrelated conversation where the person had answered yes to some questions, and the company said that it would cost $25 to hear the rest of the tape.

California, company talked to this person's minor daughter on the phone. They asked her for her name, birth date, and what long distance carrier they currently had and then switched with the minor's authorization.

This is somebody from Texas who is complaining on behalf of a friend who is hearing impaired. And the company said that it had telephone authorization of the switch, which in her case is absolutely impossible. This is the second time that this person has been switched.

A man from Indiana answered an ad for a job putting long distance service in stores. He never received the materials to actually do the work, but his long distance service was switched, and he also found monthly charges for a calling card and an 800 number service that he never agreed to. So he was both crammed and slammed.

A person from Oklahoma whose long distance was switched, the company refused to remove the charges and had a doctored tape of

her husband, who had refused the offer to switch but agreed to have information sent through the mail.

California, person got a call from somebody pretending to be with AT&T, just asking him how he liked his service, and when he said that it was fine they used that as authorization to switch him.

And here is somebody from Minnesota who was switched when her son signed up to win a prize at a carnival, son is a minor.

And finally another person from Maine, this in Camden, who was contacted by a company that represented itself as his local carrier offering billing consolidation. He agreed, not intending to ever switch his long distance service, but he was switched and the new charges were four times the previous rate that he had been paying with his original carrier.

Madam Chairman, these situations demonstrate that consumers have lost control over their telephone service to liars and thieves. And even the PIC freeze option, which is where you arrange with your local carrier for them not to effect a change order unless you have contacted your local carrier directly to say that you are switching, is not foolproof. As we understand it, if the slammer is a reseller of the service that you have from your original carrier, for instance, if you have AT&T and the slammer is a reseller of AT&T service, then the PIC freeze system can't recognize that there is a change in service because the telephone service is ultimately still being provided by the same carrier. There seems to be a real disconnect between the service and changing your service on one hand and the billing and being billed for various service providers at different rates on the other hand. And we see this as a major problem, especially since we promote the PIC freeze as an extra measure of protection that consumers can get.

The status quo is really unacceptable and half measures we do not believe will solve the problem. We have seen our different methods of verification that are required are already abused, written authorization that's forged or hidden on those contest entry forms, doctored tapes, and the negative option notices.

To address these problems, we make several suggestions, and one of them is the PIN number. I realize and I agree that none of us want to have to memorize another number. I suppose you could have the same number as you use for something else, a calling card or a bank account, or something else that would only be known to you and not known to competitive telephone companies, so that you could actually make sure that you were verifying your switch. Another alternative would be a welcome packet that works the other way around where you actually receive a notice saying that you have been switched and unless you respond to confirming that that's your desire then no change would be made.

Senator COLLINS. Please take as much time as you need.

Ms. GRANT. Oh, thank you. As you can tell I am really incensed about this problem, especially after spending the night reading these, and I am desperate to help you with a solution to this.

We really think that another important part of any kind of remedy should be minimum standards for the telephone service providers and the billing aggregators that they sometimes use to handle their—act as the middle man between the local company that does the billing for them and the actual service provider to handle

consumer complaints. All of these express great frustration of the trouble that consumers have, when they call they can't get through, the lines are busy, they get hung up on, they are abused if they do get through to somebody. There ought to be minimum standards for how disputes will be handled, and if companies do not meet those standards that should be a basis for the local telephone companies that provide the billing service to refuse to continue or to refuse new billing services.

We would like to also see the addresses of the telephone service providers on the bills. Right now consumers have no idea who these companies are or where they are. And though the company names appear on the bills, as has been pointed out before, that may not be recognizable to you. If it is a name that is Business Discount Plan, you are not recognizing that as the name of the company. It sounds like it is a service. And also if consumers cannot get through on the phone to complain to these companies, which is a common problem, they do not have any address to write, to register their dispute, and it is difficult for them to report the problem to an organization such as ours or a law enforcement agency that needs that information.

And most importantly, we want slammers to be hit where it hurts, in their wallets. We do not think that consumers should have to pay the charges that slammers assess. We believe that it is not the consumer's problem to have to figure out how much their original carrier would have charged for those calls and then remit that amount to the slammer. It is a terrible burden to place on consumers, and we also think that by taking away the ability to collect some money from consumers that would be an economic disincentive to slamming.

We also support the idea of stronger penalties. I would note that the FCC can already impose very, very stiff civil penalties. If consumers could go into small claims court and if States could also seek both actual and punitive penalties, I think that that would help. And I think that criminal penalties are appropriate for situations in which there is deliberate or repeat incidence of slamming.

And, finally, we recognize the importance of public awareness and education to fighting fraud. Your witnesses today have said that what they really need is information about how to shop for telecommunications services and what to do if they are slammed, crammed, or have any other kind of problem in that regard. And the National Consumers League is leading the way in that effort. We have a free publication that we just came out with, "Make the Call," which gives consumers information about how to shop for different kinds of telephone services and also tells them what to do if they are victims of slamming, cramming, or other telephone billed fraud such as 900 number fraud. This is available free in English and in Spanish from the National Consumers League's web site, which is www.natlconsumersleague, all one word, dot org, or by calling a special 800 number, 1–800–355–9NCL, and leaving a message with your name and address and whether you want to get this in English or Spanish. We have 350,000 of these, so we really want to get them out to as many households as possible.

In summary, we believe that if as much energy is put into solving the problem of slamming as is presently being put into devel-

oping new kinds of telephone services that consumers can be charged for, we would all be better off. Consumers would be less victimized by slamming, and the benefits of telecommunications competition that we have all been promised will be realized. And we will be really glad to continue to work with the Committee and the Congress in this effort. Thank you.

Senator COLLINS. Thank you very much, Ms. Grant. Mr. Breton.

TESTIMONY OF DANIEL BRETON,[1] DIRECTOR, GOVERNMENTAL AFFAIRS, BELL ATLANTIC

Mr. BRETON. Good morning. Thanks for allowing me to represent my company, Bell Atlantic, on this issue of slamming and how it affects consumers. I am Dan Breton. I am the Director of Government Affairs in Maine, and I am a Maine native. I have 20 years of service with Bell Atlantic and the NYNEX and New England Telephone companies.

Bell Atlantic, for people not familiar with the State, is one of 24 local exchange carriers that make up the Telephone Association of Maine. Additionally, there are also a couple of other companies that provide local service, 80 percent of the consumers are served by Bell Atlantic service in Maine, about 670,000 lines of service. Our consumers can now choose from about 200 companies for long distance services, and as of last September Maine consumers can now choose to use any long distance carrier for in-State calling without having to dial extra digits. So with all this it sounds like a great thing, great new services, great new prices. Unfortunately it has caused some confusion. Slamming is one of those by-products of having this many choices for consumers to have a chance at reaching for.

Last year we administered over 363,000 changes of customers' choices for long distance carriers for out of State calling. We also in the September to December period processed about 83,000 changes for intrastate calling, in Maine calling, in that short amount of time that customers were allowed that option. Again, that is based on 670,000 lines, but that is a lot of changes. Some people may have made more than one change, but that gives you a perspective.

Earlier Senator Collins mentioned that 86 percent of these preferred carriers changes are made to us via electronic transmission of tapes from the long distance carriers, and I believe I am out of my element to talk on behalf of long distance carriers. I am really trying to speak from my company's perspective, but I believe initially it was the feeling that we should make it as easy as we can to let customers choose long distance carriers other than the dominant carriers that provided service around the divestiture period. Long distance companies like Bell Atlantic for in-State calling and AT&T was the dominant carrier by far for out-of-State calling. So to open the market for that, we want to make it as easy as possible for choices to be made.

The long distance carriers have the responsibility of maintaining records that they have had received, from some consumer, notifica-

[1] The prepared statement of Mr. Breton with an attachment appears in the Appendix on page 106.

tion and a positive response of some sort, before they contact Bell Atlantic. We process the change. Again, when it is done electronically we probably do—with these kind of numbers a total of 440,000 changes were made last year. You can imagine how many we have to do per day just to keep up with it. And we have to do it very timely. Some of these long distance plans are dependent on timing as well as for the consumer to get their 5 cent a minute rate or what have you, whatever they have chosen to do.

Again, there were 643 slamming cases that we know of in 1996, 1,582 in 1997, so it is a little bit more than double. And those are known cases. We do not profess that everybody has called us. The customer reaction that our service reps deal with is surprise, frustration, and confusion.

We are sometimes the first to hear about a slamming episode because a customer notices the $5 charge to change their carrier on a telephone bill that we provide, and so we are probably the first to get, "hey, what is going on."

We bill for other carriers. It was brought up in prior testimony. We do billing and collection. It is a business—a line of business for us; we do it as an offering. Some carriers do their own billing. Some of the larger carriers want to maintain that relationship with their customers. We do billing, and included in our fees are charges for recovery of collection of those telephone calls, as well as some factors in for bad debt and uncollectibles. And as we run into the uncollectibles for some carrier whose actions and practices causes the customer to not want to pay, that is factored into our negotiation with that particular long distance carrier. There has been a case where we have refused to do billing for a carrier because of the number of complaints that have taken place. We do have one incident that I know of in our territory. I am sure there are other examples throughout the country.

The key points that I would really like to make is that our Bell Atlantic employees, we have 1,600 in Maine, we have 133,000 across our footprint, are trained and instructed to try to make things right for a customer who does call in with a problem caused by—especially caused by slamming, and it is probably the largest growing amount of calls we get. We instruct our employees to waive the charge, the $5 charge, that the customer incurred and to restore the customer to their original carrier if that is what the customer wants. There are those odd cases where the customer says, well, I did not know what the $5 charge on my bill was, I am getting a much better long distance rate, leave me alone. Fine, so noted, but I don't think that that is the dominant response. We restore the customer to the original carrier at no charge so they will have paid nothing, and in some cases we will refund the money.

We would rather have the customer deal with the carrier. There should be an 800 number on every page of the bill. Unfortunately some customers do not get recourse from the carrier. If they come back to us we will take the charges off and we will go after the carrier if we have that ability to do so. If we do not bill for the carrier, unfortunately, we do not have that capability. What we would do in that case is we would waive the $5 charge and instruct the cus-

tomer to ask the carriers as many questions as they can to understand what happened and to request a rebate.

We offer the PIC freeze. If 86 percent of carrier changes are done via an electronic process, then the PIC freeze should go a ways to preventing that from happening again. We have to hear from that customer to make the change, and we prefer to ask the customer a few questions that probably they would know more so than others. Rather than put the whole litany out there, it could be a Social Security number, it could be maiden name of a relative, it could be something to identify it. We are just trying to make it so that if that customer decides that, hey, this new long distance company just came into town, giving me a heck of a rate, I have to be able to swap over to that carrier when I call you, in that instance. When a customer puts a PIC freeze on, I do not have any evidence—any numbers as to how often they reverse that, but it—the intention is to have only the customers that make the change reverse that change.

We believe Congress is in the right frame of mind when they want to bring attention to this matter via your hearings, via the newsletters that you are putting out to your consumers, and you should bring attention to it. We support stiffer penalties. I believe we testified to that before the FCC, and we want to make it as easy as possible for people to add a PIC freeze. There was that incidence early on where we—local exchange companies, and I can see where the attack came from, of course you want them to freeze, and that freezes them into a long distance choice that may benefit you. We advocate for as many free opportunities as soon as possible; let the customer make that decision. We always should be saying, and we try to say it as often as possible, we are for a free market out there. When we are allowed into long distance out-of-State, we hope that we win, if we win business, with customers that want to stay with us and that they know they bought our service.

We support education, in the front of our directories we are putting information about these particular incidences like slamming, the chance of a PIC freeze. We have it in our advertising. The customer billing information notices that we send out carry that from time to time. We send those out monthly for residents and for business. And we really emphasize this matter in our employee training and if we have an employee that is on the line with a customer, there is no excuse for them not knowing what to offer the customer, how to remedy the situation. And it will be so noted, and we will do some additional training if we have to with that employee.

We are participating in the rule making at the FCC, and you may want to know that last week we supported legislation in Maine, that's LD2093, to introduce slamming protections in the Maine statutes. The bill is not completed yet. It has a very good consortium of consumer advocates as well as long distance carriers and local exchange carriers trying to put together something. It will have penalties and the slamming party will not receive money. That is the direction we are headed in and that is the direction that Bell Atlantic has advocated for. If you are a slammer, why should you get any money out of this.

Those are some of the ideas we have, and I would be more than happy to answer any questions you have.

Senator COLLINS. Thank you very much, Mr. Breton.

It has been difficult to get a handle on the extent of slamming. If you look at the FCC statistics, they clearly understate the problem, as the FCC has said. When you look at the local telephone companies, I still suspect that the problem is greatly understated.

Mr. Breton, I think you said in your testimony that Bell Atlantic did process more than 360,000 changes in long distance carriers last year for your customers; is that correct?

Mr. BRETON. That was for carriers for out-of-State calling, and you would have to add to that almost 83,000 for in-State calling as well, so we processed that many.

Senator COLLINS. So when you look at the total universe it is well over 400,000 changes, which is absolutely astounding to me that there were that many changes.

The FCC Commissioner who is going to be testifying next says that it is probably a conservative estimate to say that 1 percent are changes that resulted from slamming. So what we are talking about potentially, even if you do a conservative estimate, is more than 4,000 Maine citizens being slammed in a year; would you agree with that?

Mr. BRETON. If you leave the 1 percent, I do not have any knowledge to back that up, but that is what—everything I am reading points to large numbers. And of the 440,000—if you start from that universe you can come up with those numbers as you approach the 10 percentile.

Senator COLLINS. Ms. Grant, similarly a lot of consumers do not complain to you more than they do to the FCC. Is your impression in dealing with State regulators and the consumers that you talk with that this problem, if anything, is understated?

Ms. GRANT. Oh, absolutely. And I think the Lou Harris survey that we conducted in the Midwest bears that out. We found that of the respondents with slamming experience only 7 percent of them reported it to any kind of government agency, 2 percent to a nonprofit group such as ours. So we can see how it is vastly unreported. Although it is not scientific, all you need to do, though, is be in a gathering with your friends and ask how many people have been slammed, and you will find that the vast majority have been.

Senator COLLINS. I think this problem is much more prevalent than is generally realized, and I think there are a lot of people who do not realize that they have been slammed. If you look at the statistics just for Maine, there were 51 complaints to the FCC last year, there were 1,600 complaints, approximately, to Bell Atlantic, and yet if you apply the 1 percent ratio probably we are talking about 4,000 Maine citizens who were slammed last year, some of whom may not even realize to this day that they have been slammed. And Ms. Grant's observation is very similar to mine and to Senator Durbin's. If you talk to any random group of people you find out that there are people who have been slammed. I mention this because it troubles me that this is so widespread and that it is going in the wrong direction. We do not have the controls in place now to discourage and deter companies from slamming consumers.

Mr. Breton, can you give us some idea of the cost to local telephone companies, to Bell Atlantic, for you to remedy slamming complaints? After all, you did not cause these complaints, yet you are the one that usually the consumer calls. In some cases they call the long distance carrier directly, but frequently they cannot figure out who the long distance carrier is or how to contact them.

Mr. BRETON. Senator, we have not been tracking specific costs lost to working on the billing or the rebates, long distance switching fees. We intend to do so. I do not have any hard data on that. It takes awhile to do every case. If we know of 1,500 or so cases you can begin to extrapolate the costs of a service rep's time on the line, because we view this as—I know they are doing productive work, but it is also nonproductive time. It is not getting us ahead or it is just remedying a situation, but I do not have any data at this time of specific costs.

Senator COLLINS. Do you think it is a substantial cost to local telephone companies to remedy these problems? The reason I am pressing this issue is ultimately that is passed on to us, the consumer, because it is going to be built into the rate structure ultimately, so I think the local telephone company getting a handle on the cost is important because ultimately we pay the cost.

Mr. BRETON. Yes, I do not know how to—they do a nice job of defining within my own company substantial, but any time we spend 1,500 cases and it is growing on this kind of problem, it is costly.

Senator COLLINS. Could you describe for us some of the reactions of consumers who call Bell Atlantic? Are they puzzled; are they angry; do they understand what's happened?

Mr. BRETON. They are very puzzled because it—when a charge like that appears without any knowledge in their own home, and there are a lot of people living alone, when it happens to somebody living alone, there is no way that they could have authorized that, there is no doubt that maybe another person in the household did it. So they are very confused at times. When slamming first started happening we were trying to figure out, well, there must have been some discussion. Now we quickly explain what might have happened to try to get the consumers beyond the anger. And the anger—we try not to blame anybody out of this, but obviously your first advance as a service rep is to try to point out you are here to help, you did not cause the problem, but you would like to try to turn it around.

Senator COLLINS. Do some of the consumers who call you mistakenly think that Bell Atlantic caused the problem for them?

Mr. BRETON. Yes, they do. No matter how much money we put into advertising trying to separate ourselves from other carriers, even my godmother insist I work for AT&T, that has not been since 1984 that we were part of that system. And it is there in the consumers. These consumers have not made changes in their phone service for ages. They are very accustomed to no change at all, and this is very confusing. So they expect us to remedy the situation and to make it right. Because we bill for a lot of carriers, we will carry the ball as far as we can for the consumers, but we do take the brunt of the hit on the first call, and that is usually where the

most venting is taking place. And then we will get another call if they cannot reach the carrier, and that is a problem.

Senator COLLINS. Many consumer groups, including the one represented by Ms. Grant, recommend to consumers that they ask for a PIC freeze. Does Bell Atlantic offer a PIC freeze up front when someone calls to start telephone service?

Mr. BRETON. I did not check—when somebody is just initiating basic service, I am not sure. When somebody has a slamming problem, yes, they do offer it. We offer it right up front on the slamming complaint, but I would have to do some checking on that other situation.

Senator COLLINS. From my experience the answer to that is no, that the offer or the explanation that a PIC freeze exists only occurs upon the consumer complaining of slamming. One problem with doing it up front is right now you are the honest broker in this, but ultimately I assume Bell Atlantic is going to get into the long distance business. If that happens, is not the local telephone company now put into a situation where it has a conflict of interest in trying to resolve these slamming complaints?

Mr. BRETON. We do plan to be in the long distance arena; we have filed in New York. We are opening our markets in just about every State. We are susceptible to that complaint, that as a local carrier you have an advantage, we expect to do the long distance business through the guidelines of the Telecom Act that put together some pretty distinct areas of how to separate this kind of business. We will follow those and make it as fair as it can possibly be made. There will always be people saying that we have an unfair advantage, but the best way to change these carriers on telephone lines is through the local exchange carrier. I know in Portland here we have competition for the local lines; somebody is providing that. So any local exchange carrier, maybe in 3 or 4 years we will not have the numbers we have. For example, in Maine our long distance dominance in in-State long distance calling is less than 50 percent on business lines. We have had that market attacked by 180 carriers. So we do not have all those market numbers that we used to have. And we expect that as we continue to open our markets that we will have competition, but we will take on that kind of concern.

Senator COLLINS. Ms. Grant, I know you have a lot of expertise in telemarketing scams. In many cases that we have learned about, telemarketers have been involved in the slamming. Do you think that there is an economic incentive for telemarketers to engage in deceptive practices because they are likely to be paid in part on a commission basis?

Ms. GRANT. Yes, I do. And we know that in many of the instances where we have carriers that we would consider legitimate major carriers accused of slamming it is because they have outsourced. They have used outside marketing firms who are paid by a commission basis, and obviously they then have an incentive to claim the highest number of consumers possible as having agreed to switch.

Senator COLLINS. Some of the more reputable long distance carriers have found that they had a problem when they outsourced the telemarketing but that that problem and thus the number of slam-

ming complaints declined once they brought it in-house. Another approach taken by some of the larger long distance companies is to have a third-party, independent verifier of the consumer's willingness to change carriers. What do you think of those two approaches?

Ms. GRANT. I think that retaining your marketing functions in-house obviously gives you more control. But you could probably have very good monitoring provisions if you use outsources for that.

In terms of independent verification, we have seen so many abuses in that regard where even though the verifier and the company that is selling the service are supposed to be separate, they appear to be in league, just very easy to do. And the salesperson will in some cases be standing right there with the verifier in the same conversation putting the person on the line to verify the change. I think, although independent verification is an attractive part of the solution, it is hard to ensure that it really is independent, and that is our main concern.

Senator COLLINS. Could you describe for us some of the more fraudulent telemarketing techniques that you have encountered in going through the complaints? The reason I would like you to do this is to help educate consumers on what to beware of.

Ms. GRANT. Well, there is no bounds to the creativity of crooks. As I said, the most common kind of ploy that we see used is the billing consolidation, which is really confusing for people because they do not even really understand what that means. Consumers in most cases get all of their various kinds of telephone charges in one bill anyway, but I think just the sound of billing consolidation is attractive because people are so overwhelmed with different pieces of paper. Very often these marketers will claim to be the consumer's original long distance carrier or local carrier and are just offering a new way of billing. Sometimes they claim that in fact this change in billing, this bill consolidation, is something that is now required by the Telecommunications Competition Act. Sometimes they claim to be calling on behalf of the Federal Communications Commission.

Senator COLLINS. That is pretty bold.

Ms. GRANT. Yes, they are. They are very bold. These are people who probably are engaging in other kinds of scams as well and lying is just second nature to them.

Sometimes they claim to be conducting surveys about either telephone service or something else entirely, and they'll walk consumers through a series of questions and they'll tape record their answers and they'll get various yeses to different questions, and then later they'll produce a doctored tape that is supposed authorization using those yes answers.

Sometimes they will approach small businesses telling them that they are such great customers that they are going to be offering them a new discount plan. And, again, they will be pretending to be their original carriers. There is no agreement that you are going to be changing, just that you are going to be on some new reduced rate plan. Who could refuse that, that sounds great, and so people say yes to that. And then the next thing they know they get a bill from one of these companies. And not only were they switched

without their consent but it is no rate reduction at all. It is usually three or four times higher than their original carrier.

The prize promotions, we know that that is another common way where you fill out some kind of entry form at a county fair or a mall, also product promotions for coupons to get free products is another way that people are roped in for both slamming and cramming, where they are signing something not reading the fine print.

The job scams. The most amazing one that I have ever heard of, and we have received two or three calls about this particular outfit, is a company that calls consumers claiming to have purchased debts that these consumers owe someone. As far as the consumers know, they owe no one. But these companies claim that they have purchased the collectibles on this debt and that the consumer can get out of the debt and have a clean credit record if the consumer agrees to buy his or her phone service from this company. When—I mean, there is no way that you can even imagine the ploys that these companies will come up with to either trick people or in this case really intimidate them into buying their phone service. They say, if you do not buy our phone service then we will go after you for these debts and we will take you to court. That is the height of unfairness.

Senator COLLINS. Thank you.

Mr. Breton, you mentioned that you are supporting legislation at the State level related to slamming. I would like you to be very specific for Senator Durbin and for me on what changes you would like to see at the Federal level, whether through regulation by the FCC or through changes in the law. And to give you an example, for example, should welcome packages be prohibited by the FCC? Should we have criminal penalties? What would be your advice?

Mr. BRETON. We are at a stage now where we are still reviewing, I believe there are seven pieces of legislation. The most recent one that came out this week from Senator McCain, and each one of them has had a different flavor. I know we are pushing for increased penalties and for slammers not to receive any of the compensation. I believe right now there is—as I think Ms. Grant pointed out, that for a consumer to figure out how much they owe that different carrier after they have been slammed, that could be a problem for pushing for that. As far as a welcome package, we are right now reviewing that. The negative checkoff is problematic. I know in Maine we do not do negative checkoffs. We had an experience with that that did not go that well, and we expected not to ever do that again. And so those are the ideas I have, but I do not have any specific things other than the comments we filed on the bills.

Senator COLLINS. When you say that the long distance carrier should not be able to keep the money, are you talking about charges that are above the amount that the consumer would have paid if the consumer had kept the preferred provider, or are you talking about the long distance carrier not being able to collect anything for the calls?

Mr. BRETON. We are talking about anything. That is what we propose. I do not know how other long distance carriers have weighed in on that. But what we are saying is if somebody had some deceptive action which took you from one carrier to another

without your knowledge, that the new carrier that caused that action should not receive any money, any advantage out of this, because it will be a gaming thing. It could be they do 95 out of a hundred of those and 95 of them hold true and they keep the money. We would rather have the consumer, if they are going to pay any money on that bill, would be to the carrier they expected to pay at at the rates they expected to pay.

Senator COLLINS. Some long distance carriers have objected to that proposal because they believe it would encourage fraud by the consumer, that a consumer might run up a huge phone bill and then say, well, gee, I did not realize that I had been switched and get off without paying the bill. Do you think that is a real problem?

Mr. BRETON. Well, that is an issue in the proposed State legislation in Maine. While the FCC legislation today, I believe, leaves the door open for the consumer to pay their original carrier, the Maine legislation was uncertain as to what to do. We are concerned that this could create a situation where some claims could be made. After the claim—we note the claims on a customer's bill and we waive the charges. I believe if it happened six times in a row we would catch on to that consumer. But we would like to not have that possibility because it could be at that one and only time that a $5,000 bill was run up. But our contention is we would just rather not attract more administrative problems through slamming, and to close a loophole on somebody making a false claim to get a free phone bill, it puts us in a tough spot. We would rather just avoid that whole situation, and the consumer's understanding would be I made 30 minutes worth of calls, I would have paid this much with my other carrier, that is what I expect to write a check for this particular month.

Senator COLLINS. Mr. Breton, do you think that the local telephone companies should be required to report to the FCC if they are getting a spate of complaints involving a particular long distance carrier? Should there be some obligation on you to alert the FCC if all of a sudden you are getting tens or hundreds of phone calls that implicate a particular long distance carrier as being an egregious slammer?

Mr. BRETON. I would like to try to sidestep that answer only because it puts us in a spot of turning the policing act on the telephone bill to a carrier that we might very well be competing with head to head in in-State, and this would put us in a tough spot. When we were formulating our responses for today, we allude to in some background material to the scorecard compiled by the FCC without really mentioning any carriers because it puts us in a difficult spot. If we were forced to track that and turn it over, obviously, we will do what we have to do. But we would rather not be the first to scream about ABC company having 10 slams in a row. I know that we will probably terminate the billing arrangement we have with them. That would be how we deal with most of it.

Senator COLLINS. I guess what troubles me about that answer is the average consumer is not going to call the FCC and complain. The average consumer's not even going to call the National Consumer's League and complain. They are going to call you. The average consumer has no idea whether or not the problem that he or she has experienced is an isolated one or whether or not a whole

lot of other customers are being slammed by the same company. So what I am struggling with is how do we trigger the FCC to take action against a particular carrier. If consumers are not complaining to the FCC, and I would not expect them to do so, and you are not reporting a pattern of deceptive practices, then I am unclear how the FCC, and I am going to ask the Commissioner this question, how the FCC knows to take action.

Mr. BRETON. I guess what I would offer is we would be willing to track it in any way that would be competitively neutral so that we didn't expose ourselves to a situation. But as far as tracking, yes, if we track I believe that information should be available to agencies such as the Maine Public Utilities Commission, which we do show complaints to them and the nature of the complaint as well as the FCC. I would want to say we would want to turn them over, but we would want to be very careful so that we would have a mechanism of turning them over without starting a side show that takes away from the real problem.

Senator COLLINS. Ms. Grant, my last question for you is very similar to that which I posed to Mr. Breton, and that is what specific recommendations would you have for regulatory changes that could be implemented much more quickly by the FCC and also statutory changes to deter this very unscrupulous practice?

Ms. GRANT. I do think that the FCC should set some limits to the number of complaints that a company can have before action is taken, and there could be a series of different levels of actions that the FCC would take, depending on the number of complaints and whether it is a repeat offender. But what happens now is that there need to be so many complaints before the FCC acts or before a local company feels that it is able to terminate its relationship with a service provider without fear of some kind of liability. But I think it would be very helpful to the local companies as well as consumers in general to have those kinds of minimum standards for how the companies conduct themselves.

Senator COLLINS. And do you see the need for some law changes as well? Senator Durbin has suggested criminal penalties for repeat offenders. That is an idea that I find very appealing as well; it is deliberate and it happens time and time again. Or perhaps we should make sure that the FCC revokes a carrier's license, or whatever the proper term is, in the case of a repeat offender. Do we need stiffer fines; are there any law changes that you would like to see?

Ms. GRANT. Yes, I think that law enforcement agencies at both the Federal and the State level need more tools to shut these people down and to penalize them. And also, as I said before, I would like to see the law say, as it does for disputed 900 number charges, that the consumer has the right to refuse to pay. I think ultimately the most effective way of going at this is to take away the economic incentive to slam.

Senator COLLINS. Thank you. Senator Durbin.

Senator DURBIN. Thank you, Senator.

Let me try to get an understanding first of the local situation, and then I want to ask a broader question.

So at the current time Bell Atlantic does not offer long distance service?

Mr. BRETON. That's correct. We offer State long distance service, in-State, within Maine only.

Senator DURBIN. OK, so you would not offer it to Massachusetts or Illinois, whatever?

Mr. BRETON. Yes.

Senator DURBIN. And how many companies compete with Bell Atlantic for local service, within Maine, for example?

Mr. BRETON. When you say local service, are you talking about the dial tone line going into your home?

Senator DURBIN. Yes.

Mr. BRETON. There is one competing head to head with us in Portland now. We have about—contracts with about eight others that have the authority to compete. But one right now head to head in Maine, and there are 23 other telephone companies providing service in Maine in their own territories.

Senator DURBIN. And you said there were about 200 long distance carriers that Bell Atlantic bills for at the current time?

Mr. BRETON. There are about 200 carriers that are authorized through the Maine Public Utilities Commission to provide long distance service in Maine, and we bill for a majority of them but I do not have an exact number who we actually bill for.

Senator DURBIN. So if I wanted to start a long distance telephone company and sell to people living in Maine, I would have to go through some State process of approval through your Public Utility Commission?

Mr. BRETON. Yes.

Senator DURBIN. Is that correct?

Mr. BRETON. That's correct.

Senator DURBIN. And once having received that approval from the State utility commission, then is it your obligation to bill, to pass the bills along to my long distance company?

Mr. BRETON. If they contracted with my company, absent some reason why we could not or should not take their business, we would probably do the billing and collection for that particular company.

Senator DURBIN. That is what I would like to focus on because I think that is an important element. You suggested that you had turned down, refused to bill, for one long distance carrier. What was the reason?

Mr. BRETON. The reason was repeated complaints about slamming.

Senator DURBIN. All right. And I take it that you can do that without violating any consent decree from Federal courts or any State law; that is Bell Atlantic's decision.

Mr. BRETON. That's correct.

Senator DURBIN. So does Bell Atlantic take on—as a regional carrier take on the responsibility of monitoring the long distance carriers to see if in fact there are increasing numbers of complaints about specific carriers?

Mr. BRETON. I am not aware that we do. I am not aware we have a specific procedure for looking at these things today. I know that slamming has heightened our awareness as to problems caused by the situation.

Senator DURBIN. So how did you come to the conclusion about this one company that you wanted to stop doing business with?

Mr. BRETON. I do not have specifics on that. I could get that. But I believe it was the nature of how many calls we were taking based on the number of bills we were providing for them was getting problematic and we did not like their practices.

Senator DURBIN. But, for example, if a company is relatively new to Maine and it turns out to have been a bad player in Texas or Illinois and had problems with the FCC and in fact were fined substantial amounts for those problems, what you are suggesting is that Bell Atlantic under the current process and rules really would not take that into consideration as to whether they would play the middle man and bill for that long distance carrier in Maine.

Mr. BRETON. That is a good question, Senator. Within our own footprint of 14 States we would use our own information that we can gather about that particular client and share it amongst each other. I do not know if we would share it with Ameritech, what have you, to say stay away from this bad actor, they are going to cause a problem. I do not know.

Senator DURBIN. Does Bell Atlantic get compensated for billing this long distance service?

Mr. BRETON. We get compensated for billing and collections and there is a factor added in for uncollectibles, for bills that are bad debts.

Senator DURBIN. So this is in fact a business proposition for Bell Atlantic. There is money to be made; obviously you would not do it. And you are providing the bill to the consumer with the name of your company on the bill and have something in-State, too. What I am driving at is, going back to Senator Collins' point, is seems like the regional companies here are not passive players. You are active players in this process, and you in fact make a profit off these long distance companies. You in fact decide whether you want to do business with these long distance companies. And the question she raises I think is very pertinent. You may be the only source of information to help police against these companies. And I also think that your burden as a regional carrier should go beyond your footprint, as you say. If your company, as large as it is, and the regional companies are rather large, is not following the FCC action, for example, they on an annual basis or maybe more frequently will fine some of these long distance carriers for actions in another State. And I would think that would raise a red flag in Maine, too, that perhaps they ought to be on a watch list. And if you start receiving complaints in Maine maybe it is time to cut them off. What am I missing here?

Mr. BRETON. I believe you are on track. I do not know for sure if there is a watch list. I do not know if we refused to even take on some business. I just had evidence of the one that we terminated upon already doing some billing for them. I would like to talk to somebody in my company in the billing and collections group to get a better feel for how we screen. Obviously that would be a concern to us.

Senator DURBIN. How profitable are these long distance carriers we are talking about? I know there are large ones but there are

also brand new ones on the scene. Is there a lot of money to be made here?

Mr. BRETON. I know the size our market is in Maine, the in-State long distance market in Maine is about a $300 million market, maybe. But I do not know what it is nationally. And I do not know how profitable they are, but they are—with 188 certifying in Maine at one time, Maine is a small market, Maine is a very small market, so there must be something. Maybe one of the carriers could give us a better idea.

Senator DURBIN. Ms. Grant, can you speak to that, do you know about these long distance carriers and their profitability and how many there are nationally and what kind of money they make out of this?

Ms. GRANT. I don't have numbers, but I will tell you that there are more and more every day. Anyone can call themselves a telephone company now. It is easy because you do not have to build your own infrastructure, your own network; you can just buy service wholesale from somebody else and resell it.

I will also note that I believe that there is a list of deadbeat consumers that is shared by the telephone companies and I forget what it is called, I know it has come up in discussion about 900 number problems, so that if somebody has really abused their ability to have a telephone and stuck a company in one place, that company shares that information with its competitors in other places. I don't understand why there could not be something similar for these slammers.

Senator DURBIN. Mr. Breton, say it ain't so.

Mr. BRETON. Firsthand knowledge, I do not know. I would imagine whether we have a bad debt on a customer I know we carry it forward in our bills. If, for instance, Mr. A ran up a telephone bill and there is a bad debt there, we will note that Mr. A cannot have phone service again until they pay off the bad debt.

Senator DURBIN. And would the RBOCs exchange that information?

Mr. BRETON. That I do not know.

Senator DURBIN. Let me ask you, one of the things you said in your testimony is if somebody calls complaining saying I have been slammed, you make certain that you restore them to their original long distance service without charges for changing, either a charge for initiating the slamming service or for returning to their old service. But there is no adjustment made on the actual bill for the monthly charges that might have come from the company that slammed them.

Mr. BRETON. If the consumer—we then ask the consumer—we do adjust, that is correct, Senator, we adjust the $5 charge that was incurred by the long distance companies for us changing from one to the other. Then we waive the charge to restore them back to their original carrier, and we ask the customer to contact that long distance carrier to see if they want to give the customer credit and then we will flow that credit through on the next bill. If the customer calls us back and says they told us sorry, we are not helping you, we have a tape, we have whatever of somebody authorizing this change as a legitimate charge, and the customer still insists

that there was no way they could have done that, we will adjust that bill and we will go after that long distance carrier.

Senator DURBIN. The last area of questioning here is on this issue of cramming, which has come up a few times here. If Bell Atlantic wants to offer a new service to customers in the State of Maine, for example, whether it is call forwarding or some new modification on that, and they advertise it and the customer calls and says I am interested in that, how do you in fact verify that that customer has given approval for this new charge to be added to the bill?

Mr. BRETON. We have a billing name on our records, and we—if it is that particular person we just verify that they have service. If they are asking for a service like that, we will place it on the bill and make it as easy as possible.

We also have a policy, by the way, of removing that charge immediately if we made a mistake, if in some cases a very adult-sounding 13-year-old in the household decides to order call waiting without telling the parents, then we will waive that charge, absolutely no money will be expended by the customer on that. So we have a very liberal policy on our own services like that.

Senator DURBIN. But no signature is necessary, no written authorization, no PIN number, no PIC freeze number? If it is involved with local service and additions to charges, merely the oral representation that I am Mr. So and so from Portland, Maine, and this is my telephone number is enough to change that service and bring it to the bill; is that correct?

Mr. BRETON. That is—we change it on a verbal—yes, we do.

Senator DURBIN. Let me just say that I understand that the regional companies, including Bell Atlantic, are not the target of this hearing. But I would suggest to you that you are really intimately involved in this from a business viewpoint as well as from a professional viewpoint. And I have to agree with Senator Collins, I think you may be in the stronger position to deal with this absent changes in the law than virtually anyone. If there is evidence of wrongdoing by these long distance carriers, not only in your region but nationwide, you would be the first to know about it or could be the first to know about it and protect consumers. I assume that if you do not bill these long distance carriers that they have to bill directly; is that correct?

Mr. BRETON. That's correct.

Senator DURBIN. I think that would be another red flag, when people start receiving a new bill from a company they never heard of and they are told that this is your long distance carrier, they would be alerted many times to the fact that they had been slammed. So I think that having said that, and based on your testimony, you have an enormous volume of changes that takes place, and I am always shocked when I hear this, how many people really do set out to change their phone service each year. But I just cannot imagine anybody else in this process who can play the role of an honest broker as the regional companies can, and I hope that we can find a way maybe even without changes in the law to see that take place. Thanks.

Senator COLLINS. Thank you very much, Senator Durbin, and thank you both for your testimony this morning.

Our final formal witness of this morning, before we go to a public comment period, is the Hon. Susan Ness, who in 1994 was appointed by President Clinton as a Commissioner of the Federal Communications Commission. The FCC, as we have learned this morning, is responsible for regulating the telecommunications industry and handles slamming complaints. Commissioner Ness is an attorney with a very impressive background in communications and in the financial arena. We also very much appreciate her making the efforts to come here this morning, and I think it has been valuable for her to hear firsthand the problems that consumers are experiencing.

As I have explained previously, pursuant to Rule 6, all witnesses who testify before the Subcommittee are required to be sworn, so at this time I would ask that you stand and raise your right hand.

[Witness sworn.]

Senator COLLINS. Commissioner Ness, if you will please proceed, and feel free to take as much time as you wish, within reason. Thank you.

TESTIMONY OF HON. SUSAN NESS,[1] COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

Ms. NESS. Thank you, Madam Chairman. I greatly appreciate the opportunity to be here today. You are doing extremely important work on behalf of the consumer and I am most grateful. Also I want to thank you, Senator Durbin, for your leadership in this area as well.

I sent you detailed written testimony, which I ask at this point that you place in the record.

Senator COLLINS. Without objection.

Ms. NESS. With your permission I will just summarize my testimony so there will be more time for discussion. Certainly a lot of ideas have been put on the table today, and I am very pleased to hear these ideas.

As we have heard repeatedly this morning, slamming deprives individuals and business consumers of a fundamental right, the right to use their carrier of choice. This is a major problem in the telecommunications industry, and we at the Commission share your commitment to eradicate the practice.

Slammers are nothing if not bold. They are equal opportunity perpetrators. Victims of slamming include Members of Congress, such as you, Madam Chairman, their staffs, as well as employees of the FCC. The Commission receives more complaints about slamming than any other telephone-related complaint. In 1997 we handled about 45,000 telephone-related complaints, of which almost half were about slamming. That is about 20,000 complaints on slamming, an increase of about 25 percent over last year. Now, because many slammed consumers grin and bear it or resolve their problems without bringing them to the Commission, we do not really know how many of the 50 million carrier selection changes each year result from slamming. If it were just even 1 percent, which as we all agree is extremely low and well understating the case, it would total over 500,000 slamming incidents nationwide. And we

[1] The prepared statement of Ms. Ness appears in the Appendix on page 113.

have heard the scenarios involving deceptive sweepstakes, misleading forms, forged signatures, and telemarketers who do not understand the word no.

In complaints to the Commission consumers commonly use words like "abused," "cheated," "pirated," "hijacked," and "violated," to describe how they feel. And quite simply, as you have so beautifully stated, consumers are furious that their carrier selections are being changed without their consent.

Now we are starting to see complaints of slamming intraLATA with the short-haul local toll service within the States in areas where carriers are competing for presubscription. And as competition is introduced at the local level for local telephone services, undoubtedly there will be reports of slamming on that score. So if this was the tip of the iceberg now, I think we are entering Antarctica.

The FCC has really taken slamming very seriously. Even before passage of the 1996 Telecom Act, we adopted orders to ensure that consumers' rights to use their preferred carrier would be preserved. Our approach has been two pronged. First, our rules make it harder for carriers to slam. All carrier changes are required to be verified in one of four specified ways. And then, second, carriers who do not follow the rules are severely punished.

We review complaints for patterns of abuse; in particular we have been imposing very serious fines. Since 1994 we have taken enforcement action against 17 companies, we have imposed forfeitures totaling $160,000 against two such companies, entered into consent decrees with nine companies with combined payments of about $1.25 million, and have assessed approximately $500,000 in proposed additional penalties against five carriers. We also have two major investigations ongoing which will probably come to public attention fairly soon.

The Communications Act now gives the Commission additional authority with respect to slamming. The Telecommunications Act of 1996 added Section 258, which makes it unlawful for any telecommunications carrier to submit or execute a change order in a subscriber's carrier selection, except in accordance with the Commission's rules. That law also provides that any carrier that violates these procedures or collects charges for telecommunications service from a subscriber after the violation shall be liable to the subscriber's properly authorized carrier for all charges collected. The 1996 act requires the slamming carrier to disgorge any moneys it has received from the consumer and turn them over to the rightful carrier. In this fashion, the slamming carrier reaps no benefit from its illegal actions.

Although the 1996 act created a statutory mechanism for eliminating the financial incentive for carriers to slam, the language of the act did not explicitly provide remedies for consumers that had been slammed. In addition, Section 258 did not provide guidance on how to restructure the complex relationships between carriers who submit carrier change orders and those who implement them, without slowing down competition or restricting consumer choice. I know that has been the subject of much of the discussion today.

This quarter we will be completing new rules to implement the legislation. Our objective is the same as yours, to slam the door on slamming. The Commission has been active in educating con-

sumers about slamming and their rights in this area. This outreach has led consumers to become more informed about the problem and to insist the carriers afford them their rights without intervention by a regulatory agency. Examples of our outreach to consumers include the "Common Carrier Bureau's Scorecard," which is a pamphlet that everyone can see outside this hall, which names names. It reports how many complaints have been filed against specific carriers including Bell Atlantic, and people can see, who has been causing problems with lots of complaints nationwide. This outreach certainly has been helpful to us because as we get more complaints we are better able to tailor both our resolution of the complaints as well as propose any changes in our rules to address the issues. Our information on slamming is also available at our Website, www.fcc.gov.

In addition the Commission has a comprehensive program with the media and consumer groups to remind consumers how to avoid being slammed and where to seek relief if they are slammed. Our Call Center staff is trained to answer consumer inquiries. That toll free number is 1–888–CALL–FCC. We also send out thousands of consumer brochures on slamming and complaint resolution in response to calls to our consumer hotline. These efforts have significantly increased consumer awareness, resulting in a jump in the number of slamming incidents reported to the Commission as opposed to State regulators. These cases also help us, as I mentioned, to determine what best to do. The message we mean to send to carriers is loud and clear: We will not tolerate slamming.

And I understand Congress is considering additional legislation in this area. I particularly applaud Senator Durbin in providing for direct redress to the courts, either through State-initiated class action suits or individual consumer remedies, including minimum recoveries that can be enforced in small claims courts, as was done in the Telephone Consumer Protection Act. Making criminal remedies available also will reinforce the message that the telecommunications industry is open to reputable companies only, and I applaud that initiative as well. Whatever Congress decides in further legislation, again, our objective is the same—to prevent this type of intolerable abuse. We are trying to make examples of some of the major abusers. We will publicize these efforts to deliver the message to consumers and as a reminder to carriers that they cannot get away with slamming.

In addition, we have held forums—most recently last June—with some of the local exchange carriers about their billing and collection practices. In general we do not regulate billing and collection. That is an unregulated service that the carriers provide. But we are talking with them about the kinds of abuses that are occurring, the complaints that we are receiving, to try to come up with some best practices. And we are going to continue to focus on that area as well.

Congress has already provided the FCC with powerful tools to combat the problem. We will diligently employ these tools and any new ones you fashion to achieve our shared objective. With tougher rules and vigilant enforcement, we will help to restore the right of consumers to choose their local and long distance carriers and to have that choice honored in the marketplace.

I appreciate the opportunity to appear before you today and am happy to answer any questions.

Senator COLLINS. Thank you very much, Commissioner.

Whether you look at your own statistics or at the statistics of the National Consumer League or at the statistics that the local telephone companies have given us today and in other forums, there is no doubt that slamming has exploded, that it is a growing problem. Given that indisputable fact, do you believe that the FCC has been tough enough on slammers? If you have been tough enough, why is everybody doing it? Why is the problem growing?

Ms. NESS. We have taken every step that we can and will continue to take steps to stop the practice. Why is it happening? Because there are a lot of telemarketers out there that do not share our ethics, for example. We have got to be harder, perhaps, on some of the local carriers that are doing the billing and collection to try to get them to focus in on those carriers against whom they have received complaints, as we discussed here earlier today. We do not regulate telemarketers. The FTC does regulate telemarketers, although we regulate the carriers. If carriers are using telemarketers, we have to make sure that their practices meet certain standards. And we are, as I mentioned, revising our regulations. We received comments on the proposed rules; we expect to complete that rule making within the next month. Those should address many of the issues that were raised—or suggestions that were put forth today. I can't say how the rule making is going to come out, but I can tell you from my own personal perspective that the "welcome package" is entirely unwelcome, and I would not be surprised to see that eliminated from the options for verifying a consumer change.

One thing we know is as more competition is introduced, particularly in the local marketplace, we want to make sure that consumers can in fact change carriers if they so desire without a lot of hassle. And it is a balancing act to try to come up with a method by which only truly desired changes take place. I think a lot of ideas were put on the table today. Certainly our massive record of comments provides us with a significant amount of guidance. When we issue these regulations within the next month, we will begin to see once again a lot of publicity on slamming and, therefore, hopefully a reduction in the number of complaints. But the more one advertises these issues or publicizes these issues, the more likely consumers will file complaints, rather than chalk it up to an exasperating experience that consumers just let pass by.

Senator COLLINS. I realize that the FCC has to strike a balance, that you want to promote unfettered competition in the long distance industry, but at the same time there is a very important consumer protection role that you need to play. And I guess when I look at the enforcement actions taken by the FCC since 1994, it strikes me as pretty weak. In the State of Maine we have almost 200 companies providing long distance service right now. Nationwide it has exploded similarly. As I understand it, the FCC has only taken enforcement actions against 15 companies since 1994.

Ms. NESS. It has been more than 15 companies, but when I am saying enforcement, I am talking about formal enforcement as opposed to informal enforcement where we investigate the complaint

and get resolution of the complaint without actually going in and filing formal charges.

Senator COLLINS. Well, let me give you a specific example, because in several cases the States have been far more aggressive than the FCC. You heard this morning Pamela Corrigan describe her experience with a company called Minimum Rate Pricing. Florida assessed a fine of $500,000 against this company for slamming. The FCC, by contrast, assessed a fine of only $80,000. My concern is that an $80,000 fine——

Ms. NESS. Is the cost of doing business.

Senator COLLINS. Exactly.

Ms. NESS. Sure.

Senator COLLINS. It is not sufficient. We have not made the economic penalty a deterrent to slamming, and the FCC's penalty is so puny compared to the State of Florida's, and we could go to other comparisons, too. The State of Illinois took action against I think it was Business Discount Plan, which slammed Mr. Klein, and, again, a far more forceful action than the FCC. Are you satisfied with the FCC's enforcement?

Ms. NESS. We typically impose a $40,000 fine as the penalty for initial complaints. We have in fact imposed fines as much as $500,000. We have instituted revocation proceedings against some carriers. We are right now, as I mentioned, in the process of two major investigations that will probably help deter other incidents. So we are trying to beef up our enforcement and make examples of the companies that have been repeatedly causing problems. We have the authority to go up to $110,000 per incident, and we have the authority to go up to $1,100,000 for a continuing violation. I, for one, am in favor of us using every single tool within our power and every single dollar within our power to address the problem.

Senator COLLINS. Do you believe your authority to impose fines is adequate, or would you like to see a law change?

Ms. NESS. I like a lot of the ideas that have been suggested, certainly to be able to provide more authority for the State attorneys general to go in, for the consumers to go in in small claims court and have the minimum recovery. I think those things would help the process. Criminal penalties would be extremely helpful. I do think that our existing powers on fines probably are sufficient. It would be wonderful if we had more resources to be able to devote to the problem. That certainly, as with many Federal agencies, is a matter of scarce resources. But this is a problem that has to be addressed. As we introduce competition at all levels of telecommunications, the number of consumer complaints is going to rise. It just goes hand in hand. As a result of that, the Commission needs to refocus; as we move into more competition we have to refocus our resources and energies into the consumer protection side of the fence. And I would hope that we will do that. I certainly will do everything within my power to ensure that we do that.

Senator COLLINS. One of my staff people who headed a regulatory agency in Maine speculated to me that the FCC has not made the transition from being the regulator of essentially one company, AT&T, to a whole new arena. It is now the wild west out there with long distance telephone carriers and that there is not

an enforcement mentality at the FCC, that you are not used to playing that role. Could you respond to that concern?

Ms. NESS. I think we can certainly beef up enforcement, but I believe that we have in fact moved towards greater efforts on enforcement. We have about 28 people who do nothing but resolve informal consumer complaints, and I believe we are authorized at a level of about 70 people who do regular enforcement on common carrier matters. There is such a wide—a sweeping area of enforcement when you think of all of the laws that we do in fact enforce. We have at the FCC a total of 2,000 people. That includes all of our field personnel, that includes all of the local stuff. We regulate cable, broadcast, telecommunications, wireless communications, satellite communications, and obviously I would love to see us do more in the enforcement area. As a staunch consumer advocate, I think it's an extremely important area we have to focus on. We have a limited amount of resources. Part of what we need to do is to employ those resources better. One way to do that is to have very highly publicized enforcement activities against really large perpetrators, and that is what we are in the process of doing. Regretfully, I have not been able to present that information today because it is ongoing. But I would hope certainly within the next few weeks that question will be answered in the press. And, again, as we complete the rulemaking on slamming which was begun last August, I believe we will see that the tools that we have will have been beefed up, the ability for the consumers to get redress will have been beefed up as well.

Among the things that we are going to be addressing is whether the consumers who have been slammed should have to pay any of the bill or how they would get reimbursement for specific things such as even the premiums that might have come with the regular carrier. Those kinds of issues would be addressed here. But I do think more tools for consumer self-enforcement would be very, very helpful, and would also help our partners in the States to do their jobs better. We are continuing to work with the States to resolve some of the problems and exchange information.

Senator COLLINS. Has the FCC requested more budget or additional staff to deal with the explosion of slamming complaints?

Ms. NESS. I do not know the answer to that question.

Senator COLLINS. If you could get back to us for the record.

Ms. NESS. I would be more than delighted to do that.[1]

Senator COLLINS. Let me turn now to the role of the local telephone company. You heard both Senator Durbin and I question the Bell Atlantic representative about what their role in protecting the consumer should be.

I would like to ask you two specific questions. One, should either the FCC or Congress require the local telephone company to track slamming complaints and report complaints to the FCC, particularly when there is a pattern of abuse by a particular carrier? And second, should we change the law or the regulations so that the local telephone company only makes a change in a long distance provider upon the explicit request of the consumer as opposed to getting the request from a telephone company?

[1] See Exhibit No. 1, for response, in the Appendix on page 144.

Ms. NESS. Those are two—well, the latter is certainly one of the issues that we are considering in the additional rulemaking proceeding underway. The balance there is to what extent can you fine-tune what the consumer has to do without making it so cumbersome that it is difficult to change carriers. So we are trying to balance out those concerns. Certainly affirmative verification is essential, and I think clearly that is something that I, for one, am strongly supporting that we do. I cannot speak for my four other colleagues.

With respect to the situation you point out with Bell Atlantic, carriers who execute change orders are responsible for making sure that our rules are followed. We are trying to work with the local exchange carriers; I think that is an area that we certainly can beef up and should beef up. Whether this is putting in PINs, I share the concern that you have had raised about trying to keep in mind yet another PIN number, that is one idea certainly that has been out in the marketplace. I would caution against requiring anybody to use mother's maiden name because that is what banks typically use to verify credit, and the last thing I want to do is to provide these people with that information.

But, certainly the carrier who is executing the change form has an obligation to make sure that the procedures have been done correctly. That is an area of concern to me and I hope that we will address to some extent in the upcoming rule making.

Senator COLLINS. Our focus this morning has been primarily on long distance providers who are providing service. They may be slamming customers, they are doing other unethical practices such as cramming, but at least they are otherwise legitimate providers of long distance service. The investigators of the Subcommittee, however, have also discovered a sinister new development whereby fly-by-night scam artists are setting up long distance companies on paper only, slamming thousands of customers, and then quickly going out of business, popping up again under another name. Have you had any experience at the FCC with trying to detect this type of operation?

Ms. NESS. We have taken action to decertify one group of so-called carriers that were all related that sounded like they were doing a similar type practice, Fletcher. So we are aware of this. We do not presently require certification of long distance carriers. They are supposed to file a tariff. It is a very simple tariff. The Fletcher companies did not do that. Therefore, among other reasons, we went after them with both barrels loaded.

We certainly could consider increasing—going back into a more regulatory mode and requiring carriers to certify or to get certificates of service before they can provide long distance service. That is somewhat duplicative of what is going on in the States. I do not know to what extent that would prevent someone who was intentionally designing a scam like that from carrying it out. I don't think it would do much to prevent that activity, but it is certainly something that we should consider.

Senator COLLINS. But right now there is no background check, no licensing process? Anyone can go in and simply file the tariff and set themselves up to be a long distance provider?

Ms. NESS. Typically what happens is they buy service from another carrier in bulk and then resell it.[1]

And there are many, many legitimate carriers who do just that.

Senator COLLINS. But we know from the FCC statistics that resellers tend to be those who engage in slamming most often, that there is a problem with resellers in particular.

Ms. NESS. There are huge numbers of resellers across the country, and the vast majority of them in this business are doing a good job in providing consumers with lower rates for their long distance service. In fact, resale has been one of the tools by which we have seen rates come down in long distance, and we are hoping to see rates come down for local service as well. What we can further do with that to ensure that they are valid companies, perhaps, as we discussed earlier today, could take place in the form of looking at the billing and collection issues that the local carriers engage in contractually to carry their billing.

Senator COLLINS. Senator Durbin.

Senator DURBIN. Thank you, Commissioner Ness. So if I wanted to start a long distance carrier today I really do not need a license from the FCC.

Ms. NESS. You have to file a tariff with the FCC.

Senator DURBIN. What does that mean when you say file a tariff?

Ms. NESS. It is not a cumbersome process, but you are supposed to state what the rates are that you are going to be charging your customers. I think you could begin service the next day. And then if you are a common carrier you basically have to offer service to any and all without discrimination.

Senator DURBIN. So if I want to start a long distance carrier, too good to be true long distance, and I file this tariff there obviously is not going to be a background check on me if I can start business the next day.

Ms. NESS. That is correct.

Senator DURBIN. And I do not file any bond with the FCC.

Ms. NESS. That is correct.

Senator DURBIN. And if I want to do business in Maine, I have to look at the State laws. And I assume every State through their public utility commission or department requires me to do something more; is that a fact?

Ms. NESS. I believe that is right. I can check on that, sir.[1] I am not absolutely positive.

Senator DURBIN. It seems like it is pretty easy to get into this business.

Ms. NESS. It is.

Senator DURBIN. And it also seems like with the number of complaints that you are receiving and the number of cops you have on the beat that it is pretty tough to get caught.

Ms. NESS. Where there is a lot of consumer complaints we do investigate. I think one of the witnesses earlier today was astounded how we did in fact respond and try to put together the information and to resolve that complaint. Where we see a rush of complaints or if we have information from a carrier, we will try to investigate.

[1] See Exhibit No. 1, for clarification of answer, in the Appendix on page 144.

But you are correct, we have not applied as many resources as I would like to see to solving the problem.

Senator DURBIN. When my too good to be true long distance carrier files a tariff, do I pay anything to the FCC? Is there a filing fee?

Ms. NESS. Yes, I am fairly certain that there is. Again, I am nervous about giving you misinformation.[1]

Senator DURBIN. You are under oath.

Ms. NESS. I know.

Senator DURBIN. Be careful.

Ms. NESS. But I believe that with every tariff that there is a filing fee. For just about everything that the FCC does there is a filing fee.

Senator DURBIN. I am just curious as to whether or not this could be characterized as a user fee that might give use of additional resources for enforcement so that you could hire more people to do investigations and enforcement.

Ms. NESS. I think the issue is less with dollars than with bodies; being able to deploy the bodies. But it certainly is something worth playing around with.[1] I am delighted to take these ideas back, trust me. I think it is great.

Senator DURBIN. So you follow what actions are taken by the State utility commissions, public utilities commissions, against these companies?

Ms. NESS. We have discussions with our counterparts in the States about what they are doing and try to exchange information. It is informal, there is not a real formal process in which we are engaged. But right now, for example, the National Association of Regulatory Utility Commissioners has done surveys. It instituted a survey to find out from its membership how many complaints have been filed and what the resolutions of the complaints are. We will try to exchange that information.[1]

Senator DURBIN. I am not a cyberspace cadet nor do I profess to be adept at all of the new changes in the Internet and the like, but when I hear that kind of response I am surprised. The Federal Communications Commission, it suggests to me from your testimony, has not established a line of communications with public utilities commissions——

Ms. NESS. Oh, no, sorry if that was the impression that you have. Oh, we absolutely do. We talk regularly with our colleagues in States. We are working with what they have done—NARUC has done a survey, our staffs work very closely with their staff. The conversations go on regularly. What I was perhaps suggesting incorrectly is that there is no formal—there is no rule making that says we need to do X, Y, and Z. It just goes on.

Senator DURBIN. Does not it strike you, though, as something very basic that there would be an exchange of information?

Ms. NESS. There is.

Senator DURBIN. And formal.

Ms. NESS. Sure.

Senator DURBIN. So that any action taken against a long distance carrier in Florida against Minimum Rate Pricing, Illinois,

[1] See Exhibit No. 1, for clarification of answer, in the Appendix on page 144.

Texas, is shared with the FCC and with the RBOCs so that the regional carriers understand that out of the people who are——

Ms. NESS. Let me double-check to see what routinely we do.[1] I know every single State public utility commission receives all of our press releases and all of the information that we make available certainly to the public. So a lot of that information is routinely out there and the States have a routine way of receiving that information. But I would not be surprised if it goes deeper than that. Certainly in a number of States where we are doing an investigation we try to bring in the local PUC. Again, I cannot tell you how formal that is. I do know of a couple of instances where that is in fact taking place.

Senator DURBIN. How many long distance carriers nationwide have filed tariffs with the FCC?

Ms. NESS. I think we have about 500 carriers or at least in order of magnitude, about 500 carriers.[1]

Senator DURBIN. Roughly 500 carriers. How long does an investigation take? I am sure they vary in length.

Ms. NESS. Varies in length.

Senator DURBIN. Give me an idea.

Ms. NESS. Depends on the amount of information that is available. Usually it is done with a call coming in. The caller gives the information to the FCC. If it is an informal complaint, the FCC staffer will ask them to put it in writing in the form of a letter. That letter is received; the carriers are notified; the local exchange carrier is notified to get information from those parties and then an effort is made to resolve the complaint informally. Again, since you are asking for very specific information and it is not my area——

Senator DURBIN. I do not mean to put you on the spot. If you could just give me a general range.

Ms. NESS. My guess is it probably takes a week or two to get that piece of it resolved. If it is a more involved case it then goes over to formal enforcement, that is a separate group of people within the same division who then begin more formal proceedings.

Senator DURBIN. So there are 70 people who are in that regular enforcement division.

Ms. NESS. Correct, give or take.

Senator DURBIN. Can you give me an idea—you said some of them were fined $40,000 up to over a million, potentially up to over a million. How long do these procedures take to be investigated and come to resolution? A year, 2 years?

Ms. NESS. They can take anywhere from a few months to 2 years.

Senator DURBIN. Well, it just strikes me that we have so much——

Ms. NESS. Part of that issue, when we put out a notice of carrier liability, they have a certain amount of time to respond, and there are procedural requirements.

Senator DURBIN. I know, it is the lawyers. But it just strikes me if we are dealing with 70 people at the FCC reviewing 500 long distance carriers and you are receiving 20,000 complaints a year now

[1] See Exhibit No. 1, for clarification of answer, in the Appendix on page 144.

of slamming, you do not have a prayer. There is no way you can keep up with this.

Ms. NESS. That is why we have to leverage it by publicizing in a major way where we have taken very strong action against a particular carrier. And as I say, this is a process right now that is ongoing. I wish I could have come with the specifics, but it is not ready for prime time.

Senator DURBIN. I'll just conclude by saying I think that is part of it, too. I think consumer information is part of it, coordination with the State attorneys general and public utility commissions, that is part of it as well. But as you said, we are just starting to walk into an area of greatly expanding business opportunities when it comes down to local carriers and the competition that is bound to ensue there and the problems that are likely to follow. As people try to use the same model of fraud and exploitation, there will be bad actors out there and consumers will suffer. So I hope that we can start thinking about this in different terms. We deregulated so let us go for competition. We know competition is good for consumers but we also know——

Ms. NESS. But it has got a dark side.

Senator DURBIN. It has a dark side and we have talked about it for awhile here, and I hope we can focus on coming up with some legislative responses that target consumers as well as government agencies to help bring some protection. Thank you, Madam Chairman.

Senator COLLINS. Thank you, Senator Durbin.

Commissioner Ness, we have experienced an explosion of slamming. It is hurting small businesses; it is hurting families; it is hurting senior citizens; it is hurting consumers across the United States. And I am left with one of two conclusions, and I would like you to tell me which one is right. Either the FCC has sufficient authority to fight slamming and simply hasn't been aggressive enough in using the tools that are available, or the FCC needs new authority and additional legal tools to fight slamming, because otherwise we would not be seeing this very disturbing trend. So which is it? Is it that there is not an aggressive enough enforcement approach at the FCC, or do you need new tools?

Ms. NESS. I think that no matter—even if I said yes to both, I think we would still see a rise in the number of slamming complaints, largely because I think consumers are finding out about it and now better understand what's going on, because there's never going to be a way of completely eliminating disreputable telemarketers. If it is easy to get into long distance it is far easier to get into telemarketing, and, I agree with you, we need to provide and ensure that the resources are applied in the best, most efficient way possible to get at the problem. We are trying to do that; obviously we can always do more. And I hope that we do do more. I think that the rules that we are about to promulgate will go a long way to resolve some of those problems. But they won't address them all. I think some of the suggestions that have been raised here today for legislation are very good ones, and I think that those will be complementary to the efforts that the Commission has already undertaken.

Do we need additional tools? I think that, again, there may be some specific aspects that would be helpful, but let—I am inclined to say we have enough right now to be able to make a big dent in it. It won't solve the whole problem, but I do think the suggestions to provide for the State attorneys general for class action suits, we do not do class action suits, those kinds of things are particularly helpful and will also complement our efforts to get at the heart of the problem. I—that is hedging a little bit on answering your question, but I think it is a little bit of an answer "yes" to both.[1]

Senator COLLINS. Thank you, Commissioner. I very much appreciate your traveling from Washington to be with us today. I know that this is an issue that Senator Durbin and I are going to pursue, and I hope that you and other commissioners and the staff will work with us to find a real and effective solution to this growing problem.

Ms. NESS. I certainly see this as a partnership in working to resolve the problem. It is a growing one, it is one of great concern, and we are going to do everything in our power to make it work.

Senator COLLINS. Thank you very much for your testimony.

Ms. NESS. Thank you very much.

Senator COLLINS. We are now going to turn to a brief period for public comment. We have about 10 or 15 minutes. What I will ask if you do have an experience you would like to share with the Subcommittee, I do not know whether there are people who want to do it through testifying today or just submitting a statement, but I do want to provide this opportunity.

You can come up to the mike that has been set up in the front. I would ask that you state your name and where you are from, so that the court reporter can get your name down. I would also ask if you are representing a specific organization that you identify that organization. If you are just representing yourself, that is great, too. Just let us know.

Ms. GRIFFITH. My name is Deborah Griffith. I am from Integrated Communication Systems. We are a small interconnect up in Auburn servicing small business to medium-size businesses in Maine and New Hampshire.

A lot of the items that were discussed here were items that I brought with me to discuss. One of the things that you were asking, Senator Collins, was how can you come up with a time or a price tag for what this is costing. As an interconnect I deal with probably 8 hours a week on slamming for my customers.

Everything is so complex these days. They do not know where to turn, so they turn to their telephone providers. And sometimes they will call Bell Atlantic, a lot of times our customers call us for anything, and then I interface with Bell Atlantic to get it changed, with their long distance carrier to get things changed, and I spend about 8 hours a week on that. Several other people in the office will also spend an hour or two, but I do the majority of it. Bell Atlantic has to spend time, the long distance carrier has to spend time to get this, so there is an enormous cost. Now, Bell Atlantic is absorbing it, I know a lot of the long distance carriers, the larger ones are absorbing it. As a small interconnect we can't afford that

[1] See Exhibit No. 1, for clarification of answer, in the Appendix on page 144.

kind of cost, so that is a cost that we have to pass on to our customers in order for us to be able to stay in business.

Another item that we have a lot of trouble at our office physically with one large carrier trying to slam our office lines on a weekly basis. And one of the things that we did was put in caller ID to try to find out who was doing it so that we could give the FCC some information as to who was making these calls. The telemarketers that are doing this calling and even a lot of the phone companies, such as Bell Atlantic, do not have their lines ID'd. The lines come up with unknown. So there is no way to trace back. When I send my letter to the FCC complaining about what's going on, then I have no way to say it was this phone number or this company, because as soon as you ask for a manager, they will hang up on you.

I send letters about every week to the FCC complaining about somebody trying to slam our office or a customer being slammed, and the resolution—the most I have gotten out of the FCC was a letter saying this is what you can do to prevent slamming, and so I do not see any resolution from them on the items. Now, I do not really expect any because I am one small person and this is a major problem across the country. But it is—for the interconnects, and I am sure we are not the only ones that are doing it, it is a major cost that we have to pass on to the customers. The customers may have a $100, $200, or $300 bill for us to get this resolved for them, and that does not have anything to do with the charges that come up on their phone bill because these are separate charges that come to us.

Senator COLLINS. I thank you very much for providing the Subcommittee with your perspective.

Mr. DAVIDSON. Good afternoon, my name is Derek Davidson. I am the Assistant Director of the Consumer Division with the Maine Public Utilities Commission.

I would just like to clarify a couple points I think people need to be aware of, that, as Dan Breton had mentioned earlier, as of September of 1997 customers in Maine can now choose their in-State toll provider as well as their interstate toll provider. Now, the Maine Commission recognized that with people being allowed to choose now for their in-State toll service, we anticipated problems with slamming with the in-State tolls that were currently seen with the interstate tolls. So to address that the Commission has drafted some legislation which Dan also mentioned, LD2903, and I would just like to mention some highlights of that legislation that we are hoping will go through smoothly.

One, the customer who is slammed will owe no moneys to the slamming company. The slamming company will be responsible for all fees to the—that were incurred in initiating the switch as well as to return the customer to their original carrier. We will have authority to levy fines against slamming companies on a per incident basis. And there is also going to be an affirmative choice that companies are going to have to go through in order to verify their customer has indeed decided to switch their phone service.

We also have a complaint process to address the in-State slamming problems. In-State slamming for the in-State toll service is within the jurisdiction of the Maine Public Utilities Commission,

and people who are slammed for their in-State toll service can call the Maine Public Utilities Commission, we have an 800 number, that's 800–452–4699. And what we will do is we will assist them in taking care of the charges and ensure that their complaint is handled appropriately. We will also help people who are slammed for the interstate service. What we will do with them is we will give them some guidance on how they can—what they need to do to address the problem. We will connect them with the FCC and assist them in any other way that we can.

I did bring some materials on in-State and interstate slamming, and it is on the table out front.

Senator COLLINS. Thank you very much, Mr. Davidson. I would also ask that you provide to the Subcommittee a copy of the legislation that you have drafted for consideration by the State legislature because that may be useful for us on the Federal level as well.

Mr. DAVIDSON. Sure, I have one with me.[1]

Senator COLLINS. Excuse me, Senator Durbin has a question for you also.

Senator DURBIN. I asked earlier when the FCC Commissioner was before us, do you know in Maine whether the Public Utility Commission, when a company comes in and asks for authority to do business in the State, a long distance carrier or local carrier, routinely ask for any kind of background check as to problems that company might have had in another State?

Mr. DAVIDSON. What we do is we have a certification process for companies that are going to provide in-State toll service. And what—as part of that certification process I am not sure the extent of a background check we go through, but we make sure that they are a corporation that is under good standing with the State. And there is a checklist process that we go through that we require them to file tariffs with us, we review those tariffs to make sure they are in compliance with our rules and regulations. As far as the extent of a background check, I am not sure.

Senator DURBIN. It just seems to me that some of these bad actors are moving around the country, and if we are going to discover wrongdoing by the same company in Florida it may be a red flag in Maine or Illinois as to whether or not we want them to do business.

Mr. DAVIDSON. Well, one thing that we do do is we recently went to a new computer system so that we could more adequately and appropriately attract consumer complaints. And what we are doing is we are trying to get an idea of the companies that are out there performing business, what are the good actors, what are the bad actors, so that we can when we are reviewing tariffs provide extra scrutiny on the companies that we are having problems with.

Senator DURBIN. Thanks.

Senator COLLINS. Thank you very much.

Mr. DAVIDSON. Thank you.

Senator COLLINS. Good afternoon.

Mr. EISENHART. Good afternoon, Senator, thank you. My name is Patrick Eisenhart. I am the owner of the OP Center, which is a small business that operates out of the Small House, Joseph Small

[1] See Exhibit No. 1, for clarification of answer, in the Appendix on page 144.

House, over in the historic district. And our goal in life is to keep phone bills small for a lot of small businesses.

I have a packet of information that I would like to leave with you. It covers a lot of areas, topics I would like to talk about.[1]

Very quickly, when you talk about these guys that are slamming, who's slamming, who's not slamming, oftentimes people equate that to mean resellers. And I am an agent for a number of reseller companies, and our goal is basically to get the lowest rates, particularly in the State, for Maine businesses.

There is no State in the union that has higher in-State rates than Maine. Companies—since the Telecommunications Act of 1996, long distance carriers have been moving out of the in-State business as opposed to moving into it. That has been my experience. For example, one company, Connect America, which a year ago—as early as 3 months ago, was charging 13.9 cents in-State rates, now has had to raise its rates to 38 cents a minute.

Slamming, as far as active slamming, AT&T is in the hall of shame of the *Telecom Digest,* which is a neutral newspaper that you get on the Internet, it's www.digest.com, cites AT&T as having numerous incidents of slamming, were fined the $80,000 by FCC. $80,000 to AT&T I would suggest is very little money, and what happens with most of the businesses that get slammed, they do not want to deal with it, they are too busy, they just go ahead and pay it. So when we are talking about slamming I think we have to put it within a context there are a number of companies; it is not just the reseller companies.

My problem, as an agent for trying to get my customers the least cost telephone service, is with, basically, Bell Atlantic. I have in the packet the phone bills, the telephone numbers of some 12 different companies that one column shows that they were provisioned by AT&T in April—I am sorry, by Bell Atlantic, in other words, got up on their long distance service by Bell Atlantic in April, charged the $5, and then 2 months later they were slammed by Bell Atlantic and by the companies that they bill for. So these are actually—actual phone records and telephone numbers to suggest that is happening.

I think the way my recommendation to deal with the problem is not have the FCC add on more staff, have the Federal Government do all kinds of prosecution of 500 different phone companies. I think rather the focus should be on the regional carriers. They are in a conflict of interest situation with long distance carriers for both in-State and soon to be out-of-State.

There is a procedure in place, and the procedure that we take is as follows. When we have a customer change their service they write—they sign a letter of agency. That outlines—gives the carrier permission to provide that service, it has the signature of the customer, it has the signature of the agent that is signing that. That—if that were required to be faxed in to Bell Atlantic, Bell Atlantic had that on record, then any time anybody said, hey—and then a confirmation coming back saying we have made that switch, I think that would do it, if FCC would enforce that policy. The same thing with 800 lines, the standard right now is a resporg form,

[1] Exhibit No. 8 is retained in the files of the Subcommittee.

which is a responsible organization form. That is a written document signed by the customer, by the carrier, gets faxed to the appropriate carrier, comes back again. The last part of this——

Senator COLLINS. I am going to have to ask you to wrap up your comments.

Mr. EISENHART. I just wanted to leave you with that recommendation. That procedure is in place, and if we enforce that at the regional level I think the slamming would stop. The last part of it is is that if someone does get slammed, and my recommendation to my customers has worked very effectively, if they do get slammed do not pay it and require that long distance carrier come back and say, let me see your letter of agency or let me see your responsible organization form. Thank you.

Senator COLLINS. Thank you very much for your testimony. Good afternoon.

Ms. SAYRE. My name is Robin Sayre, and I am actually a public relations manager for AT&T.

I wanted first of all to say of course that AT&T takes slamming very seriously. In fact, I think we were the first company to bring this to the attention of the FCC back in 1990. We do exit interviews with our customers to find out why they are changing their long distance service, and that is how we found out a lot of people who were leaving us did not know they were leaving us. And we have always complied with FCC rules on slamming. We have taken very aggressive steps to educate consumers about the problem. We have sponsored public service announcements in various languages, distributed pamphlets, and we take this very strongly.

The main reason I wanted to get up to speak today was to let you know that we have actually sent a letter to our resellers, including Business Discount Plan, to let them know that we are asking them to take steps to ensure that they are in compliance with Federal and State rules and policies regarding carrier changes, as a condition of AT&T continuing to process their carrier change requests.[1] As you may know, as a common carrier we have the obligation to provide phone service to all resellers who come to us asking for service, but we have taken this extra step of sending out this letter to make sure that they do conform to the procedures that are required, to make sure that we are not inadvertently helping them slam people. So I just wanted to bring that to your attention. I would be happy to share a copy if you would like, or I know AT&T was going to submit comments.

Senator COLLINS. Right, thank you very much. I just wanted to for the record say that prior to the hearing we did ask AT&T to submit a written statement. That has not been submitted to us yet, but we do expect to receive it.

I also want to let the long distance carriers who are here know that in addition to their written statements we will be holding further hearings on the slamming problem, and there will be more of an opportunity at those hearings as well.

I do want to thank everybody for appearing today. The testimony that we have heard has made it clear that much more needs to be done to control slamming. Existing enforcement efforts are obvi-

[1] Exhibit No. 9 is retained in the files of the Subcommittee.

ously inadequate to stem the growing tide of slamming. In Maine, for example, we have heard that slamming complaints to Bell Atlantic have increased by over a hundred percent over the past year, and that is completely unacceptable. I believe that the FCC must step up its enforcement efforts to fight slamming and to make sure that existing laws and regulations are followed.

Consumers deserve this protection. It is outrageous and completely unacceptable that a consumer's choice of long distance carrier can be reversed without the consumer's permission. The FCC cannot treat slamming as an administrative or a technical problem that can be solved by polite warnings to long distance carriers. To me intentional slamming is like stealing, and that certainly seems to be the opinion of many of the consumers whom we have heard from today.

In addition, I want to pledge to work with my colleagues in the Senate, especially Senator Durbin, who's been such a leader in this area. We want to make sure that the current legal remedies are adequate and that the penalties for slamming provide an adequate deterrent. It is evident that today they do not.

On behalf of myself and the people of Maine, I want to again thank Senator Durbin for coming to Maine for this hearing. He has been a leader on this issue, and I look forward to continuing to work with him. I also want to thank his judiciary staff member for being here and for his work on this issue. I want to thank my own staff who's worked very hard in putting this hearing together, Kirk Walder, John Neumann, Tim Shea, Lindsey Ledwin of the Subcommittee staff, Steve Abbott and Felicia Knight of my personal office, as well as the staff of my Portland office. They all worked very hard and are continuing to help Maine consumers understand their rights.

And finally we appreciate the hospitality of our host today, the City of Portland. Senator Durbin and I were commenting what a very nice city chamber this is. We very much appreciate their hospitality, and I want to thank you all for coming. Thank you. This hearing is adjourned.

[Whereupon, at 12:33 p.m., the Subcommittee was adjourned.]

THE EXPLODING PROBLEM OF TELEPHONE SLAMMING IN AMERICA

THURSDAY, APRIL 23, 1998

U.S. SENATE,
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:37 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Subcommittee, presiding.

Present: Senators Collins, Levin, and Durbin.

Staff Present: Kirk E. Walder, Investigator; John Neumann, Investigator (Detailee, GAO); Mary D. Robertson, Chief Clerk; Eric Eskew, Investigator (Detailee, HHS–IG); Lindsey E. Ledwin, Staff Assistant; Pamela Marple, Minority Chief Counsel; Alan Edelman, Minority Counsel; Elizabeth Stein, Minority Counsel; Bill McDaniel, Minority Investigator; Maggie Hickey (Sen. Thompson); Michael Loesch (Sen. Cochran); Jeff Gabriel (Sen. Specter); Leslie Phillips (Sen. Lieberman); Kevin Landy (Sen. Lieberman); Steve Diamond (Sen. Collins); Felicia Knight (Sen. Collins); Linda Gustitus (Sen. Levin); Katie Siegel (Sen. Durbin); Myla Edwards (Sen. Levin); and Steve Abbott (Sen. Collins).

OPENING STATEMENT OF SENATOR COLLINS

Senator COLLINS. The Subcommittee will please come to order. Good morning.

Let me start with an apology for keeping people waiting. We just had three back-to-back votes in the Senate. We try to schedule hearings around the Senate schedule, but oftentimes our best efforts notwithstanding, it is a very difficult task to accomplish.

Today, the Permanent Subcommittee on Investigations will hold its second hearing on the exploding problem of telephone "slamming"—that is, the unauthorized switching of a consumer's long-distance service. Slamming is a pervasive and growing problem in Maine and throughout the country. Nationwide, the number of incidents of slamming has soared over the past few years.

The Federal Communications Commission, the government agency responsible for regulating the telecommunications industry, received a record number of slamming complaints from consumers in 1997—over 20,000 complaints. This is a 900-percent increase since 1993. More troubling is the fact that in the first 3 months of this year, the FCC has already received nearly 20,000 complaints on its 1–800 line. In fact, slamming is the No. 1 consumer complaint to the Commission. Since most consumers do not report slamming in-

cidents to the FCC, however, this number actually greatly underestimates the extent of the real problem.

Perhaps a more accurate picture of the extent of slamming is found in the National Association of State Utility Consumer Advocates' estimate that as many as 1 million consumers each year are deceptively transferred to a long-distance provider not of their choosing. Moreover, as the statistics indicate, this problem is not getting better; it is getting worse. In Maine, Bell Atlantic reported a 100-percent increase in slamming complaints from 1996 to 1997.

In response to numerous complaints from consumers, the Subcommittee last fall undertook an extensive investigation of telephone slamming. In February, I chaired a field hearing in Portland, Maine, and my distinguished colleague, Senator Richard Durbin of Illinois, joined me on that very cold and wet day, and we heard firsthand from several consumers about their personal experiences with telephone slamming. We learned that telephone slamming disrupted the operations of small businesses, that it cost consumers time and money, and that it frustrated families throughout the State.

Maine slamming victims testified that some long-distance companies had used fraudulent or deceptive ploys to change their telephone service. Witnesses used words to describe it such as "stealing," "criminal," and "break-in" to describe the practices employed by unscrupulous telephone providers in switching unsuspecting consumers in order to boost their profits.

These practices included telemarketers who use deceptive techniques to trick unsuspecting consumers into switching long-distance carriers, as well as the so-called welcome package, mailed by a carrier, that actually requires consumers to return a postcard rejecting the change in long-distance service which otherwise goes into effect. Some particularly unscrupulous long-distance providers simply change a customer's carrier without any contact with the consumer at all.

To assist the Subcommittee in its ongoing investigation, I requested the General Accounting Office's Office of Special Investigations to determine which entities are slamming consumers most frequently and to explore the techniques used to deceive consumers. During our hearing today, the Subcommittee will hear the results of the GAO's investigation.

Specifically, our hearing today will focus on the following issues: First, which entities are responsible for most of the intentional slamming? In this era of telecommunications deregulation, are certain segments of the industry or certain businesses particularly egregious offenders?

How does slamming occur under the existing regulatory schemes and telecommunications market structure? How can we achieve the goal of an open and vigorously competitive long-distance market and yet one that is also free from unfair and fraudulent activities like slamming?

Third, what regulatory and legislative solutions can be used to halt this escalating problem? For example, should criminal penalties be imposed in cases where unscrupulous providers deliberately and repeatedly slam consumers?

The Subcommittee's first hearing clearly demonstrated that current statutory and regulatory responses have been ineffective in controlling slamming. One of the purposes of today's hearing is to explore possible remedies to curtail this problem, including legislative proposals that I have introduced with Senator Durbin. In that regard, this hearing is particularly timely since the Senate expects to debate anti-slamming legislation within the next month.

There is simply no excuse for intentional slamming or the enormous number of slamming problems that are occurring each year. Consumers all over the country are increasingly the target of unscrupulous telephone service providers who use blatantly deceptive marketing techniques or outright fraud in order to change the long-distance carrier selections of consumers.

Victims of slamming are frustrated. They do not believe that they should have to spend time and energy resolving problems not of their own making. People rely heavily on their home and business telephone service. They should be able to choose their own long-distance service carrier without fear that that decision will be changed without their consent. To me, deliberate slamming is like stealing and it should not be tolerated.

Finally, let me emphasize that no one is immune to this problem. Maine victims include senior citizens, a town manager, a school principal, several small businesses, and even a town office. I, too, have been slammed twice, despite having a PIC freeze on my own account.

We will hear from two witnesses this morning. Our first witness is Eljay Bowron, the Assistant Comptroller General for Special Investigations for the General Accounting Office. He will testify about the types of entities responsible for slamming, how these entities go about slamming consumers, and the adequacy of existing Federal enforcement efforts. In addition, he will present a disturbing case study of a long-distance service provider who employed slamming as a standard business practice.

Our second and final witness today will be the Hon. William Kennard, the Chairman of the Federal Communications Commission. He will testify about the FCC's activities to control slamming and discuss what additional regulatory or legislative changes could be made to reduce this practice.

We look forward very much to hearing our witnesses today and exploring ways to control this growing problem.

It is now my pleasure to recognize a leader in this area, Senator Durbin of Illinois.

OPENING STATEMENT OF SENATOR DURBIN

Senator DURBIN. Thank you, Senator Collins. I want to thank you for calling this hearing on the important topic of telephone slamming.

As Senator Collins mentioned, we had a field hearing in Portland, Maine. I thought Chicago was a windy city until I visited Portland, Maine, where we had a horizontal rain storm which I still recall.

On May 10, millions of Americans are going to pick up their phone to call Mom. But they may get a surprise when they get the

bill for the call. Thousands of people calling to wish their mother a Happy Mother's Day will have been slammed.

My interest in slamming started last year when a constituent, a small business owner in Chicago who had been slammed came and told me her story. She had little or no power to rectify the situation or to seek redress for her injuries. But that was only the beginning of the story. I traveled around the State of Illinois and found that hers was not an unusual case. Many people had suffered this same type of slamming where your long-distance carrier is changed without your permission.

And what can you do about it? For most of these people, my answer was: Almost nothing. But with the Chairwoman's help, we have come a long way toward finding a sensible solution. Slamming is a serious problem that has to be stopped. It is not just an inconvenience or a nuisance. It is stealing. It is an act of fraud. It costs long-distance telephone consumers millions of dollars every year. Imagine, you have signed up with a long-distance carrier. You think it is in the best interest of your family or business. And then you discover with next month's bill somebody has changed your carrier. Your charges are higher.

Well, if they had done the same thing to you with your mortgage, you would be headed to the courtroom, to think that somebody could change your bank on your home mortgage. But in this case, they are changing your long-distance provider without your permission, and you are the loser.

The GAO report we received today details many individual incidents and serious gaps in our regulatory scheme. And as the Chairwoman said, it is the No. 1 source of complaints at the FCC.

In my home State of Illinois, slamming was the No. 1 source of consumer complaints at the attorney general's office in 1995 and No. 2 in 1996. That is only the tip of the iceberg.

In the *Los Angeles Times,* there are reports that more than a million telephone consumers have been slammed in the last 2 years. But the *Los Angeles Times*' estimate may be far too conservative. As Bob Spangler, Acting Chief of the Enforcement Division of the Common Carrier Bureau, testified last November, as many as 1.5 to 2 million customers were slammed in America last year. One survey of Chicago, Detroit, and Milwaukee found 30 percent of the adults saying that they had been slammed or someone they knew had been slammed.

Slamming was most egregious in Chicago where 36 percent of adults said they were slammed. Moreover, slammers appear to be targeting people of color: 39 percent of African Americans, 42 percent of Latinos, as compared to 28 percent of whites.

The GAO report we will hear about today is frightening. It tells a disturbing new kind of American success story by these slammers. They bamboozle the government into giving them a license. They slam thousands of people, and they make millions of dollars and then flee from justice.

Senator Collins and I have introduced the Telephone Slamming Prevention Act to stop this slamming and empower consumers. The bill takes important steps to accomplish this, taking part of the financial incentive away from slammers, increasing civil penalties,

creating criminal penalties, and requiring telecommunications carriers to report slamming complaints to the FCC.

Slamming has already caused telephone consumers to become angry and disillusioned with the entire telecommunications industry. These people have voiced their concerns to local telephone companies, to State regulatory bodies, and to the FCC. But they still feel like their complaints have not been heard. My hope is that our Telephone Slamming Prevention Act and this hearing will help us produce a solution.

I might say at the outset that I join in Senator Collins' apology for our being late, and I also want to apologize in advance for having to leave from time to time. I have a markup in the Judiciary Committee at the same time as this hearing, so I will try to cover both as best I can. But, Madam Chairwoman, thank you for holding this hearing, and I look forward to hearing from the witnesses.

Senator COLLINS. Thank you.

As you can imagine, there has been considerable interest in this issue. Without objection, the hearing record will remain open for 30 days so that additional materials, including all exhibits, can be submitted to the hearing record.

Prior to the hearing, I sent letters to several of the major long-distance companies and three telephone resellers associations inviting them to provide written statements on the slamming problem. Most of them have done so. We have received statements from Sprint, AT&T, MCI, CompTel, the America's Carriers Telecommunications Association, the Telecommunications Resellers Association. We have yet to receive a response from Frontier Communications.

Without objection, all of these statements will be included in the printed hearing record as exhibits.[1]

I would now like to invite our first witness to come forward. Our first witness this morning is Eljay Bowron, the Assistant Comptroller General for Special Investigations of the U.S. General Accounting Office. We look forward to hearing the results of the GAO's 4-month investigation of slamming.

Prior to joining the GAO, Mr. Bowron served this country with distinction as Director of the U.S. Secret Service. He comes to us today with 24 years of law enforcement experience. Pursuant to Rule VI, all witnesses who testify before the Subcommittee are required to be sworn, so I would ask that you stand and raise your right hand.

Do you swear that the testimony you are about to give to the Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BOWRON. I do.

Senator COLLINS. Thank you. Please be seated.

Your entire written testimony will be made part of the record, and I would ask that you limit your oral presentation to about 15 minutes so that we have ample time for questions. Thank you.

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[1] See Exhibits 43–48 of the April 23, 1998 hearing in the Appendix on pages 297–324.

TESTIMONY OF ELJAY B. BOWRON,[1] ASSISTANT COMPTROLLER GENERAL FOR SPECIAL INVESTIGATIONS, OFFICE OF SPECIAL INVESTIGATIONS, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY RONALD MALFI, FINANCIAL AND GENERAL INVESTIGATIONS ASSISTANT DIRECTOR

Mr. BOWRON. Thank you, Madam Chairman, and Senator Durbin, for inviting us here today to testify about the results of our investigation into slamming. As you mentioned, it is about telecommunications fraud and abuse.

Before I summarize our investigation, I would like to introduce our Assistant Director for Financial and General Investigations, Ron Malfi. He supervised this investigation.

As we have reported, slamming is the unauthorized switching of a consumer from the long-distance provider of choice to another provider. Although all three types of long-distance providers—facility-based carriers, switching resellers, and switchless resellers—have some incentives to engage in slamming, switchless resellers are by far the most culpable.

I would like to provide a definition of these three types to help explain why each has at least a monetary incentive to slam.

Facility-based carriers, carriers such as AT&T, Sprint, and MCI, have invested considerably in the physical equipment such as hard lines and computerized switching equipment necessary to accept long-distance calls and forward them to their destination. Because the carriers already have that equipment, it costs them little to provide service to additional customers, whether they are slammed or not, who increase the carriers' profits.

Switching resellers lease capacity on a facility-based carrier's long-distance lines at a discounted price and resell the long-distance services to customers at a profit. These resellers have one or more switching stations, so they do have an investment in their companies. Again, though, additional customers, whether they are a result of slamming or not, increase their profits.

Switchless resellers also lease line capacity and resell it at a profit. However, they have no equipment and little or no financial investment in their company. So of the three provider types, they have the most to gain and the least to lose by slamming customers.

Intentional slamming is accomplished through deceptive practices. This includes misleading consumers into signing a written authorization—known as letters of agency or letters of authorization, referred to as LOAs—forging LOAs, or even pulling numbers from a telephone book and submitting them to a local telephone company for change.

Although the Federal Communications Commission received only about 20,000 slamming complaints in 1997, intentional slamming is not an occasional occurrence. For example, Daniel Fletcher, the owner/operator of the companies discussed in our case study, apparently attempted to slam about 544,000 customers in one effort. However, the FCC, State regulatory agencies, and the industry each rely on the others to be the main force in the fight against slamming.

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[1] The prepared statement of Mr. Bowron appears in the Appendix on page 119.

Of these efforts, those by some States are the most extensive. The FCC really has no front-end controls to ensure that long-distance provider applicants have a reasonable level of integrity or record of ethical business practices.

To illustrate, long-distance providers are required to file a tariff, or a schedule of services, rates, and charges, with the FCC before doing business. States and the industry rely on that tariff as a key credential for a provider. But in its filing procedure, the FCC really just accepts the filing and does not review the information submitted and filed with the tariff.

To test the FCC's oversight of the filing procedure, we easily filed a tariff using fictitious information, didn't really provide the application that is required, and didn't pay the $600 filing fee. Our fictitious switchless reseller, which we named PSI Communications, could now slam consumers with little chance of adverse consequences. In short, the FCC's tariff-filing procedure isn't a deterrent to a determined slammer and provides no assurance to States, to the industry, or to the public concerning a long-distance provider's legitimacy. In fact, despite your experience, Madam Chairman, the most effective anti-slamming measure appears to be one that consumers can take themselves: Contacting their local exchange carrier and freezing their long-distance provider, or primary interexchange carrier, commonly known as a PIC. And this has become known as a PIC freeze.

A PIC freeze likely helped some consumers avoid being slammed by Mr. Fletcher's eight known switchless resellers. The owner/operator of our case study companies apparently entered business in 1993 and continued into 1996. Through each company, he apparently slammed or attempted to slam many thousands of consumers, including, as I mentioned, 544,000 in one attempt. Business records, although incomplete, indicate that between 1993 and 1996, Fletcher companies billed their customers over $20 million and left at least $3.8 million in unpaid bills to some of the firms that they dealt with. Another firm has a $10 million judgment against one Fletcher company.

Some State regulatory agencies and the FCC have taken action against one or more Fletcher companies. Generally, the States have taken the stronger action. For example, in 1997, Florida canceled the right of one Fletcher company to do business and fined it $860,000 for slamming.

The FCC, in June 1997, issued a show-cause order regarding Mr. Fletcher and his eight companies. However, as of the writing of our report, it had not finalized its order. I understand now, though, subsequent to our briefing of the FCC on our findings, that in the last few days finalized that order and taken action with respect to the Fletcher-owned companies.

Although it appears that all eight Fletcher companies were out of business by the end of 1996, we identified several instances of his continued involvement in the industry. But because Mr. Fletcher knowingly used false information to conceal his identity and whereabouts, he has not been located.

Madam Chairman, that concludes my summary, and I would submit my full statement for the record. We would be pleased to answer any questions that you or Senator Durbin may have.

Senator COLLINS. Thank you very much.

Let me start by directing your attention to the bar graph that is before you that shows the number of slamming complaints to the FCC since 1993. As I mentioned in my opening statement, there has been an enormous explosion in complaints, yet we know that this actually greatly underestimates the amount of slamming that is actually occurring.

Based on your investigation, what would you cite as the major causes for this explosion in slamming?

Mr. BOWRON. Well, there is an emphasis certainly on increasing competition in the industry, and that has not been accompanied by an increase in any kind of effort to protect consumers. We are in an environment of competition, but really relying on a system that isn't geared toward enforcement in that competitive environment. It might have been more effective in a monopoly environment, but under the current environment it isn't effective.

Senator COLLINS. You mentioned in your written testimony and in your report that the FCC issues a scorecard of slamming complaints. Could you explain a bit about that scorecard and whether you think it accurately describes the slamming complaints, particularly with regard to resellers, which you have identified as the segment of the industry most likely to engage in intentional slamming?

Mr. BOWRON. The FCC scorecard provides a ratio of slamming complaints to dollars in revenue. It understates the slamming problem in that resellers are only required to report revenues of $109 million or more. For those resellers that don't report those revenues—and most of them don't or a large number of them don't—the $109 million in revenue is assumed in absence of the information. So that throws off the ratio of complaints versus dollars and revenue, because the revenue is actually much lower and their complaints are higher in that ratio.

Senator COLLINS. So for the smaller resellers, it actually may understate the amount of complaints; is that correct?

Mr. BOWRON. That is correct.

Senator COLLINS. You talked in your testimony that slamming is profitable for a lot of long-distance companies. Could you explain to us what the incentive is, what the profit incentive is for the various segments of the industry? One of my concerns is that slamming clearly pays, that the financial incentives are very strong, the fines are often treated just as a cost of doing business.

Could you explain to us the segments of the industry and what the incentive is to slam customers?

Mr. BOWRON. The incentive for the primary components of the industry—the facility-based carriers and the switching resellers—are the same in that they have fixed costs associated with their businesses and with their equipment, and the cost of carrying additional customers on their equipment doesn't significantly increase their overhead, so more customers provide them with more dollars without really increasing their costs dramatically.

Switchless resellers have no investment, so it is a simple matter of the greater the customer base they are able to develop and switch, the more profit; that is, more dollars in their pockets.

Senator COLLINS. A customer who is slammed still pays the unauthorized carrier for the calls. It may be at the rates of the original carrier, but doesn't the money from the consumer go to the company that deceptively switched the consumer in the first place?

Mr. BOWRON. That is clearly a problem. There is an economic incentive in that even if it is identified, complained about, and action is taken, the slamming company still receives the money, at least at the rate that would have been paid to the customer's preferred carrier.

Senator COLLINS. I think that is a major problem because that is one reason that slamming pays. Senator Durbin and I have introduced legislation that would change the system so that consumers could pay their original carrier rather than the carrier that slammed them.

Do you think that that would help reduce the financial incentives to slam consumers?

Mr. BOWRON. Yes, I do.

Senator COLLINS. I would now like to turn to the licensing process that you talked about. First, it would be helpful to the Subcommittee if you outlined what the FCC's requirements are for becoming a long-distance telephone carrier.

Mr. BOWRON. The FCC's requirements are that you provide certain information about the kind of business you will be doing and the rates and charges that will be involved; and that you file a tariff with the FCC, provide it with an application, and pay a $600 application fee. Those are the requirements for someone to be recognized with a tariff through the FCC.

Senator COLLINS. Is there any kind of review by the FCC of the applications that are filed or the tariff that is filed?

Mr. BOWRON. It appears from our experience and investigation that any review would be after complaints were filed, that there isn't a review in advance that would prevent someone from getting a tariff.

Senator COLLINS. So do you think that the requirements and the current process are sufficient to prevent someone whose sole purpose for becoming a provider is to slam people, to prevent that kind of fraudulent individual from entering the market?

Mr. BOWRON. No. I believe that whether you are talking about telecommunications fraud or any other kind of fraud, when you are trying to chase fraud after it has occurred, it is a labor-intensive, resource-intensive battle that is very difficult to make. So the more you can do to implement some up-front controls to deter or minimize unscrupulous people from coming into the business, that is a positive step.

Senator COLLINS. I would like to have charts brought up on your own application for an FCC license when you went to the FCC and established the company, PSI Communications. I am not sure whether to thank you for naming it after the Subcommittee or to look forward to a cease and desist order from the FCC.

Now, according to your report, you used a fictitious name, a phony telephone number that you took simply off the FCC's sample application form and put it on your form, your license application. Also, as I understand it, instead of submitting the tariff informa-

tion, the rates, and the services, you just submitted a blank computer disk. Is that accurate?

Mr. BOWRON. Yes.

Senator COLLINS. Did you pay the $600 fee?

Mr. BOWRON. No.

Senator COLLINS. But you were able to be licensed as a long-distance provider despite that?

Mr. BOWRON. We received a tariff. In fact, that letter represents the tariff when stamped by the FCC, and we were then listed by the FCC on the Internet as having applied for and received a tariff.

Senator COLLINS. So even today, PSI Communications, a totally bogus company that submitted an application with a phony phone number that was taken from the FCC's sample form, which did not pay the application fee of $600, and submitted a blank disk rather than the information that you required, you are now a recognized, legitimate provider of long-distance services in the FCC's eyes?

Mr. BOWRON. I don't know about today because we did brief the FCC on our activity about a week or so ago.

Senator COLLINS. Until briefing them.

Mr. BOWRON. So we may not be today, but we would have been recognized at least up until that point.

Senator COLLINS. So to become a long-distance telephone service provider in the United States, you have testified earlier that you don't need any equipment; is that correct?

Mr. BOWRON. That is correct.

Senator COLLINS. You don't need any facilities?

Mr. BOWRON. That is correct.

Senator COLLINS. You don't need employees?

Mr. BOWRON. That is correct.

Senator COLLINS. You don't need any experience in the industry?

Mr. BOWRON. That is correct.

Senator COLLINS. You don't need any special showing of expertise or ability to perform the services?

Mr. BOWRON. No.

Senator COLLINS. You don't need an office or any other location?

Mr. BOWRON. No.

Senator COLLINS. All you need is to supposedly file the tariff, pay the fee—but you didn't do either of those—and you can become licensed; is that correct?

Mr. BOWRON. Well, obviously, after you have taken those steps, you would have to have a customer base that you were going to provide to a carrier who you entered into an agreement with to lease line capacity. You would have to go through a billing procedure, which is frequently accomplished through a billing company that you enter into an arrangement with. But those are the steps that you would take, and the tariff in most instances, although it varies a little bit from State to State, would enable you to accomplish that.

Senator COLLINS. And this means that anyone, even someone with a lengthy criminal record, could get through the first threshold; is that accurate?

Mr. BOWRON. Yes.

Senator COLLINS. And we know, in fact, given Daniel Fletcher's experience, that going to the next level is not that difficult either.

Do you have any evidence that the major carriers check with the FCC to see whether someone has been barred from the industry or has a disciplinary history with the FCC or whether, in fact, they have filed the information correctly with the FCC?

Mr. BOWRON. No. Those are two other vulnerabilities. I mean, there really isn't a requirement for the industry, before doing business with a reseller, to check with the FCC, and there really isn't a requirement for them to report to the FCC that they are doing business with any particular entity.

Senator COLLINS. One of the aspects of this that troubles me is it seems that no one is really in charge, that the FCC expects the industry to essentially police itself and for the major carriers to take responsibilities for their dealings with the resellers. The industry seems to rely on the FCC's process, and yet we have just seen that it is very easy to become licensed as a long-distance carrier.

Is that a weakness in the system that allows a Daniel Fletcher to enter it and to rip off consumers?

Mr. BOWRON. Yes. There is no centralized repository for slamming complaints, and as you indicated, our investigation and interviews with the FCC and with State and industry representatives, indicates, as we said in our report, that each really relies on the others to be the main forces in anti-slamming efforts. So there really isn't any one entity that is taking overall responsibility for that.

Senator COLLINS. I have a number of specific questions I want to ask you about your case study of Mr. Fletcher, but I know that Senator Durbin is on a tight schedule, so I am going to yield to him now for some questions.

Senator DURBIN. Thanks, Senator Collins.

The more I get into this, the more I am convinced that, to this point, no one has taken this seriously. If a fellow like Fletcher can get into business and, according to what we have here, charge the slammed customers as much as six times the rates they had previously been paying, can make, it appears, millions of dollars off of this and ultimately escape prosecution. As I understand it, he has never been indicted or prosecuted for anything. Is that true?

Mr. BOWRON. I believe that is correct.

Senator DURBIN. If you steal hubcaps they stop you, arrest you, make you face the judge, and this fellow is involved in millions of dollars of fraud, and no one has ever prosecuted him. It appears to be a game in the minds of some people. But it is not a game in the minds of the victims.

I am also concerned, too, because the threshold qualification to be part of this business, the tariff at the FCC, clearly is not on the up and up. There isn't a good job being done by that agency if you can go in there and not even present the $600 filing fee. You managed to get a tariff without paying?

Mr. BOWRON. Well, that was our experience. Now, we didn't do any work to ascertain whether there were other occasions on which tariffs had been obtained under such circumstances. But that was our experience, yes.

Senator DURBIN. I just wonder how many other Americans could expect to go to a Federal agency and receive a license or a tariff

or some permit and not provide the check that is require, I assume that is required by law. Is that the case here?

Mr. BOWRON. That is what is required by law, yes.

Senator DURBIN. And there was obviously no effort to scrutinize your application to find out if you were legitimate.

Mr. BOWRON. That is right.

The process though, is somewhat fragmented in that all steps of the process don't occur at the same place. You send the application to one location. You send the check to a location. You actually go in to obtain the tariff at a different location and provide your disk. So we didn't really study the process, but our experience showed us that the process was fragmented.

Senator DURBIN. Well, it appears the process is meaningless as well as being fragmented if you could give a false telephone number—I don't know if that address up there was a legitimate address. Is it?

Mr. BOWRON. No.

Senator DURBIN. You made that up, too.

Mr. BOWRON. It is a real post office box mail drop.

Senator DURBIN. You used a mail drop, a phony number. Who is Ron Ryan? Is that someone who works for you?

Mr. BOWRON. The two agents that were involved in the investigation used the first name of one and the last name of the other.

Senator DURBIN. So it is a phony name and a phony address—not a phony address but a mail drop, with a phony telephone number, and you handed them a blank computer tape?

Mr. BOWRON. Disk.

Senator DURBIN. Disk?

Mr. BOWRON. Yes.

Senator DURBIN. It had nothing on it?

Mr. BOWRON. Nothing on it.

Senator DURBIN. And then you didn't give them the check, and you walked away with your tariff.

Mr. BOWRON. Yes.

Senator DURBIN. And now you are ready to do business.

Well, if that is the best we can do at the Federal level, we have a long way to go to try to convince the consumers that we are even trying. And it troubles me as well that this Fletcher got away with this for such a long period of time. These newspaper articles called him "the king of slammers."

Do you have any idea how much money this man made or what he took out of this business?

Mr. BOWRON. We really can't report with any precision how much he made. We do know that he billed over $20 million to customers. If you use his typical method of operation—and he wasn't able to do this on all $20 million—through billing companies, he received 70 percent of the billing amounts in advance of the bills actually being paid. So if you use that 70 percent method, he could have made as much as $14 million.

Now, he made something less than that, but certainly there was a lot of money involved.

Senator DURBIN. And not only stiffing consumers, he stiffed some of these long-distance providers like AT&T in the process, did he not?

Mr. BOWRON. Yes.

Senator DURBIN. I don't know if this is accurate, Madam Chairwoman, but it said that despite warning signals, companies like AT&T and Sprint took months or years to stop doing business with this fellow. As a rule, they only stopped when he failed to pay his bills. And until this investigation was initiated, AT&T at least had no idea they were owed almost $2 million by Fletcher.

Mr. BOWRON. That is correct.

Senator DURBIN. Is that what you found?

Mr. BOWRON. Yes.

Senator DURBIN. It amazes me that this fellow did this with impunity. And 29 years old, he was? Pretty enterprising young businessman. And now he has fled the country. Is that the best we know?

Mr. BOWRON. We are not sure that he has left the country, but there is an ongoing investigation, and he may very well have left the country.

Senator DURBIN. Well, let me tell you, the bill that Senator Collins and I have introduced is finally going to put criminal liability into this, and a man like Mr. Fletcher would certainly be a prime target for it. If people want to do this repeatedly at the expense of consumers, I think they should be held just as accountable as the folks that are stealing hubcaps.

Thanks, Madam Chairwoman.

Senator COLLINS. Thank you, Senator.

If PSI Communications were to start slamming consumers, how would the FCC go about taking enforcement against the company?

Mr. BOWRON. FCC would have difficulty taking any enforcement action because it has no legitimate information that would allow it to locate or communicate with the representatives of that company.

Senator COLLINS. Isn't that one of the problems, then, of there being no verification of even the phone number that is on the application? If there is a problem, what can the FCC do if the information is phony?

Mr. BOWRON. That is a problem, a vulnerability.

Senator COLLINS. I would like to turn to the Fletcher case and follow up on some of the questions that Senator Durbin asked you.

First, let me start by asking you, Did Daniel Fletcher file the necessary documents with the FCC to be considered an authorized long-distance service provider?

Mr. BOWRON. Not in every instance. I believe out of his eight companies he filed for a tariff with regard to two of them.

Senator COLLINS. But despite not even filing with the FCC, he was able to enter into relationships with the major carriers to lease capacity?

Mr. BOWRON. Yes.

Senator COLLINS. So that indicates that one of the problems here is, even if the information is accurate with the FCC, if the individual doesn't file at all, the major carrier is not doing a check with the FCC to see whether or not there is authorization. Is that correct?

Mr. BOWRON. That is correct. There is no current requirement that makes it incumbent on the carrier to make such a check.

Senator COLLINS. So, to the best of your knowledge, none of the long-distance or billing companies checked with the FCC about Mr. Fletcher prior to doing business with him?

Mr. BOWRON. We don't believe so.

Senator COLLINS. You mentioned that in one case Daniel Fletcher tried to slam more than half a million customers. That is pretty bold. Do you know how many he was successful in slamming?

Mr. BOWRON. Well, in that particular instance, we don't know how many he was successful in slamming. We know that about 200,000 of a group of 500,000 went through, and based on the number of rejections, resulted in suspicion on the part of one entity that Mr. Fletcher was dealing with.

Senator COLLINS. Are the techniques that Daniel Fletcher used to slam consumers unusual?

Mr. BOWRON. No, they really are not.

Senator COLLINS. I would like to discuss one of those techniques by having a chart brought up. It is my understanding that one of the most common methods that he used was a combination sweepstakes entry and letter of authorization for changing the long-distance services. Is that accurate?

Mr. BOWRON. Yes.

Senator COLLINS. Are you familiar with the two charts that we are putting up?[1] One is what I understand was a poster that was used, and the other is a slightly blown-up version of what really was a three-by-five card which served as the letter of authorization.

Mr. BOWRON. Yes.

Senator COLLINS. Could you explain how Mr. Fletcher used the enticement of a sweepstakes in order to slam consumers, in order to get their names and addresses and phone numbers?

Mr. BOWRON. Well, he used the marketing technique of a sweepstakes, which concealed the fact that people were unknowingly changing their long-distance carrier in the fine print. It provided confusing information that did not clearly identify even a single carrier that one would be switching to; but, most importantly, it combines it with an official registration. Although it says LOA at the top of the form, most people only know it is an official registration. LOA doesn't really mean much to them.

So he has disguised, basically, through a marketing attempt the fact that people are changing to his long-distance company.

Senator COLLINS. So most consumers thought that when they filled out this postcard that they were signing up to win the new Mustang convertible or $20,000 in cash. Is that accurate?

Mr. BOWRON. That is accurate. What I don't know for sure is whether that particular form went with that particular contest. But that is a typical scheme.

Senator COLLINS. This is, according to the information we have from our investigation, precisely what was done in this case. These materials were provided to us by the State of Florida which took action against Mr. Fletcher.

The way this was set up is this essentially was a poster with the Mustang convertible come-on, and then these were little cards that

[1] See Exhibit 39 (d) and (e) of the April 23, 1998 hearing in the Appendix on pages 236 and 238 respectively.

people could fill out and put in the box with the slot right below the poster. So I would wager that most people thought they were entering a contest, not signing up to switch their long-distance service.

Based on your knowledge of slamming, is that a reasonable assumption on my part?

Mr. BOWRON. Yes.

Senator COLLINS. And is this a typical method of slamming that unethical providers use?

Mr. BOWRON. This is a typical example of a deceptive marketing practice to build a customer base.

Senator COLLINS. AT&T wrote to Mr. Fletcher on several occasions questioning the legitimacy of his letters of authorization or letters of agency, and, in fact, in April of 1996—and I think we have given you a copy of this exhibit; if not, I will ask for the clerk to make sure that one is brought down to you—AT&T wrote Mr. Fletcher in a "Dear Daniel" letter and said that these LOAs, the letters of authorization, were a problem, that they violated the current FCC rules.

In fact, the AT&T individual said to Mr. Fletcher about his LOAs, "This is not sufficient for proof of authorization purposes because the FCC rules provide that the LOA form may not be combined with any sort of commercial inducement."

So, in other words, AT&T realized that Mr. Fletcher was violating current FCC regulations; is that correct?

Mr. BOWRON. Yes.

Senator COLLINS. Is there any indication—and it is my understanding that as a consequence AT&T rejected thousands of the change orders that Mr. Fletcher submitted; is that correct?

Mr. BOWRON. The records that we got from AT&T weren't complete enough for us to be able to determine whether or not they processed those LOAs. We do know that they continued to do business with Mr. Fletcher until November of 1997. We don't know with certainty whether or not they processed those particular letters of agency.

Senator COLLINS. So AT&T continued to do business with Mr. Fletcher despite its concerns. It may or may not have stopped processing some of his orders. Is that correct?

Mr. BOWRON. Yes, it is.

Senator COLLINS. Did AT&T report its suspicions about Mr. Fletcher to the FCC?

Mr. BOWRON. No.

Senator COLLINS. That troubles me greatly because AT&T's letter says to Mr. Fletcher that he is not in compliance with the FCC. Do you think there should be some sort of requirement or obligation imposed on the major carriers to report activity like this to the FCC? Here we had a classic scheme for slamming. We have evidence that thousands of consumers are being deceived. AT&T realized that, but it didn't take action—it wrote to Mr. Fletcher, but it didn't take action to report to the FCC that its regulations weren't being followed.

Mr. BOWRON. Based on our interviews and investigation with respect to the industry, they do not report that kind of activity. They don't consider it their responsibility to report that kind of activity.

They generally put the suspected slammer on notice, as in the Fletcher case, that they expect the company to comply with FCC regulations, but do not report it to the FCC.

Senator COLLINS. One of the provisions of the Collins-Durbin legislation would put more requirements on the major long-distance carriers as well as the local exchanges, the local telephone companies, because they are the ones who get most of the slamming complaints, to when they see a pattern, report to the FCC. Do you think that would be helpful in cases like this that would allow earlier detection of widespread slamming by an individual provider?

Mr. BOWRON. Yes, I do.

Senator COLLINS. I would like to now turn to the FCC's actions against Mr. Fletcher. If AT&T did not, or none of the other companies—and I am not trying to single out AT&T because, obviously, Mr. Fletcher did business with other major carriers as well. To your knowledge, none of them contacted the FCC about Mr. Fletcher's activities; is that correct?

Mr. BOWRON. To our knowledge, they did not.

Senator COLLINS. How did the FCC become aware that Mr. Fletcher was engaged in such blatant slamming?

Mr. BOWRON. Mr. Malfi advises me that there were direct complaints made to FCC with respect to Mr. Fletcher.

Senator COLLINS. So it was consumers complaining directly.

Mr. BOWRON. Yes, that is correct.

Senator COLLINS. And the FCC saw the pattern.

We know that Mr. Fletcher slammed probably hundreds of thousands of consumers. He certainly tried to slam a huge number. Yet it took the FCC almost 2 years to take final action against Mr. Fletcher to ban him from the business.

Could you give us your opinion of the FCC's enforcement activity in this case?

Mr. BOWRON. Well, the enforcement activity in this case really was not more aggressive than sending a notice of the orders to Mr. Fletcher; and when Mr. Fletcher didn't respond to those orders, FCC could have used his lack of response to act sooner, but did not. So while they did initiate some action, they really did not follow through with the action as soon as they could have based on his lack of response, which enabled him probably to stay in business longer.

Senator COLLINS. Do you think Mr. Fletcher is still doing business today?

Mr. BOWRON. Yes. We have some indication that he is, but because of an ongoing investigation, I really wouldn't want to comment further than that.

Senator COLLINS. Based on your investigation and the FCC's enforcement actions to date, what is there to stop another Daniel Fletcher from getting an FCC license to provide long-distance service, from slamming thousands of consumers, getting paid up front, and disappearing again?

Mr. BOWRON. Right now there isn't anything that would prevent that.

Senator COLLINS. Is there anything that would prevent Mr. Fletcher from getting back into business again? He has legally been barred, but given the weaknesses in the system, is there anything

to prevent him from setting up yet another company with yet another name? He has done it eight times.

Mr. BOWRON. He would have to use another name, but other than that, he could certainly get back into the business.

Senator COLLINS. I wonder if he could get back in using his own name if there is no review of the FCC's applications.

Mr. BOWRON. It is possible.

Senator COLLINS. Senator Durbin and I have introduced legislation that would make intentional and repeated slamming, such as Mr. Fletcher has committed, a crime. It would make it a criminal offense.

You have enormous experience as director of a law enforcement agency. You have a lot of knowledge of the Fletcher case and of slamming in general. Do you think that activities such as Mr. Fletcher's should constitute criminal conduct and should there be criminal penalties for such egregious cases?

Mr. BOWRON. Yes, I believe that should be the case. And I would say that right now there are criminal laws that could be applied—wire fraud, mail fraud—but it would be, I think, from an enforcement standpoint for prosecuting attorneys and law enforcement agencies, preferable if there were specific violations that were specific to slamming rather than trying to use the facts and circumstances to rely on other statutes.

Senator COLLINS. So it is a stretch under existing laws to bring a criminal case for slamming?

Mr. BOWRON. It is certainly not as straightforward. It is more difficult. You have to make sure that you meet the particular elements of those other offenses, such as mail fraud or wire fraud.

Senator COLLINS. Have you looked at the States' enforcement actions against companies that engage in slamming?

Mr. BOWRON. Yes, to some extent.

Senator COLLINS. How do these States' actions compare with the FCC's action in general?

Mr. BOWRON. It varies from State to State, but in general, the States' actions are more severe than those taken by the Federal Government.

Senator COLLINS. In closing, I would like to ask you to just go through what you think consumers should do to avoid being slammed, what you believe the industry needs to do, and what you think that the FCC needs to do. And part of it, I should say, means that Congress also needs to change the law and toughen the penalties, but if you could focus on what you believe would be most effective to curtail this practice once and for all. We clearly have a new deregulated environment that has brought many benefits, but it has also opened the door to fraud and scams like slamming. So what should we be doing?

Mr. BOWRON. Well, certainly I think, as I said, the most important step that consumers can take to protect themselves is to initiate a PIC freeze with respect to their long-distance carrier, and they can do that by contacting their local exchange carrier.

If they are slammed, they should immediately notify the local exchange carrier and the FCC.

Now, as far as developing something that would result in a more effective enforcement of rules and regulations and centralizing re-

sponsibility for this, I think that the legislation that you talked about, taking the economic incentive out of slamming, is a very important step. But I also think that any time you have dollars changing hands in businesses, as much as you can reasonably do to establish up-front controls to keep unscrupulous people out of the business, should be done. And I am not talking about going from doing nearly no review or no examination to doing a full field background investigation. The banking industry, credit card industries, credit bureaus—lots of entities—have developed information-verification steps that can be taken that are not resource-intensive and that can be done from a centralized location. It couldn't be done without some resources.

In addition to that, I think that there needs to be a centralization of where the slamming complaints go so that local exchange carriers, the telecommunications industry, and sellers of hard lines should have to report to the FCC their experience with unscrupulous or suspicious people that are in this business. They should also have to check with the FCC to determine whether or not a tariff has been filed.

Now, if the FCC had a record of all the slamming complaints filed by States and other industry entities, at least when a provider called the FCC to check on someone that it was going to do business with, the FCC would be able to provide that information.

So, really, I think that centralizing a repository for all slamming information would help.

Senator COLLINS. And, in addition, I believe today you have endorsed many of the very strong provisions of the Collins-Durbin bill—is that correct, also—on criminal penalties, the requirements on the industry, and the increased fines?

Mr. BOWRON. I think that they are very viable steps that would have an impact.

Senator COLLINS. Thank you very much, Mr. Bowron.

Senator Levin, do you need a moment or two?

Senator LEVIN. No. I am fine. I am ready to go.

Senator COLLINS. OK.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Madam Chairman, and thank you for your leadership in this area and for the hearing that you have called today. You have put your finger on a major problem, a major consumer problem in this country, and all of the Nation should be grateful to you and Senator Durbin and others who have taken a leadership role in this for that leadership.

My office has received huge numbers of complaints from constituents on the practice and the problems of slamming. In fact, switching someone's long-distance carrier without their consent, or slamming, is the No. 1 complaint which has been received by the Michigan Public Service Commission. And Michigan ranks fourth nationally in the number of slamming complaints which have been received, and it is a growing number.

Twenty-five percent of telephone customers in Michigan's two largest cities, Detroit and Grand Rapids, have either had their telephone carrier switched without their permission or know someone who was illegally switched.

There is no national database, so we don't know exactly how many complaints there are on slamming. But we do know that local phone companies receive most of the complaints, and one local phone company in Michigan received close to 116,000 complaints last year. And that is just the tip of the iceberg.

Consumers are understandably outraged when this happens. It leaves them vulnerable, paying higher rates, and they want to be in control, and they have a right to be in control, and they lose that control when slamming occurs without their consent and rewards the companies that engage in these deceptive and misleading marketing practices. And we had many examples, but in Westland, Michigan, Mrs. Lori Isler's 14-year-old daughter was approached three times in a mall by marketing representatives who urged her to fill out a form for a chance to win new cars. She told them she didn't want to. They persisted. She told them she didn't want to. They persisted. Finally, she signed. Happily, she told her mother, who notified the regular long-distance carrier that the service had been switched, and she complained to the Michigan attorney general, Frank Kelly's office, for protection, and they got action.

But think of the hundreds of thousands that don't, and that action, just having that minor sign a card, violates the regulations of the FCC. You are not supposed to have anything on that notice other than the request for the change. And yet we don't see any enforcement that is flowing in that area from the FCC.

I have just one question, and, again, I want to commend our Chair for her leadership here in the bill that she has introduced. And we also will be looking at the FCC-proposed regulations to see if they are strong enough and, indeed, if Congress should act in addition to the ways that have already been proposed by our Chairman.

I just have one question of you. That is, some of us are looking at the possibility of requiring a bond, an up-front bond, for the resellers. And I am wondering what you would think about that and what your comment would be on that.

Mr. BOWRON. I think that that is a very viable option and it should be considered, and the bond could vary in amount, obviously, and the length of time that someone had to be bonded could also vary. It wouldn't necessarily have to be for their entire period of time in the business, but I think it is a viable option.

Senator LEVIN. You have pointed out in your testimony that chasing fraud after it occurs is extremely expensive and labor-intensive, and hopefully we can stop it from occurring, and one way possibly that I hope we will consider would be a requirement that the resellers here be required to put up bonds.

Thank you, and thank you, Madam Chairman.

Senator COLLINS. Thank you very much, Senator Levin.

Thank you very much, Mr. Bowron. I really appreciate the cooperation of GAO and the assistance, the very able assistance, GAO has given us in this important matter. Thank you very much.

Mr. BOWRON. Thank you, Madam Chair.

Senator COLLINS. Our second witness this morning I am pleased to welcome is the Hon. William E. Kennard, the Chairman of the Federal Communications Commission.

Mr. Kennard was confirmed as Chairman of the FCC last October, having previously served for over 3 years as the FCC's general counsel. Before joining the FCC, he practiced communications law at a very prestigious Washington law firm, and he brings a considerable private and public sector experience to the Subcommittee today. He has a very impressive academic and legal background that makes him well-qualified for the challenges of his job.

We look forward to hearing the FCC's position on slamming, a review of its current policies, and suggestions on what you may have for us to control this problem.

Pursuant to Rule VI, all witnesses who testify before the Subcommittee are required to be sworn, and so I would ask that you stand and raise your right hand.

Do you swear that the testimony you are about to give to the Subcommittee is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KENNARD. I do.

Senator COLLINS. Thank you very much.

Mr. Kennard, you may proceed.

TESTIMONY OF HON. WILLIAM E. KENNARD,[1] CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION

Mr. KENNARD. Thank you, Madam Chairwoman, and Senator Levin.

I appreciate the opportunity to appear before you today, and I am particularly pleased that you are shining the spotlight on this very important area, and I commend you for your leadership in bringing these issues to the attention of the Congress.

Please be assured that we at the FCC are very aware of this problem. We understand the outrage that consumers feel when they are slammed. The practice brings the industry into disrepute, leaves consumers frustrated, and we are committed to doing all we can, and to doing more.

I think the recent action that we took against the Fletcher companies demonstrates our willingness to get tough against slammers, but we won't stop there. I would like to outline what I think should be our three-pronged approach to dealing with the slamming problem.

First, vigorous enforcement. We need to nab the bad actors when slamming violations occur. We need to be vigorous in this area.

Second, and most importantly in my view, we need to strengthen our existing rules. We need to take the profit out of slamming. Madam Chairwoman, you touched on this in your questioning and in your opening statement. I think the single most effective thing that we can do in this area is to eliminate the profit motive from slamming, to tell consumers that if you get slammed, you don't have to pay a dime to the slammer or to anybody else. I think that that would go a long way in removing the incentive for people to slam in the first place.

And, third, we need to continue to educate consumers on ways that they can avoid being slammed in the first place. Many Americans are adjusting to the transition from monopoly to competition.

[1] The prepared statement of Mr. Kennard appears in the Appendix on page 130.

Most Americans in this country remember—I certainly do—when you only had one long-distance provider. Well, obviously, the world has changed. We have 500 providers of long-distance service in this country. Consumers need to be vigilant. They need to educate themselves, and we want to help them do that.

Now, I have proposed for the Commission's consideration tougher rules that I hope will take the profit out of slamming. Currently, for the period their service was changed without their permission, slammed consumers need only pay the slammer the amount they would have ordinarily paid to their authorized carrier. But to discourage slamming, I think we should do more. My own view is that slammed consumers should not have to pay any charges for a reasonable period of time after being slammed, maybe one or two billing cycles. Such an approach, in my view, will remove the profit incentive from slamming, and it will also tell the carriers that do the billing for these long-distance carriers and these slammers that they have to be vigilant.

We heard testimony earlier about how AT&T was not vigilant enough in shutting down Mr. Fletcher. Well, if there was no profit incentive for Fletcher to slam, if AT&T knew that the consumers that Fletcher was slamming didn't have to pay them a dime, then I think that AT&T might have been more vigilant themselves.

Now, Madam Chairwoman, I am aware of your concerns. We have talked about this proposal, and I am aware that you have concerns about absolving consumers altogether from the responsibility of paying when they get slammed. But I think that we can craft rules with appropriate safeguards so that we can take the profit motive out of slamming without creating abuse by consumers themselves.

We have talked a lot about tariffs this morning. With all due respect to the GAO, I think that a lot of this focus on the tariffing process is really misdirected.

First of all, a tariff is not a license. It has never been a license. A tariff is a document that carriers are required to file at the FCC which provides basic information about rates and services, not about marketing practices. It has never been intended to be a process to screen people coming into the market based on their marketing practices or their character. And we freely stipulated to the GAO that the tariffing process was not intended to screen people or do background checks or anything of the sort.

In fact, the FCC has tried to get out of the tariffing business because we have found, based on years and years of experience, that in a competitive market the tariffing process is anti-competitive because it allows carriers to signal to one another what rates they are going to charge to consumers. And it has not been good for competitive markets. So I do not think that beefing up the tariffing process and, in effect, erecting a new entry barrier for people getting into the long-distance business is the solution.

Now, as to consumer education, the Commission has done a lot in this area and we will continue to do so. We receive most complaints about slamming via our toll-free number. That is working well. Consumers have one place to call to get information about slamming and how to protect themselves.

I want to raise one other issue that is very important. It is an emerging problem in the telecommunications marketplace. That is the problem of cramming. And, Madam Chairwoman, I would invite your leadership and your attention to this matter because I think that cramming is the next major consumer protection issue that we have got to deal with.

Cramming is the process when consumers receive bills for services that they never ordered. It is sort of a variation on slamming. We are seeing a lot of consumers complaining about receiving bills for Internet services, for example, that they never ordered or never wanted.

To head off this growing problem, today I am calling upon the CEOs of the major local telephone companies to come together next month at the FCC in order to prevent cramming and to identify voluntary practices that they can incorporate in their billing procedures to stop cramming.

I am making available the Commission's resources to assist in these industry efforts. I hope to create a neutral forum where the industry can come together, and I would certainly invite your leadership in this process as well, Madam Chairwoman.

This concludes my oral testimony. Again, I praise you for your efforts to call attention on this problem and to propose some very helpful legislative solutions which will give our Commission more tools to combat this problem. I think there are some wonderful provisions in your bill.

I am happy to be here and to take your questions.

Senator COLLINS. Thank you very much, Mr. Kennard. We appreciate your cooperation and your being here this morning.

I am a little bit troubled by some comments that you made in discussing the tariff and the application process. You said, I think, that—you explained correctly, obviously, that tariffs are not really a license, they are a filing of the charges and the fees that are going to be offered by the provider. And you described them as being anti-competitive, and you and I have had a discussion on the phone as well that your mission is to deregulate. And deregulation has certainly brought a lot of benefits to consumers, but with deregulation have also come scams. And my concern is that that doesn't mean we shouldn't deregulate, but it means that when we are dealing with a deregulated market, we do need to have some consumer protections that would not have been necessary in the old regulated market when you could just deal with one company and you had a very close working relationship with them.

Now we have some—I think it is 500 long-distance telephone providers, and we have learned very clearly that some of them are engaging in outright fraudulent activities. We don't seem to have the process or the procedures in place to adjust to this deregulated market from the consumer protection perspective.

Now, it is my understanding the FCC provides a blanket authority for domestic long-distance carriers to enter the market. Is that correct, that there is this blanket authority that means that there isn't any kind of review?

Mr. KENNARD. Well, there isn't a licensing requirement, no. The tariff is not intended to scrutinize carriers coming into the market. It is, rather, a method for them to indicate to the FCC their rates

and charges. But, again, the tariffing process is really a vestige of a less competitive marketplace and really should go by the wayside, in my view.

Senator COLLINS. So are you advocating having no application process, no filing at all with the FCC?

Mr. KENNARD. What I am saying is that the way to combat slamming is not through the tariffing process. I really think, Madam Chairwoman, that we need to think outside the box a little bit on this and not look at the tariffing process as the solution.

I believe that the reason people slam is because there is a financial incentive to do so, and we need to remove that financial incentive.

I could go out tomorrow and create a 50-page tariff filing requirement and do background checks and collect all sorts of financial information, and it wouldn't do one thing to combat what we saw in that Fletcher case, because as we heard the GAO testify, Fletcher didn't even file a tariff, and had he filed, he probably would have misled the FCC and lied in his application, as he lied to Dun and Bradstreet when we tried to track his financial information.

So an individual like Fletcher, who sets out in a very intensive, unscrupulous way to rip off consumers, is going to do that whether you have an extensive tariffing process or not. What an extensive tariffing process would do is harm the legitimate providers, and most of the providers today are legitimate. It would just impose an entry barrier, another regulatory issue that they have got to deal with, more cost, delay, and expense for them to get into the marketplace.

Senator COLLINS. But the legitimate providers are losing customers to the slammers. I mean, that is not good for the competitive market, either, when an unethical provider can so easily enter the market and rip off the customers of a legitimate provider.

Mr. KENNARD. I don't disagree with that. My point goes to how do we eliminate the bad conduct, the slamming. And I think that we do that by taking the profit incentive out of slamming, not by trying to erect some sort of an entry barrier or a background check, which I don't think is going to give us the kind of protection that we need.

Senator COLLINS. What if the FCC received a tariff from an individual whose address was Cell Block C of Leavenworth penitentiary? Would that trigger any kind of review by the FCC?

Mr. KENNARD. It probably would. But that sort of review—and this is my point—is not going to solve the slamming problem.

Fletcher is a great example of this. We chased Fletcher all over the country for almost 2 years. This was a guy who was on the lam. He was intentionally trying to violate our rules. So he probably would have filed the most legitimate looking application you have ever seen, and it would have been wrong. We know that he gave us false addresses and false telephone numbers. So an upfront approach is not going to solve the problem.

We would have combatted Fletcher if we had had rules, as I have proposed to the FCC, I believe, that would tell the Fletchers of the world, if you slam someone, you are not going to get a dime from that consumer because they won't have to pay.

Senator COLLINS. As you know, the GAO's investigators filed an application for "PSI Communications." It had phony information. The phone number was wrong. They didn't pay the fee. The computer disk was blank, so they really didn't file the tariff.

Shouldn't that kind of blatant deception be caught by your application process, by the process that you have now? I mean, all that would have been required is to plug in the computer disk or—I mean, I am amazed that someone could get authorization without paying the $600 fee. There must be some sort of reconciling of accounts, I would think.

Mr. KENNARD. No one got authorization from that PSI tariff filing. If you recall the chart that was put up earlier, in the corner it said unofficial log. That was not a license. That was not an official tariff. That was just a notification that this filing had been made.

We talked to the GAO when they came to discuss this procedure with us. We freely told them, don't look for the tariff process to try to scrutinize who people are who are providing long-distance service, because that is not what we rely on tariffs to do, nor should we. The FCC has sought to de-tariff the long-distance business because we do not rely on tariffs to enforce against slamming, because in my view, that is an ineffective way to do it.

Senator COLLINS. What troubles me about that answer is the industry has told us that they consider the tariff filing as being a key credential when they decide to do business. Now, there is also evidence, I will say, that the major carriers don't bother to check with the FCC. So there is conflicting evidence. But the major carriers are telling us that they rely on the filing with the FCC.

Mr. KENNARD. Some of the carriers like tariffs because, as I mentioned before, it allows a signaling process. The non-dominant carriers like tariffs because it allows them to get information about what their competitors are charging consumers. That is exactly why I don't like tariffs in a competitive market, because it allows signaling and allows carriers to tell one another what prices consumers should be charged. We don't need that in a competitive market.

So the tariff is not really the best way to combat this problem. And certainly if one were to design a process to combat this problem, it wouldn't be through a tariff. It would be through some sort of background check or financial qualifications. But there, again, I don't think that that is going to combat the unscrupulous type of slammer, as we have seen in the Fletcher case.

Senator COLLINS. You mentioned in your testimony the need for more consumer education.

Mr. KENNARD. Yes.

Senator COLLINS. And, indeed, the FCC has urged consumers to scrutinize their telephone bills to make sure that they have not been a victim of slamming.

I would like you to take a look at a phone bill on our chart. It is Chart F.[1] This is an actual phone bill. We have just taken out the telephone numbers to protect the privacy of the person whose bill it is.

[1] See Exhibit 39 (f) of the April 23, 1998 hearing in the Appendix on page 239.

Now, would you please identify for the Subcommittee the name of the long-distance telephone company on this bill?

Mr. KENNARD. I don't see the name of a long-distance carrier on this bill.

Senator COLLINS. I didn't either when I looked at it, and I was amazed to learn that the name of the long-distance provider is "Phone Calls." That is the name of the company. And we have highlighted it to draw attention to it.

Now, the problem with telling consumers that it is up to them to scrutinize their bills is any consumer could look at this bill all day—you are Chairman of the Commission—and not realize that they have been slammed by a company that has deliberately adopted a deceptive name in order to deceive the consumer. The name of this—most consumers would never realize that "Phone Calls" is the name of the long-distance company. Instead, it appears to you, as it did to me, to be a listing of long-distance phone calls made by the consumer.

I would like to show you another phone bill. It is Chart G.[1] And, again, I would ask you if you could identify the name of the long-distance company.

Mr. KENNARD. It looks to be "LongDistanceServices."

Senator COLLINS. And we have obviously highlighted it to help you out.

Mr. KENNARD. That is very helpful. Thank you. [Laughter.]

Senator COLLINS. Again, do you think that most consumers, no matter how carefully they scrutinize this bill, would realize that they have been slammed by a company called "LongDistanceServices"? Doesn't that instead look like a listing of long-distance calls?

Mr. KENNARD. I think you have a fair point here. I think you do highlight a problem when a consumer can't reasonably determine who is charging them for long-distance services. That is fair.

Senator COLLINS. When a company files a tariff listing a deceptive name like "Phone Calls," shouldn't that trigger some sort of scrutiny by your staff? I mean, if the FCC can't tell, how can the consumer tell?

Mr. KENNARD. Well, the one caveat I would give is that often times—and I notice this on my own phone bill—the name of the long-distance carrier is on the front page of the bill but not listed on every page. So I would—it is important, before coming to final judgment on something like this, to scrutinize the entire bill.

Senator COLLINS. My concern is that we have companies out there whose favorite technique is to take a name that is going to be clearly deceptive to the consumers, and telling the consumer that it is up to you to scrutinize a bill like this in order to find out whether you are slammed is just unfair. It is not fair to expect a consumer to know that "Phone Calls" is the name of the long-distance company.

Mr. KENNARD. I don't disagree with that.

Senator COLLINS. We are in the midst of a vote. We have 7 minutes remaining. I can either yield to one of my colleagues, or would

[1] See Exhibit 39 (g) of the April 23, 1998 hearing in the Appendix on page 240.

you prefer to—certainly, Senator Durbin, I am going to go vote and come back.

Senator DURBIN. Tell them I am coming.

Senator COLLINS. I will. Thank you.

Senator DURBIN. Mr. Kennard, thank you for being here, and I am sorry I missed your testimony in person, but I read it. And I am troubled by it, very troubled by it. I just don't buy your premise, and your premise is that if we are in the world of deregulation, it is time for the FCC to step aside and let the Wild West prevail——

Mr. KENNARD. Senator, that is not my testimony.

Senator DURBIN. You have suggested to me that tariffs you don't like because it is, as you call it, a price schedule that is going to be shared, and it is anti-competitive, and yet you have not come back with any alternative suggesting a new function of your agency that would help protect consumers. It is one thing for you to agree with Senator Collins and say these are deceptive, but not a word in your testimony suggests any new regulation that would stop this. Am I missing something?

Mr. KENNARD. Senator, yes, I think you are, and I respectfully disagree with your premise.

First of all, my testimony outlines a number of things that the FCC is doing and can do more to protect consumers. I have proposed strengthening the anti-slamming rules. The point that I am trying to make is we need to have rules against slamming. That is fundamental. The FCC needs to have a strong consumer protection orientation, more so than ever in a competitive marketplace. My point is only that we have got to do that in an environment where my agency and all other Federal agencies are challenged to do more with less.

Senator DURBIN. Now, that is a legitimate point, and I am not going to argue with it. Because if we want your people to actually make sure that there is something written on that computer disk or that the check is received before the tariff goes out, you need the people to do it. And if we are short-changing you, I would think your responsibility as chairman of the FCC is to tell us as much: Members of Congress, you want new responsibilities, you want more activity from my agency, give me the people to do it. That is legitimate.

But the argument that you have made here that basically you have got to step aside from this process, I can't accept that premise. At one point here you say—and I disagree with this, incidentally. It sounds very good on the surface. "Slammed consumers should not have to pay any charges for a reasonable period of time." That sounds good on its face, and a lot of the people that I have talked to who have been hurt by this process would jump at the chance. But imagine what you just invited. You invite people who don't like their long-distance charges to come in and say, "I was slammed, so I don't want to pay for a couple months."

So then you go on to say, oh, incidentally, the FCC can craft rules with safeguards. Why is it that you can craft rules with safeguards in the expanded rights of consumers but can't craft rules with safeguards to establish whether the company in the first instance is totally bogus?

Mr. KENNARD. Because I think that by eliminating the incentive to slam, you will take slamming out of the picture. Again, an unscrupulous company is going to slam no matter what we do on the front end. I do believe that it is possible to craft appropriate safeguards.

If somebody steals your credit card and makes an unauthorized charge on your credit card, if you call your credit card company and tell them that your credit card has been stolen, you are not responsible for making that charge—for paying that charge. That is appropriate. I want to import that to the slamming context. And in the slamming context, carriers know whether their customers have been slammed, so they can make that determination.

Senator DURBIN. Well, here is where we disagree. I don't think you are wrong in your premise that if we enforce the penalties and make it expensive for slammers it will discourage them. But I don't think it is unreasonable to also say that people who want to play in this arena have to be legitimate, that you have to know who they are and where they are and where they can be reached, because the bottom line is if your tariffs are meaningless—and it appears they are—your enforcement actions are meaningless.

Mr. KENNARD. I agree. I mean, you are suggesting that I am not interested in doing anti-slamming enforcement. That is incorrect. I think that the FCC can do more to enforce against slamming. I want to have higher fines. I think the provisions in your bill to impose criminal sanctions and give people civil penalties is great.

Senator DURBIN. But you are missing my point. Why is it that you don't feel any obligation on the threshold, on the front end of this process, to establish that the people who are creating these bogus companies are using misleading names, are giving you addresses that don't exist, are using telephone——

Mr. KENNARD. I freely acknowledge that, Senator.

Senator DURBIN [continuing]. Numbers that are totally phony. I'm saying to you that they are not even going to pay the filing fee, and they are going to give you an empty computer disk, and you are saying, "Well, we will catch you if you break the law."

Mr. KENNARD. I freely acknowledge that there are people out there who will use fictitious names and lie to the FCC, and my point is, if they do that, we won't be able to catch them by having the most elaborate of screening processes.

There are really two categories of companies that slam. There are the unscrupulous companies like the Fletchers of the world that go out to break the law. And then there are carriers that are legitimate; they respond when we call them; they respond when we fine them; they enter into consent decrees; and they get sloppy and careless. Those folks we need to work with. We should hit them with higher fines.

All I am saying is on the front end—we saw this in telemarketing fraud—people who go out to rip off consumers are not—you are not going to catch them by having them fill out applications.

Senator DURBIN. I am afraid I have to run and vote, but I appreciate your testimony. The committee, I guess, will stand in recess until another Senator shows up.

Thank you.

Mr. KENNARD. Thank you.

[Recess.]

Senator COLLINS. The Subcommittee will be back in order. Again, my apologies. This is a heavy voting day.

Mr. KENNARD. I understand.

Senator COLLINS. My hope is that we can conclude the hearing before the next votes start.

Mr. Kennard, I want to follow up on the points that we have just made. In these cases, the consumers are going to have a very difficult time figuring out that they were slammed. I agree with your statement that we need to take the profit out of slamming and that that is going to help curb the problem. But that only works if the consumer knows that he or she has been slammed.

In a case like this, the consumer might never realize that he has been slammed. So taking the profit out isn't going to affect this kind of situation where the unauthorized carrier is going to continue getting all of the payments from the consumer because the consumer doesn't realize that he has been slammed.

That is why I think we need a more comprehensive approach and one that does something on the front end. I don't want to impose a huge new regulatory burden. I don't want to constrict entry into the market unnecessarily. But I do want to have some way of weeding out the bad apples right up front if we possibly can.

Mr. KENNARD. You are quite right about that, and it is fundamental that a consumer should know when he or she has been slammed. I mentioned in my opening statement that I am going to call together the CEOs of all the major telephone companies that do the billing to consumers, and I am going to put this issue on the table and see if we can address this issue of long-distance carriers not fully disclosing the charges to the carriers or identifying themselves on the bill. Maybe we can come up with a solution to that.

Senator COLLINS. Thank you.

The *Washington Post* reported today that a Minnesota judge struck down that State's anti-slamming law. The judge ruled that Federal regulations in this area preclude States from adopting their own regulations. I am very troubled by that because States have been very aggressive and have, frankly, been more aggressive than the FCC in taking enforcement action against slamming. If State laws are struck down, then the burden on the FCC is going to be even greater.

Do you believe—and I realize this judgment just came down, or this decision just was rendered, but do you believe that Federal law needs to be clarified to ensure that States are allowed to take action against intrastate slammers?

Mr. KENNARD. Section 258 of the statute currently allows the States to take action. That is why this Minnesota decision is curious. I am very interested to see the reasoning that the judge used to reach that conclusion. But, fundamentally, I welcome State activity in this area. We need more cops on the street. We need more State commissions to continue to be vigilant in this area.

So provided that their actions are not inconsistent with the Federal law, I invite the States to be very, very active in this area.

Senator COLLINS. It was my understanding that the current Communications Act explicitly sets forth a role for the States in

intrastate, but that it is silent on interstate. Am I mistaken on that? Is there explicit authority for the States?

Mr. KENNARD. I would want to go back and look at the statute, but it is my understanding that the provision allows the States to conduct their own anti-slamming activities provided that such action is not inconsistent with Federal law. And I believe that could include slammers who are slamming both interstate and intrastate. But I would have to double-check that.

Senator COLLINS. I would ask that you work with us to try to clarify that so that the role that the States are playing, which has been a really critical role, is not jeopardized in any way.

Mr. KENNARD. I would be happy to.

Senator COLLINS. I would like to ask you a question about the Fletcher companies, which has been the source of much discussion today. First, let me say that I am very pleased that the FCC has taken action this week to revoke the authority of these companies.

However, it is my understanding that the FCC received the majority of the complaints against the Fletcher companies in mid-1996, and during the interim time, several States took action against Fletcher. Alabama, Illinois, Florida, and New York actually revoked his authority to operate over a year ago.

Why did it take the FCC almost 2 years to issue a final order in this case banning him from the business?

Mr. KENNARD. Well, I have reviewed the enforcement action in the Fletcher case, and first let me say that slamming complaints should be expedited. I think that the Commission can and will take steps to make sure that complaints are expedited. They are taking too long.

But in the Fletcher case in particular, because he was such an egregious actor, it was clear that the FCC's enforcement activity against him escalated over time. Originally, we began an investigation into the complaints that we were receiving in mid-1996. By the end of 1996, we had issued a fine against his companies. We broadened our investigation about a month later. At that time we began to realize—this was the beginning of 1997. We began to realize that this was a really bad actor, and we contacted the FBI's field office in Los Angeles to try to track him down and get more information about him.

We issued another forfeiture against him in May of 1997, about a year after we first got a lot of complaints, and then it became clear to us that he had disappeared and he was no longer in the business. At that point we decided that we wanted to make sure he stayed out of the business. We issued an order to show cause to revoke his license, and that final order was—that has to go through a hearing procedure because he has some fundamental due process rights. We designated his operating authority for hearing. He didn't show up. And at that point we revoked his license.

Senator COLLINS. It is my understanding that the FCC sent a number of notices over the past 3 years, though, and that all of them came back as either refused or no addressee or unclaimed, so that it was evident pretty early on that you weren't going to be able to find him.

Do you think the FCC should have acted sooner?

Mr. KENNARD. I think the FCC should act as quickly as possible on all slamming complaints. I think it takes too long. Fletcher is not the isolated instance of that.

Senator COLLINS. Do you believe that the major carriers who dealt with Fletcher who realized that there were problems here, that they had very questionable letters of authorization, that he was combining the LOAs with the sweepstake offer in contradiction to your regulations, do you think they had an obligation or should have an obligation to report to you when they uncover a case where your regulations are not being followed by a company they are doing business with?

Mr. KENNARD. Yes, I like this provision in your legislation which requires the carriers to notify the FCC when they become aware that there is a problem. I think that that would be a helpful solution.

Senator COLLINS. One of the troubling facts that we learned during this investigation is that sometimes the long-distance carriers, the major carriers, the facility-based carriers, are not checking to see whether there is a tariff before doing business with a provider. And in the Fletcher case, as you have pointed out, he registered with you or filed the tariff for a couple of his companies, but he didn't with others.

Should there be some sort of requirement that there be a check? My concern is that were it not for the notoriety that our investigation has given Mr. Fletcher, there would be nothing to stop one of the carriers from doing business with him tomorrow, despite your order barring him, because they are not checking with you.

Mr. KENNARD. Well, this goes back to what I believe is the single most important thing we can to prevent slamming, and that is to take the profit motive out of it. If carriers knew that companies that they deal with, if those companies got involved in slamming, that they weren't going to be able to remit any funds to the carriers, I think that they themselves would be more vigilant in policing the kind of people that they do business with. So I think it all comes back to that.

Senator COLLINS. I think that is a powerful improvement, and it is one that I know you are working on from a regulatory perspective and we are working on legislatively. But that assumes that the consumers realizes it. And when you have a company that is named "Phone Calls," the consumer is not going to realize it. And that is why I think we need to look at that aspect of the problem as well.

Mr. KENNARD. I agree.

Senator COLLINS. It is also troubling to me that GAO testified this morning—and I don't know whether you are aware of this—that they believe that Mr. Fletcher is still in the long-distance business. Were you aware of that prior to the testimony this morning?

Mr. KENNARD. Frankly, I don't think anyone knows where Mr. Fletcher is or what he is doing. We have been in contact with various law enforcement authorities through our field offices and elsewhere, and we have not received any definitive information about what this man is doing or where he is.

Senator COLLINS. Part of taking the profit out of slamming is making sure that the fines for slamming are sufficiently high so

that slamming doesn't pay. Would you support an increase in the civil fine authority such as suggested by the legislation that Senator Durbin and I have introduced?

Mr. KENNARD. Yes, I think it is important to send a signal to all carriers that slamming is a serious offense, and one way to do that is to make sure that they understand that if they get sloppy, even if it is not an intentional violation, they need to be vigilant to prevent this sort of activity. So I think that increasing the level of fines is a helpful thing.

Senator COLLINS. Because right now some companies are treating the fines as just a cost of doing business, so I think that is part of taking the profit out of it for them. And that is something that I do want to pursue.

Just so I get you on the record, we talked earlier about the fact that intentional slamming is now currently a separate Federal crime, and the legislation that Senator Durbin and I have introduced would make intentional slamming possibly subject to criminal penalties in the more egregious cases, such as Mr. Fletcher's. Would you support that provision?

Mr. KENNARD. I think that would be helpful. I think we have to be very careful to make sure that we are clearly defining intent, because under any criminal statute, as you know, you have to be very, very explicit about that.

Senator COLLINS. Right, and there is, I should mention, some changes in long-distance service that do occur because of error. But that isn't really what our bill is designed to do. We want to get after the intentional, deliberate use of slamming.

Mr. KENNARD. Right.

Senator COLLINS. One final issue that I want to talk to you about is the actions taken by State governments. I am concerned about the disparity between the slamming penalties imposed by the States and those imposed by the FCC. And we have got two charts—J and K,[1] that compare the slamming enforcement actions as of April between the Federal Government and aggregating the States.

Now, you have recently imposed a very hefty fine on the Fletcher companies of $5.6 million, I think it is, which we could add to the $1.8 million. But you are still substantially below the amount of money that has been imposed by the States.

Do you think your enforcement actions have been tough enough using your current authority?

Mr. KENNARD. I think that for the egregious violators we should have more stringent fines. It is important to understand something, though, more about just the gross numbers in understanding how the enforcement process works.

At the FCC today, the staff is delegated authority to issue a forfeiture in the slamming area for up to $80,000. And so if the fine is issued at the staff level, it can move more quickly because we have more resources at the staff level. It avoids the process of bringing the complaint up to the Commissioners and having a full Commission vote. So it is faster.

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[1] See Exhibit 39 (j) and (k) of the April 23, 1998 hearing in the Appendix on pages 243 and 244 respectively.

In cases where we can get the attention of the carrier with an $80,000 notice of forfeiture, and when they cooperate with us and we bring them in, it is often more effective if we levy a smaller fine. Or, stated another way, sometimes the size of the fine is not as relevant as our ability to get the carrier to the table so we can negotiate a consent decree and actually enter into a long-term monitoring arrangement so that the carrier has to report to us on remedial efforts they have taken, for example. So it is a little misleading to look at just the gross amount of the fines to evaluate the level of our enforcement activity.

There is a fundamental matter. We are not in competition with the States in levying fines here. As I said before, we invite the States to be in this area. We want them to be active. We want their enforcement to be effective. And we are not trying to levy more fines or fewer fines than them.

Senator COLLINS. I understand that, but the States generally have not only imposed higher fines and tougher penalties, but they have acted much sooner. And I think that is really critical because you have cases where slamming can go on for a very long time while the FCC is going through its processes.

So I think that one thing that we need to look at is how can we act more quickly in addition to imposing heftier fines.

Mr. KENNARD. Well, some States have; some States haven't. The point is that I agree we need to expedite the processing of these complaints. But, again, we don't want more complaints. We want fewer complaints. And I am convinced that issuing huge fines is not going to deter all the slamming complaints. Some it will. Some it won't. We have to take the economic incentive out of slamming to solve this problem.

Senator COLLINS. I agree we have to take the economic incentive out of slamming. Slamming cannot pay. It does now. We also need to try to prevent those bad actors from getting in in the first place, and we need to send a very strong message that it is not going to be tolerated. And I think having criminal penalties available, having tougher fines, would deter some people.

Right now it can be treated as a cost of doing business, and certainly the availability of criminal penalties and tough fines sends a far different message from the Federal Government about our seriousness in combating this problem.

Mr. KENNARD. That is a fair point, and I intend to direct the FCC staff—in fact, I have directed the FCC staff to revisit the level of the forfeitures that are being recommended so that we can up the ante for these sorts of violations.

Senator COLLINS. I think that would be very helpful. I don't want to dwell on this point, but I want to show you one more chart [1] which looks at a number of companies against whom there have been considerable slamming complaints. And, again, it compares—the State actions are in red, the Federal actions are in green. I would just urge you to take a look at that, because I think right now that the message is being sent that the Federal Government is not really committed to cracking down on this problem.

[1] See Exhibit 39 (k) of the April 23, 1998 hearing in the Appendix on page 244.

One final question on the issue of the States. When the States take enforcement action, does it trigger a review by the FCC? Is there coordination or some sort of reporting by the States to the FCC when they take enforcement?

Mr. KENNARD. Not on each individual action. We are in regular contact with the State public utility commissioners, the National Association of States Attorneys General, to share information and enforcement techniques. But there is not a formalized notification system.

Senator COLLINS. Thank you very much, Mr. Chairman, for your testimony. I suspect that some of the other Members who were not able to get back due to continuing activity on the floor may have some questions to submit for the record. We look forward to working with you to solve this problem.

There is no doubt in my mind that deregulation has had many good benefits for consumers, but that it has also been an open invitation to scams and fraud by the unethical providers. And that doesn't mean that we shouldn't continue to deregulate the market and promote competition. But legitimate providers are harmed just as much as consumers are by the actions of companies that slam.

We have an obligation as we pursue deregulation to not forget about the consumer and to put in place consumer protections that perhaps were not needed in a regulated environment. It is clear to me from the two hearings we have held, plus our 6-month investigation, that the existing enforcement actions have been woefully inadequate and that current laws aren't strong enough, that you don't have all the tools that you need to cope with this problem. Otherwise, we wouldn't see it keep continuing to spiral ever upward.

The FCC can't treat slamming as a technical or an administrative problem that can be solved with polite warnings. I think we need far tougher and more aggressive action.

Senator Durbin and I will be working with our colleagues, especially Senator McCain, who has reported some slamming legislation. We have already talked to Senator McCain about strengthening the bill that was reported by the Commerce Committee. We want very much to work with you. Our goals are very similar.

From my perspective, it seems to me that we need to take three actions legislatively:

First, as you have emphasized throughout your testimony, the financial incentive for slamming must be removed. Under the current law, the slamming carrier gets to keep the money from its fraudulent activities. Consumers should be able to refuse to pay the unauthorized carrier. Crime shouldn't pay. There should not be a benefit for slamming people. I know you have proposed going even further, and we have talked about ways to set that up that might go even beyond what we have suggested.

Second, penalties for slamming must be tough enough to stop the problem from growing each year. That is the situation we are in now. It seems to me that the companies are treating the fines as just a cost of doing business, that in many cases they are not going to be caught at all, so they are never going to be subjected to penalties.

And, finally, I believe that we must establish criminal penalties for cases of intentional, deliberate, repeated slamming. Currently, it is not a crime and, thus, the people like Daniel Fletcher in this world can pretty much get away with this activity.

I am going to continue to work with my colleagues on this Subcommittee and also with you, and I would appreciate any advice that you might have for us as we pursue this initiative.

I want to thank you very much for being here today.

Mr. KENNARD. It is my pleasure.

Senator COLLINS. And we look forward to working with you.

Mr. KENNARD. Thank you.

Senator COLLINS. I want to thank the Subcommittee staff who worked very hard on this investigation, especially John Neumann, Kirk Walder, Tim Shea, Lindsey Ledwin, Mary Robertson, and Steve Diamond from my personal staff.

I appreciate your being here today, and the Subcommittee's hearing is now adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF
SUSAN DEBLOIS
Winthrop, Maine
Before The
SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
Hearing On
UNAUTHORIZED LONG DISTANCE SWITCHING
"SLAMMING"

February 18, 1998

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Good morning. My name is Susan Deblois, and I live in Winthrop, Maine. It is a pleasure to be here this morning to tell you about my experience with telephone slamming.

I was slammed in early 1997 by a company from Texas called Excel Communications. At the time I had my long distance service provided by MCI, and was very satisfied with their service. I had been with Excel Communications earlier, but switched to MCI and had used their service for about two months. Excel may have slammed me because they had my name and number as a previous customer.

I learned that I had been slammed when MCI called and asked why I had switched. I was both shocked and surprised as I had not authorized any change in my long distance service. In fact, I had told MCI that I didn't want anyone to be able to change my phone service. I never received a call, or any notice, asking or telling me about any changes in my phone service.

I was very upset that I was slammed because I had two 800 numbers and a calling card that my two college-age daughters (one in New York and one in Massachusetts) use to call home and make other long distance calls. In addition, my husband and I travel

frequently. Had there been an emergency with my daughters or while my husband and I were traveling, none of our family would have been able to make a long-distance call using our MCI numbers. While my daughters would have been able to call home collect, if they would have reached my answering machine, they would have been unable to leave a message.

It was difficult for me to get switched back, but I was able to return to MCI after after calling them and explaining the situation. I did pay one bill to Excel of about $50, and had to pay some extra fees to MCI because I had not stayed with them for three months, both of which I probably should have contested. But, I was in graduate school at the time, and was very busy, and just wanted to have the problem resolved.

I hope my experience with slamming is of assistance to you in your efforts to stop companies from doing this in the future.

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STATEMENT OF

PAMELA CORRIGAN

West Farmington, Maine

Before The

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Hearing On

UNAUTHORIZED LONG DISTANCE SWITCHING

"SLAMMING"

February 18, 1998

★ ★ ★

In June of 1997 I received a certified, return receipt letter from Minimum Rate Pricing, Incorporated and found typical advertising propaganda inside. Because I receive so much of this type of unsolicited mail I read only the opening paragraph of their letter which began with a greeting thanking my household for using Minimum Rate Pricing's telephone services. My family customarily tasks me with the responsibility of searching out the best long distance phone service, but just to be sure, I checked with my husband and son to be sure neither had spoken with a telephone representative. When they confirmed that they had not authorized any change in our telephone service, I became a little irritated with the dramatic return receipt tactics of the letter but figured that since we had not signed up with this company the correspondence was of little consequence. Usually I would toss such literature in the trash but I had been waiting for a friend to send information about another long distance carrier, Unidial, so I held on to the Minimum Rate Pricing letter until I could check with my friend to see if there was any connection between the two companies.

My son left for college in late June and I got serious about changing our long distance carrier to Unidial because they provide an attractive calling card service for students. When I contacted my local telephone carrier to switch from our long time long distance carrier, AT & T, to Unidial, I was informed that I had been changed several weeks earlier to Minimum Rate Pricing I asked who changed the service and they explained Minimum Rate Pricing had made the change. My response was "They can't do that!". The very polite customer service representative explained to me that companies can switch your service without any written authorization. She further explained to me that it was possible to place a lock on your service through your local carrier so which would require that any future changes be made by the customer personally. I proceeded to change my long distance carrier to Unidial and placed a lock on my service.

Angered by the unauthorized change, I searched through my unfiled documents and found the Minimum Rate Pricing letter...and read the whole thing this time. I found mixed in with the various pages of information a 3 X 5 card with a place to request additional information about the company. Listed at the very bottom of the card was the option to "cancel the order". I felt I had been tricked I wondered how it was possible for a company to change your telephone service simply because you did not respond within a specified amount of time telling them you don't want their service. How could it be that the burden was on the customer to respond in order for them to keep the status quo?

Few things in life get my blood boiling, but for days after learning that companies can unilaterally make such changes, the feeling that I had been violated had not subsided I wrote to the FCC stating that I felt it should be illegal for companies to change long distance carrier service without the customer's expressed permission. Secondly, I suggested that if such an unauthorized change is made, the guilty company should be responsible to pay the original telephone carrier for all costs associated with correcting such changes

When I sent the letter I expected that the staff at the FCC would be much too busy to respond to such an isolated issue. To my surprise I received an acknowledgement letter from the FCC and later received copies of correspondence from my local carrier and Minimum Rate Pricing, the originals of which I believe were sent to the FCC. The local carrier's response was simply a history of what changes had been made on what dates The Minimum Rate Pricing response asserted that it had followed all required procedures, including the independent verification process whereby they claim to have recorded my husband's voice when he gave authorization to change the service. My husband and I chuckled at their response because we both know how rude and abrupt he is to all telephone solicitors. Even if he had experienced a brief spell of patience, he never would have endured the solicitation through to the verification process and in fact, he did not recall ever receiving a call from any telephone carrier during the period in question.

Phone slamming not only effects households; it impacts municipalities and businesses also. The phone service for my employer, the Town of Farmington, was changed from AT & T to World Tel in mid-January without the proper authorization. It is difficult to track the history behind this type of phone service change-over in large organizations, but we believe World Tel made the change based on their conversation with one of the Town's recreation department staff members who is not authorized to make such a change. It is imperative that telephone companies making such solicitations be required obtain written permission from the person authorized to obligate the organization.

My stories are not sensational. They are not newsworthy. They are not even particularly interesting to outsiders. But I can't help wondering how many others are experiencing similar frustrations. Because the practice of phone slamming is a quiet and seemingly innocuous, it receives little attention. Thus unscrupulous companies continue to get away with this form of stealing. I applaud Senator Collins for bringing this issue to light in Maine. From what I have learned since I was telephone slammed, what you will hear today is only the tip of the iceberg I hope the good Senator succeeds in bringing about legislation to prohibit these practices and also hope she is able to help educate the public regarding the locking mechanism available through local phone companies so citizens can protect their right to select their long distance carrier until proper corrective legislation is enacted.

It is an honor to give testimony at this hearing and I thank you for your time

STATEMENT OF

STEVE KLEIN

Before The

SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Hearing On

UNAUTHORIZED LONG DISTANCE SWITCHING

"SLAMMING"

February 18, 1998

★ ★ ★

Mermaid Transportation Company is a small Maine owned and operated business that was established in 1982. Our primary business is our five trips daily from Portland, Maine to Boston's Logan Airport and back. We also have an extensive charter business that caters to business and private groups.

Virtually all our business is conducted over the phone.

Our business was "slammed" on Friday, October 3rd sometime after business hours, all our phone lines were "slammed" by Business Discount Plan, a Long Beach California company that had acquired our name from AT&T. All four of our phone lines were "stolen" without authorization.

We were completely unaware of this seizure until sometime the next day when an office staff member thought our in-state lines were out of order because we could not access them by dialing a 1-700 code. The condition continued the next day, Sunday. By Monday, October 6th, we realized after calls were made to Bell Atlantic and OneStar (the carrier who handles our in-state and out-of-state service) that our lines had been "slammed."

This seizure disrupted our business (which is dependent upon making and receiving long distance and intrastate calls) for four days and required hours on the phone with Bell Atlantic and our carrier OneStar to rectify the matter.

When I asked Bell Atlantic how this could happen and who could have given AT&T our numbers they could not respond with an intelligent answer.

Furious and frustrated, I was about to put this matter behind us when I received a call from AT&T wanting to know why we had switched from them and wanting switch us back. I immediately asked for the supervisor who then would not give me his name nor the department at AT&T he was calling from. He then came up with another number at AT&T that he said would help us. It turned out to be Small Business Billing, which had nothing to do with the matter.

I told AT&T the details and the solicitation call from AT&T from an anonymous department and manager. They looked up our numbers and said that they sell blocks of time to outside carriers who "Slam" these numbers. When asked just who they sold our numbers to they said they could not reveal that information. I feel that AT&T is certainly not off the hook here (pardon the pun) just because they sold time to someone who has acted unlawfully.

With some further investigation I was able to find out that Business Discount Plan was the party that seized our lines. I called them for an explanation and they insisted that a woman in our office had authorized the switch back in July. I said that was impossible because I knew that she would not have allowed this to happen and that she did not have authorization in her job capacity to do that. The person from Business Discount Plan said he had a tape. I told him that I would be delighted to listen to it. He said he would have it in a few days and play it for me. That was in November and I have never heard the tape.

"Slamming" is unfair and I believe infringes upon individuals' and business' privacy. If electronically they can steal your phone lines, why could they not tap or play havoc with your incoming and outgoing calls?

I also believe that they are preying upon the elderly with deceptive mail or just unauthorized "slamming." Unfortunately, the elderly sometimes don't understand what is going on or feel that they cannot change the situation.

In January I again received a phone call from Business Discount Plan to check and see if certain charges had been removed from our bill (which they had). I asked the person on the line about the tape that never surfaced, and she replied that her office was separate from Business Discount Plan's office and that she worked for a telemarketing firm.

Back in October I contacted the FCC and the Maine Public Utilities Commission about this. But the FCC wants names and other information that we cannot get because these people will not identify themselves. In fact, they are representing themselves as AT&T. Frankly, this is a federal matter because most of these infractions are coming from out of state.

Something must be done to penalize these unauthorized "break-ins." It seems now that the perpetrators are making a lot of money and get a slight slap when caught (at best) and the victims are required to put the pieces back together — which is time and money consuming.

THE NIGHTMARE OF TELEPHONE "SLAMMING"
Testimony of the National Consumers League
to the Senate Permanent Subcommitee on Investigations
by Susan Grant
Vice President of Public Policy and Director, NCL's National Fraud Information Center

February 18, 1998

The National Consumers League, America's pioneer consumer organization, appreciates the opportunity to provide the Senate Permanent Subcommitee on Investigations with insight into the dark side of telephone competition -- slamming. The rising problem of unauthorized carrier switching is a nightmare for the victims and threatens to undermine the benefits of increased competition for telephone services. NCL is a private, nonprofit organization that has represented consumers in the marketplace and the workplace since its founding in 1899.

NCL's Role in Fighting Telephone-Related Fraud and Abuse

NCL has taken an active role in educating consumers and advocating for appropriate consumer protections concerning telephone-related fraud and abuse. In 1992, NCL created the National Fraud Information Center, a unique hotline service, 1-800-876-7060, which consumers can call for advice about telephone solicitations and report possible fraud and deception. The NFIC's services were expanded in 1996 with the launch of its web site, http://www.fraud.org, through which consumers can make inquiries and report fraud. With the advent of scams in cyberspace, the NFIC now also offers advice about and takes reports of fraud perpetrated through online services and the Internet.

Consumers' fraud reports are uploaded daily by the NFIC to the database maintained by the Federal Trade Commission and the National Association of Attorneys General. The NFIC

also relays selected fraud reports to over 160 individual federal, state and local law enforcement agencies who have arranged to receive them. This alerts them to scams they may wish to investigate and provides the documentation needed to shut down fraudulent operations.

The free consumer and law enforcement services that we provide are supported by the members of the National Consumers League and contributions from corporations and trade associations that are concerned about consumer fraud and fairness in the marketplace.

NCL also coordinates the Alliance Against Fraud in Telemarketing, which is comprised of representatives from consumer groups, law enforcement and regulatory agencies, trade associations, telephone carriers, credit card companies, and other business interests. The AAFT conducts meetings and produces materials designed to educate its members and the public about telephone-related fraud, including unauthorized carrier switching. In addition, NCL works with the media, and in partnership with other groups, to raise public awareness about how to navigate the new telecommunications marketplace.

Slamming is on the Rise

Last year, the number of reports made to our National Fraud Information Center about problems with carrier switching increased steadily. In the first six months of 1997, we received 221 reports; by the end of December, the total was 810, making carrier switching the fifth most frequent problem reported to the NFIC. Of those, fewer than 5 percent concerned situations in which consumers voluntarily switched service on the basis of what they contended were price misrepresentations. The vast majority of reports were about unauthorized switching.

However, we know that what we are hearing is just the "tip of the iceberg." According to a Louis Harris & Associates survey commissioned by the League last September to look at the

affects of telephone competition in three Midwest markets, Chicago, Detroit/Grand Rapids, and Milwaukee, nearly one-third of the respondents had been slammed themselves or knew someone who had. Only 7 percent complained to a government agency, 2 percent to a group such as ours. Most complained to the slammer, the original carrier, and/or the local exchange carrier.

In fact, the local telephone companies are probably the best sources of statistics on slamming, since they provide the switching and billing services for other telephone service providers. For example, according to Ameritech, which offers local exchange services in five states in the Midwest, the company received 115,958 slamming complaints in 1997. From January to June of 1997, the number of slamming complaints was 45,754, nearly double the 25,285 slamming complaints the company received during the same period in 1996. In the last six months of 1997 Ameritech received 70,204 additional slamming complaints. And in January of 1998, the company received more than 15,000 slamming complaints, the most in any single month so far. These escalating numbers, while alarming, probably do not include every unauthorized switch, since not all consumers complain or even realize that they have a problem.

Who is Slamming Consumers?

In reviewing the reports we received in 1997 about unauthorized carrier switching, I found that fewer than 10 percent involved the major, well-known carriers. One reason why slamming occurs, even with legitimate telephone service providers, is that they may hire other companies to market on their behalf. Since those marketers are often compensated on a commission basis, there is obviously an incentive to claim that consumers agreed to switch, even when they did not.

More than 90 percent of the slamming reports we received last year were against resellers of telephone service or the billing aggregators, or middlemen, who sometimes act on their behalf.

While of the slamming reports concerned long-distance service, some consumers reported unauthorized switching of local toll and local telephone service where competition for those services exists.

Anyone can be a telephone company now. It is not necessary to build your own infrastructure; you can simply purchase telephone service in bulk and resell it to consumers. That is undoubtedly creating more choices and, in some cases, more competitive pricing. But because the telephone system is based on faith, the faith that change orders and orders for optional services submitted to the local exchanges truly reflect consumers' decisions to purchase those services, it also creates a wonderful opportunity for crooks to fraudulently bill consumers, and to use their local telephone companies to collect the money for them.

In most cases, consumers have never heard of the companies that slammed them. Our Harris survey confirmed that 80 percent of the respondents with slamming experience did not even know that they had been victimized until they received their bills. And sometimes it is not obvious that there is a different company name on part of the bill, especially since telephone bills now run several pages. Because the rates that slammers charge are invariably much higher than the consumers' original carriers, the first tip-off that there may be a problem is often the fact that the bill seems unusually high. Another way that consumers may discover they have been slammed is if their original carriers contact them to say "goodbye." In some cases, consumers only find out that they've been switched when their calling cards or other optional services no longer work.

How Does Slamming Occur?

Many consumers have no idea how their service was switched, since they do not recall having any conversation or other contact with the companies that now appear on their bills. They

are forced to reconstruct what might have happened or to ask the slammer how authorization was supposedly given.

The most common ploy appears to be the billing consolidation pitch: a call is placed to a residence or business by someone purporting to be from AT&T or the local telephone company in that area. Whoever answers the phone, whether he or she is the telephone account holder, is informed that it is now possible to get all telephone carriers consolidated on one bill -- in fact, in some cases, the caller says that it is now mandatory under FCC regulations or federal law for bills to be consolidated. The person answering the phone says, "sounds good to me," not realizing that, in most cases, telephone services usually consolidated on one bill already, and never intending to switch service. In fact, the consumer is often explicitly assured that this will not change anything regarding your service.

Another variation on this scheme is the discount plan scam, where again the callers pretend to be consumers' existing carriers and announce that because they are such good customers, they are eligible for special discounted rates. Again, the consumers say, "great," only to be hit later with much higher rates by companies with whom they never agreed to do business.

There are many other ways that consumers are unwittingly switched, including:

- someone in the household signing up to receive coupons for products or to enter sweepstakes without realizing that in the fine print, they are agreeing to switch their telephone service;
- receiving calls from companies pretending to be their existing carriers, asking if they are satisfied with their service, or from organizations supposedly conducting surveys. If whoever answers says yes to any of the questions, their answers are taped and then

presented later as proof of authorization;

- asking for written information in response to a telephone solicitation -- something that we always encourage consumers to do -- and then having their service switched;
- failing to respond to negative option notices that they think are simply junk mail, when in fact their service will be switched to the sender's company unless they give notice that they do not want that to happen.

The creativity of slammers is boundless. In one instance, the consumer said that he was contacted by someone who told him that he had reached his credit limit with his regular carrier and had to switch to another in order to keep making long distance calls.

In another especially inventive scam, the consumer was lured to calling a number in response to an advertisement for doing telemarketing work at home. He later received a notice that his service was switched and that, in addition to his calling charges, he would be assessed a $10 monthly fee for "tracking" his work. We have received other reports from consumers about slamming that occurred as a result of responding to ads for employment.

We have also heard from some consumers who said that they were contacted by companies claiming to have purchased their old debts, unrelated to phone services, and threatening to proceed with collection unless the consumers switched their phone service to them.

Finally, consumers can be victims of "phantom switching." The Illinois Attorney General's Office brought action against one company that was accused of picking consumers with Latino names out of the phone directory and submitting change orders with their names and numbers to the local exchange carrier, without having any contact with those consumers at all.

Many consumers report being slammed multiple times -- one man was slammed by the same company seven times. Some also report being billed by the unauthorized carrier for additional unwanted services, such as voice mail and paging.

Difficulty Reaching the "Slammer"

When consumers discover they have been slammed, they are shocked and outraged. But that is only the beginning of their ordeal. If they call the company listed on that section of the bill, it may be the slammer or a billing aggregator acting on behalf of dozens of telephone service providers to make billing arrangements through the local telephone company and supposedly handle disputes. However, many consumers report that there is no answer at the number listed on the bill, or the line is always busy, or they just get a recording, or the company representatives are abusive and hang up on them. They do not know what to do next, and they do not even know for sure who their complaints are against, because the fact that there can be more than one company name involved is very confusing. Furthermore, there is no address on the bill for either the slammer or the billing aggregator, if there is one. This makes it difficult for the consumer to notify the company of the dispute and to report the fraud to an agency or organization such as ours.

In addition, consumers have complained that there were assured the charges will be adjusted and their service switched back, only to find out later that those promises were false.

Problems with Proof of Authorization

When consumers do manage to reach the slammers or their representatives and question the authorization for switching, the proof that is offered is often fabricated. For instance, consumers report that:

- the signatures on written authorization forms were forged;
- the audio tapes were doctored so that "yes" answers in response to questions unrelated to switching telephone service were used as proof of authorization;
- the names of the people who supposedly agreed to switch were unknown to them;

In one case, the person who purportedly authorized the switch was long-deceased.

Frequently, the companies claim to have audio tape recordings of the agreement but refuse to play them. One consumer said that the company eventually said there was a problem with the tape and it was blank. Another contended that he was out of town on business and there was no one else home when the conversation supposedly occurred. In some cases the people named as agreeing to switch were children, who clearly had no authority in that regard.

Difficulty Resolving Billing Disputes

In addition to being charged exorbitant amounts, slamming victims reported that they were charged for the same time period by more than one company, that they had difficulty getting adjustments or refunds for overcharges, and that they were threatened with collection or loss of telephone service if they refused to pay disputed charges. Consumers also complained that they were unable to get reinstated in special calling plans or programs with their original carriers and lost other premiums as a result of being slammed.

In some cases, slamming victims also reported that they had difficulty getting switched back to their original carriers, and were required to pay switching fees, even though the FCC rules provide that they should be switched back at no charge. Furthermore, many consumers who contacted us about slamming were unaware that they had the right to pay only the amount that their original carriers would have charged for the calls in question.

In our Louis Harris survey, 80 percent of the respondents said that their slamming problems were resolved, but a third described the process as very difficult or somewhat difficult. Twenty-six percent said it was somewhat easy, while another third said it was very easy. Consumers who talk to our fraud center counselors express the strong belief that their right to choose their telephone carriers should be protected. They feel that it is unfair to have to spend their time and energy going around in what often seems like endless circles to resolve problems that were not of their making. Obviously, legitimate carriers also suffer from unauthorized switching of their valued customers.

How to Stop Slamming

Consumers have lost control over their telephone service. The promises of telecommunications competition are outweighed at this point by the potential for fraud and abuse. We cannot go back to the days of one phone company, nor should we. But in anticipation of even more competitive pressure as the market for telephone services expands, stronger measures are needed to protect consumers and ensure a level playing field.

We believe that there are several crucial steps that must be taken to stop slamming and create a fair competitive environment.

1. Ban "negative option" promotions for telecommunications services. Consumers fail to grasp the fact that if they ignore these solicitations, they are agreeing to purchase the services.

2. Change the verification process for switching. Written or taped authorization does not work because it can be faked. Furthermore, there is no requirement that proof of authorization be submitted along with the change order to the local exchange carrier. Rather, the authorization is only provided after the damage has been done, if the consumer questions the switch.

One idea that we have suggested is that consumers be issued PIN numbers by their local exchange carriers when they first obtain service. Consumers' service could be switched only if the they provided their PIN numbers to their desired new carriers, who would submit them for confirmation to the exchange carriers with the change orders. To avoid the potential problem of consumers' service being repeatedly switched once their PIN numbers become known, consumers could be given new PIN numbers by their local exchange carriers each time they changed any of their telephone service providers.

Alternatively, there could be a requirement that consumers be notified in writing by their local exchange carriers whenever change orders have been submitted. Consumers would have to respond affirmatively within a certain time period or the change would not be made.

3. Require that the address of the telephone service provider or its agent be provided on the bill. This would help consumers dispute charges and report slamming incidents.

4. Require telephone service providers and billing aggregators to meet specific minimum standards for handling consumer disputes regarding alleged slamming. If those standards are not met, local exchange companies should be barred from preforming billing services for those service providers or billing aggregators. Any monies payable to the slammers should be forfeited and used for consumer redress and public education. In addition, Congress should consider the possibility of greater penalties for slamming.

5. Give consumers the right to refuse payment to the slammers or their representatives. The most effective way to deter slamming is to prevent companies that change consumers' service without authorization from being able to reap the financial reward for doing so. While we support the idea that payments consumers have made to unauthorized carriers be passed back to

their original carriers, we are not convinced that this would remove entirely the economic incentive for carriers to slam, or that it would make consumers whole. Consumers will continue to pay, fearful of losing their telephone service. And like other fraudulent telemarketing operators, some slammers will undoubtedly hide their ill-gotten gains in off-shore bank accounts, change their company names, and continue in the same or some other illegal activity. Ultimately, recovery by the consumer or the original carrier may not be possible, or could be greatly delayed.

6. Improve the carrier freeze option. With the carrier, or "PIC" freeze, consumers have more protection against unauthorized carrier switching because their local exchange carriers cannot implement any change orders without the consumers' direct authorization. However, even this option is not foolproof at present. Some consumers' service providers are switched even when they have PIC freezes. One way that this apparently can happen is when the slammer is a reseller of service from the consumer's original carrier. For instance, if the consumer has AT&T long distance service and another company buys bulk service from AT&T to resell, that company may switch the consumer's long distance service to its own without authorization, but the local exchange carrier may not be aware of that because its system cannot tell that there is a new company involved, since the ultimate telephone service provider is still AT&T.

There seems to be a disconnect between the telephone services and the billing services. An analogy is 900 number blocking, another free service that consumers can choose. While 900 number blocking physically prevents 900 numbers from being dialed from a consumer's home, it does not prevent fictitious bills for 900 number calls from being submitted through the local telephone company for payment.

Considerable time and energy is being devoted to developing new types of telephone services for which consumers can be charged. Surely research should also be conducted to develop better ways to protect consumers from unauthorized carrier switching and other telephone-billed abuses.

Conclusion

Finally, as our Harris survey shows, consumers are barraged by telephone, mail and advertising solicitations for telecommunications products and services. They need more objective information about their choices and their legal rights. Government and the private sector should initiate and support more educational efforts. The National Consumers League is leading the way with materials such as our "Make the Call" survival guide for consumers, available free in English and Spanish on the League's web site at http://www.natlconsumersleague.org or by calling (800) 355-9NCL and specifying the English or Spanish version.

The problem of slamming has reached critical proportions. If adequate action is not taken to curb it, the marketplace for local and long distance telecommunications services will be a quagmire instead of the cornucopia that was envisioned as a result of increased competition. We look forward to working with the Congress and others to ensure that the telecommunications marketplace is fair and offers the benefits that consumers expect and deserve.

Respectfully submitted by:
National Consumers League
1701 K Street NW, Suite 1200
Washington, DC 20006
(202) 835-3323

Testimony of Daniel Breton

My name is Daniel Breton and I am Director of Government Affairs for Bell Atlantic in Maine. I would like to thank the Committee and Chairman Collins for inviting me to testify on one of the most important consumer issues in the telecommunications industry today.

The term "slamming" refers to the practice of changing a consumer's preferred carrier without his or her permission. The Federal Communications Commission receives far more complaints about slamming than about any other common carrier practice.

Slamming occurs because local telephone companies are required to implement presubscription changes for long distance companies. The overwhelming majority — more than 86 percent — of presubscription changes in Maine are initiated by the long distance company. That company typically places these orders electronically, by delivering a computer tape to Bell Atlantic, which Bell Atlantic then runs on its systems. These tapes automatically change the presubscribed carrier routing in our network and

make changes in the customer's billing records. Consistent with FCC regulations, Bell Atlantic does not require any documentation from the carrier. However, the FCC requires that the carrier submitting the change retain documentation to verify that the customer actually requested the change.

Bell Atlantic processes two kinds of presubscription changes in Maine — interLATA and, as of September 1997, intraLATA. In 1997, Bell Atlantic processed 363,199 interLATA carrier changes in Maine. IntraLATA presubscription began in Maine last year, and we processed 82,795 intraLATA carrier changes for September through December 1997. To put these numbers in context, Bell Atlantic has more than 670,000 subscriber lines in the State.

Bell Atlantic does not know for sure how many Maine customers have been slammed. However, our records show that 643 customers in Maine said they were slammed in 1996, and 1582 in 1997.

Customers often do not learn that they have been slammed until they receive their Bell Atlantic bill, which contains a notification of the change. Customers then typically call Bell Atlantic to complain. When a customer calls, our customer service representative establishes the customer's identity

and then switches the customer back to the original carrier. The reps are also instructed to offer customers who have been slammed a "freeze" so that we will not process any carrier change request from a long distance company. (A change can still be made if the customer contacts Bell Atlantic directly.)

We also advise the customer that we will remove any charge on the bill for having changed the carrier in the first place and waive the charge for changing the customer back to the original carrier.

Bell Atlantic offers billing services to long distance carriers. Some such carriers, however, bill their customers directly. Carriers that use Bell Atlantic billing service send us information by computer tapes or electronic feed, which Bell Atlantic processes through its billing systems so that the charges are shown on a separate page in the customer's Bell Atlantic bill. The first Bell Atlantic bill to a slammed customer may contain charges from the new carrier. When the customer calls our customer service representative to complain about being slammed and about the new carrier's charges, the rep may also credit the customer for those charges.

The FCC has rules that are designed to control slamming. A copy of these rules are attached to this testimony. The Commission currently has an open rulemaking proceeding in which it is proposing to strengthen these

rules. In that proceeding, Bell Atlantic has asked the Commission to adopt rules that ensure that the victims of slamming will pay nothing to the carrier responsible for the slamming. It has also urged the Commission not to impose any obstacles on subscribers who wish to freeze their preferred carrier selection beyond the change verification procedures of the existing rules. Finally, Bell Atlantic asked that the rules that apply today to changes of interexchange carrier service be broadened to cover local service as well.

There is no need for additional legislation at this time. The FCC will adopt new rules, and Congress should wait to see if they solve the problem. I would urge Members of Congress to continue to do the kind of thing that you all are doing today — taking steps to alert consumers to this problem.

PART 64--MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Subpart K--Changing Long Distance Service

Sec. 64.1100 — Verification of orders for long distance service generated by telemarketing.

No IXC shall submit to a LEC a primary interexchange carrier (PIC) change order generated by telemarketing unless and until the order has first been confirmed in accordance with the following procedures:

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Sec. 64.1150; or

(b) The IXC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC is to be changed, to submit the order that confirms the information described in paragraph (a) of this section to confirm the authorization. IXCs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC change, including automatically recording the originating ANI; or

(c) An appropriately qualified and independent third party operating in a location physically separate from the telemarketing representative has obtained the customer's oral authorization to submit the PIC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

(d) Within three business days of the customer's request for a PIC change, the IXC must send each new customer an information package by first class mail containing at least the following information concerning the requested change:

(1) The information is being sent to confirm a telemarketing order placed by the customer within the previous week;

(2) The name of the customer's current IXC;

(3) The name of the newly requested IXC;

(4) A description of any terms, conditions, or charges that will be incurred;

(5) The name of the person ordering the change;

(6) The name, address, and telephone number of both the customer and the soliciting IXC;

(7) A postpaid postcard which the customer can use to deny, cancel or confirm a service order;

(8) A clear statement that if the customer does not return the postcard the customer's long distance service will be switched within 14 days after the date the information package was mailed to [name of soliciting carrier];

(9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and

(10) IXCs must wait 14 days after the form is mailed to customers before submitting their PIC change orders to LECs. If customers have canceled their orders during the waiting period, IXCs, of course, cannot submit the customer's orders to LECs.

[57 FR 4740, Feb. 7, 1992, as amended at 60 FR 35853, July 12, 1995; 62 FR 43481, Aug. 14, 1997; 62 FR 48787, Sept. 17, 1997]

Effective Date Notes: 1. At 62 FR 43481, Aug. 14, 1997, Sec. 64.1100 was amended by revising paragraph (a), effective Jan. 12, 1998. For the convenience of the user, the superseded text is set forth as follows:

Sec. 64.1100 Verification of orders for long distance service generated by telemarketing.

(a) The IXC has obtained the customer's written authorization in a form that meets the requirements of Sec. 64.1150.

* * * * *

Sec. 64.1150 — Letter of agency form and content.

(a) An interexchange carrier shall obtain any necessary written authorization from a subscriber for a primary interexchange carrier change by using a letter of agency as specified in this section. Any letter of agency that does not conform with this section is invalid.

(b) The letter of agency shall be a separate document (an easily separable document containing only the authorizing language described in paragraph (e) of this section) whose sole purpose is to authorize an interexchange carrier to initiate a primary interexchange carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the primary interexchange carrier change.

(c) The letter of agency shall not be combined with inducements of any kind on the same document.

(d) Notwithstanding paragraphs (b) and (c) of this section, the letter of agency may be combined with checks that contain only the required letter of agency language prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The letter of agency check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is

authorizing a primary interexchange carrier change by signing the check. The letter of agency language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the letter of agency must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) The subscriber's billing name and address and each telephone number to be covered by the primary interexchange carrier change order;

(2) The decision to change the primary interexchange carrier from the current interexchange carrier to the prospective interexchange carrier;

(3) That the subscriber designates the interexchange carrier to act as the subscriber's agent for the primary interexchange carrier change;

(4) That the subscriber understands that only one interexchange carrier may be designated as the subscriber's interstate or interLATA primary interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional primary interexchange carriers (e.g., for intrastate, intraLATA or international calling), the letter of agency must contain separate statements regarding those choices. Any carrier designated as a primary interexchange carrier must be the carrier directly setting the rates for the subscriber. One interexchange carrier can be both a subscriber's interstate or interLATA primary interexchange carrier and a subscriber's intrastate or intraLATA primary interexchange carrier; and

(5) That the subscriber understands that any primary interexchange carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's primary interexchange carrier.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current interexchange carrier.

(g) If any portion of a letter of agency is translated into another language, then all portions of the letter of agency must be translated into that language. Every letter of agency must be translated into the same language as any promotional materials, oral descriptions or instructions provided with the letter of agency.

[60 FR 35853, July 12, 1995, as amended at 62 FR 43481, Aug. 14, 1997]

Testimony of
Commissioner Susan Ness
Federal Communications Commission

Before the
Permanent Subcommittee on Investigations (Governmental Affairs)
United States Senate

Field Hearing: "Switching Long Distance Service Without the Consent of the Customer (Slamming)"

Portland City Council
Portland, Maine

February 18, 1998

Thank you, Senator Collins, for inviting me to testify before you today on the important issue of telephone slamming, the practice of changing a consumer's long distance carrier without the consumer's knowledge and express consent. There can be no doubt that slamming, which deprives individual and business consumers of a fundamental right -- the right to use their carrier of choice -- has become a major problem in the industry. We at the Commission are committed to eliminating this practice through rulemakings and enforcement actions, both of which I will describe for you today.

Slammers are nothing if not bold. Victims of slamming include Members of Congress and their staffs, as well as employees of the FCC.

The Commission receives more complaints about slamming than any other telephone-related complaint. In 1997, we handled about 45,000 complaints in total, dealing with such issues as high charges for calls from payphones and for international calls. Over 20,000 of those complaints -- almost as many as for all other categories combined -- were for slamming. In short, we are being deluged with an increasingly large number of complaints. Moreover, I understand from my counterparts at the state public utility commissions that state regulators are similarly besieged.

Because many slammed consumers grin and bear it, or resolve their problems without bringing the matter to the attention of government authorities, we don't really know how many of the 50 million carrier selection changes each year result from slamming. If just 1% were slamming changes -- a very conservative estimate -- that would total over 500,000 slamming incidents each year.

Not only is slamming a growing problem, but it is also one that consumers care about passionately. In complaints to the Commission, consumers commonly use words like "abused," "cheated," "pirated," "hi-jacked," and "violated" to describe how they feel.

Slamming scenarios involve deceptive sweepstakes, misleading forms, forged signatures, and telemarketers who do not understand the word "no."

Quite simply, consumers are furious that their carrier selections are being changed without their consent.

And now we're seeing complaints about slamming of intraLATA (or "short-haul") toll service in areas where carriers are competing for presubscription. As competition is introduced in the market for local telephone services, I'm sure reports of slamming won't be far behind.

The FCC has long taken slamming very seriously. Even before passage of the 1996 Telecommunications Act, we adopted orders to ensure consumers' right to use their preferred carrier. Our approach is two-pronged: first, our rules make it harder for carriers to slam. Second, carriers who do not follow the rules are severely punished.

In crafting these rules, the Commission carefully balanced the twin goals of consumer protection and unfettered competition. We prohibited local carriers from imposing a carrier change charge if the subscriber asserted that the charge was unauthorized and no evidence to the contrary could be obtained. And we ruled that the slamming carrier must make the consumer whole by ensuring that it did not charge the subscriber more than the preferred carrier would have charged.

No carrier may lawfully submit a change order unless it has complied with our rules to obtain the subscriber's authorization, which may be either oral or written. The Commission's current anti-slamming rules require long distance carriers to use one of four verification procedures to confirm carrier change orders resulting from telemarketing:

(1) a written authorization;

(2) confirmation from the subscriber via a toll-free number provided exclusively for this purpose;

(3) an independent third party to verify the subscriber's order; or

(4) a "welcome package" – a letter that the consumer receives in the mail that confirms a purported oral request by the consumer; unless the consumer expressly countermands the change in carrier, the change goes into effect after two weeks.

Thus, your service cannot be changed simply because you tell a telemarketer "okay" -- there must be a subsequent verification of that authorization.

Our rules do not require verification of an authorization contained in a signed

Letter of Agency (LOA). The LOA must, however, adhere to rules that the Commission adopted to deter deceptive practices. Our rules specify what may be in the LOA: essentially the minimum details of form and content necessary for written authorizations of carrier changes. Just as important, the rules also state what may not be included (such as promotional material or contest entry data).

These rules slam the door on misleading and deceptive marketing practices, such as having promotional material in one language and the form to authorize a change in carrier in another language.

The Communications Act now gives the Commission additional authority with respect to slamming. The Telecommunications Act of 1996 added Section 258, which makes it unlawful for any telecommunications carrier to submit or execute a change in a subscriber's carrier selection, except in accordance with the Commission's verifications procedures. That law also provides that any carrier that (1) violates these procedures, and (2) collects charges for telecommunications service from a subscriber after such violation, shall be liable to the subscriber's properly authorized carrier for all charges collected. The 1996 Act requires the slamming carrier to disgorge any moneys it has received from the consumer and turn them over to the rightful carrier. In this fashion, the slamming carrier reaps no benefit from its illegal actions.

Although the 1996 Act created a statutory mechanism for eliminating the financial incentive for carriers to slam consumers, the language of the Act did not explicitly provide remedies for consumers that have been slammed. In addition, Section 258 did not provide guidance on how to restructure the complex arrangements between carriers who submit carrier change orders and those who implement them, without slowing down competition or restricting consumer choice. On July 15, 1997, the Commission released a Further Notice of Proposed Rulemaking to implement Section 258, as well as an order resolving six petitions for reconsideration or clarification of the Commission's 1995 Order adopting the LOA rules. The Further Notice (discussed in greater detail below) sought comment on how best to use the additional authority provided by the new law to protect consumers, while at the same time promoting the increased competition envisioned by Congress.

The record in response to the Further Notice closed on September 29, 1997. The staff has reviewed the copious comments filed in response to the Further Notice and plans to present its recommendations to the Commission within three weeks. I anticipate that a order adopting new and tighter rules will be adopted no later than the end of next month.

Enforcement is the second prong of our anti-slamming campaign. Simultaneous with our formulation of rules implementing Section 258, and because of the need to address this growing consumer problem in advance of adopting new rules, the Commission has continued to take swift enforcement action against carriers accused of

slamming.

First, where the Commission has recognized a pattern of slamming behavior by a carrier, we have investigated the situation and taken enforcement action as appropriate. Our primary enforcement tools are forfeitures and consent decrees. Since 1994, the Commission has taken enforcement actions against 17 companies. We have imposed forfeitures totaling $160,000 against two companies, entered into consent decrees with nine companies with combined payments of $1.25 million, and have assessed approximately $500,000 in proposed additional penalties against five carriers.

Consent decrees are especially useful in this area, because the carriers agree to take actions beyond what our rules require to ensure that the activities that led to the problem do not recur. Consent decrees have resulted, for example, in one carrier's agreeing to use a third-party verification procedure for all change orders, such as those resulting from direct marketing programs where the customer signs an LOA. Another carrier agreed to make monetary restitution to slammed subscribers that far exceeded the amount required by our rules and policies.

Second, we have expedited the handling of slamming complaints and maintained contact with state officials, in order to compile current data on what carriers are generating the most complaints. We have also met informally with carriers to discuss our concern about the number and nature of slamming complaints against them in order to allow them to make necessary changes to safeguard consumers without the institution of formal proceedings.

Finally, the Commission recently took an unprecedented action against a group of commonly-owned companies that have been the subject of over 1,000 consumer complaints, most alleging unauthorized changes in the consumers' primary interexchange carrier. In addition to the alleged slamming incidents, these companies refused to accept or respond to Official Notices of Informal Complaint, failed to designate agents for the receipt of official notices, failed to provide legitimate business addresses, and failed to file tariffs. The Commission designated for a hearing the question whether the common carrier operating authority of the companies should be revoked. In addition, our order directed the principals of the companies to show cause why they should not be ordered to cease and desist from any further provision of interstate common carrier services without prior Commission consent. The Commission believes that strong action such as this will act as a powerful deterrent to other carriers violating regulations that safeguard consumers.

The Commission is currently investigating other carriers showing a pattern of potentially unlawful actions, and stepped-up enforcement actions are likely this Spring.

These Commission enforcement initiatives have, both individually and as a whole, put the entire industry on notice that carriers are expected to concentrate on self-

regulation by examining their own internal corporate procedures and policies to comply thoroughly with consumer protection requirements. When carriers fail to do so, we will not hesitate to enforce our rules. Commission actions of this type will likely have a significant impact on protecting consumers from slamming, and they will serve as useful tools for dealing with other carriers that fail to conduct lawful common carrier operations.

The Commission has also taken the lead in educating consumers about slamming and their rights in this area. This outreach has led consumers to become more informed about the problem and to insist that carriers afford them their rights without recourse to a regulatory agency. Examples of the Commission's outreach to consumers include the Common Carrier Bureau's Scorecard publication, which identifies trends in consumer complaints on a company-specific basis. This and other related information is available on our Website: www.fcc.gov.

In addition, the Commission has a comprehensive program with the media and consumer groups to remind consumers of how to avoid being slammed and where to seek relief if they are slammed. Our Call Center staff is trained to answer consumer inquiries. The toll free number is 1-888-CALL FCC. We also send out thousands of consumer brochures on slamming and complaint resolution in response to calls to our consumer information line. These efforts have significantly increased consumer awareness, with a resulting significant increase in the number of slamming incidents reported to the Commission that, in turn, have provided us with information on how best to address the problem.

The message we mean to send to carriers is loud and clear: we will not tolerate slamming. But more needs to be done.

In the pending rulemaking that I mentioned earlier, we are considering whether existing verification procedures are effective in deterring slamming – for example whether a "welcome package" requiring the consumer to respond affirmatively to prevent a carrier change – is adequate verification. I don't believe it is – not all consumers read the mail they get from communications companies. I sure don't. So I hope the order we adopt next month will close off this avenue of potential abuse.

We have proposed to require the slamming carrier to reimburse the consumer for any premiums or frequent flyer miles that otherwise would have been earned with the chosen carrier. I hope that the order we adopt next month will turn this proposal into an enforceable rule.

We are also considering whether a slammed consumer should have to pay at all for the service rendered by the slamming carrier. Under our current policy, carriers who provide unauthorized services must recompute the consumer's bill so that the consumer pays no more than would have been paid to the properly authorized carrier. In assessing whether we should go further, and absolve the consumer of the obligation to pay either

carrier, we must weigh the deterrent effect against the possibility of encouraging bogus complaints.

And we are asking whether rules are needed to address preferred carrier freezes. In a freeze, local carriers get consumers to authorize the blocking of future carrier changes unless the consumer gives his or her written or oral consent to the blocking carrier -- not just to the requesting carrier.

As local competition arrives, the blocking local exchange carrier is poised to compete for long distance with the requesting carrier. Thus, the local exchange carrier may no longer be acting as a neutral third party, but may have instituted freeze procedures for anticompetitive reasons. In drafting our rules, we must be vigilant to avoid deterring lawful competition even as we work to eliminate slamming.

Consumers wishing to comment on any of the issues in this proceeding can reach us by the Internet. The address is: slamming@comments.fcc.gov.

Meanwhile, I understand that Congress is considering additional legislation in this area. Proposals which may have particular merit include those that would provide for direct redress in the courts -- either through state-initiated class action suits or individual consumer remedies that could be enforced in small claims courts (as was done in the Telephone Consumer Protection Act). It may also be useful to amend the criminal laws so as to send a powerful deterrent message.

Whatever Congress decides on the issue of further legislation, I know that our objective is the same: to prevent this kind of intolerable abuse. Congress has already provided the FCC with powerful tools to combat this problem, and we will diligently employ those tools, and any new ones that you fashion, to achieve our shared objectives.

In conclusion, with tougher rules and vigilant enforcement, we will help restore the right of consumers to choose their local and long distance carriers -- and to have that choice honored in the marketplace.

I appreciate the opportunity to appear before you today. Thank you for the invitation, and for your kind attention. If time permits, I would be glad to address your questions.

Thank you.

United States General Accounting Office

GAO

Testimony

Before the Permanent Subcommittee on Investigations,
Committee on Governmental Affairs,
U.S. Senate

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TELECOMMUNICATIONS

Telephone Slamming and Its Harmful Effects

Statement of Eljay B. Bowron
Assistant Comptroller General for Special Investigations
Office of Special Investigations

GAO/T-OSI-98-11

Telecommunications: Telephone Slamming and Its Harmful Effects

Madam Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the results of our investigation to determine (1) what entities engage in intentional telephone slamming–a form of telecommunications fraud and abuse; (2) how they go about it; and (3) what federal and state regulatory entities and the telecommunications industry are doing about it.[1] I will also discuss our case study concerning an individual whose known companies apparently slammed 544,000 consumers in one effort.

Slamming is the unauthorized switching of a consumer from the long-distance provider of choice to another provider. It can harm consumers in a number of ways, such as by paying higher, sometimes exorbitant, rates and experiencing frustration at having to correct the problems resulting from being slammed. Slamming also results in losses to long-distance providers and other industry firms when slammers take their profits and leave unpaid bills, sometimes amounting to millions of dollars.

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[1]See also Telecommunications: Telephone Slamming and Its Harmful Effects (GAO/OSI-98-10, Apr. 21, 1998).

- All three types of long-distance providers–facility-based carriers, switching resellers, and switchless resellers[2]–have economic incentives to engage in slamming. Switchless resellers, which have the most to gain and the least to lose, slam most frequently.

- Intentional slamming[3] is accomplished in deceptive ways, such as by misleading consumers and falsifying or forging documents.

- The Federal Communications Commission (FCC), state regulatory agencies, and the industry each rely on the others to be the main forces in the fight against slamming. Thus, few of their efforts are extensive. To illustrate, the FCC has adopted some antislamming measures but effectively does little to protect consumers. Most states have some antislamming measures, but their extent varies widely. And industry's measures appear to be more market-driven than consumer-oriented. In fact, the most effective antislamming measure appears to be one that

[2]Facility-based carriers, e.g., AT&T (American Telephone and Telegraph), MCI Telecommunications Corporation, and Sprint, have the physical equipment including hard lines and switching stations necessary to take in and forward calls. Switching resellers lease capacity on a facility-based carrier's long-distance lines, resell long-distance services, and have one or more switching stations. Switchless resellers also lease capacity and resell long-distance services but have no equipment and little or no substantive investment in their companies.

[3]Sometimes, legitimate mistakes are made in transcribing data that result in slamming, but these mistakes are not paramount to the slamming issue and can be easily rectified.

consumers can take--contacting their local exchange carrier and "freezing" their long-distance provider from unwanted change.

- Daniel H. Fletcher, the owner/operator of the switchless resellers in our case study, apparently entered the industry in 1993 and began large-scale slamming in 1995. By 1996, when most industry firms had stopped dealing with the Fletcher companies, they had slammed or attempted to slam hundreds of thousands of consumers, billed their customers at least $20 million, and left industry firms with at least $3.8 million in unpaid bills.

WHAT ENTITIES ENGAGE IN SLAMMING AND WHY?

According to representatives of the FCC, numerous state regulatory agencies, and the industry, those who most frequently engage in intentional slamming are switchless resellers. They have the least to lose by using deceptive or fraudulent practices because they have no substantive investment in the industry. Nevertheless, the economic incentives for slamming are shared by all long-distance providers.

HOW IS SLAMMING ACCOMPLISHED?

Anyone with a telephone must select a long-distance provider, or Primary Interexchange Carrier (PIC), through the appropriate local exchange carrier. Consumers can change their PIC again through the local carrier or through a long-distance provider with a written or verbal authorization.[4] Intentional slamming is then possible because the legitimate authorizations can easily be subverted. For example, the written authorization, or letter of agency (LOA), can be changed or forged. In addition, unscrupulous telemarketers or providers can use deceptive marketing practices and mislead consumers into signing an authorization. Or consumers can be slammed without being contacted, such as when a slammer obtains telephone numbers from a telephone book and submits them to the local carrier for changing--and then presents forged LOAs if asked for the authorizations.

WHAT HAVE THE FCC, STATE AGENCIES, AND THE INDUSTRY DONE TO FIGHT SLAMMING?

Although the FCC, most state regulatory agencies, and the telecommunications industry have some antislamming rules and practices, each of the three entities relies on the others to be the main forces in the antislamming battle. Indeed, of the antislamming

[4]Such written authorization is obtained by using a letter of agency (LOA), whose sole purpose is to authorize a local exchange carrier to initiate a PIC change for the consumer. The LOA must be signed and dated by the subscriber requesting the change. (47 C.F.R. section 64.1150(b)) Verbal authorizations are usually initiated by a telemarketer.

measures, those by some states are the most extensive. The FCC does not review information that potential long-distance providers submit with their tariff filings, which are required before the companies can begin service. Moreover, the FCC lags far behind some states in the amount of fines imposed on companies for slamming.

Antislamming Measures

The FCC first adopted antislamming measures in 1985[5] and revised or amended them in 1992, 1995, and 1997.[6] However, we found no FCC practice that would help ensure that applicants who become long-distance providers, or other common carriers, have satisfactory records of integrity and business ethics. To illustrate, long-distance providers are now required to file a tariff--or schedule of services, rates, and charges--with the FCC.[7] State regulators and the industry rely on an entity's filed tariff as a key credential

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[5]In a 1985 policy statement (50 Fed. Reg. 25,982 (June 24, 1985)), the FCC decided that allowing customers to select long-distance carriers rather than automatically assigning them to one provider would benefit the public interest. Providers would then have incentive to provide consumers with helpful information and competitive services, which the consumers could use to make informed choices.

[6]47 C.F.R. section 64.1100 (1992); 47 C.F.R. section 64.1150; and 47 C.F.R. section 64.1150(g) (1997).

[7]Under section 203 of The Telecommunications Act of 1934, each common carrier must file a tariff with the Commission. However, under section 203 (b), the Commission has discretion to modify this requirement. In 1996, the FCC promulgated a regulation (47 C.F.R. section 61.20), under which nondominant long-distance providers (e.g., providers without the power to control prices) were exempted from the requirement to file tariffs. However, the regulation was stayed in 1997 as a result of MCI Telecommunications Corp. v. FCC, No. 96-1459. Therefore, all common carriers must file tariffs at the Commission.

that signifies legitimacy. However, according to knowledgeable FCC officials, the FCC merely accepts a tariff filing and does not review the applicant's information provided with the filing. For example, to test FCC oversight of the tariff filing process, we easily filed a tariff using fictitious information and avoided paying FCC's $600 filing fee. Our fictitious switchless reseller–PSI Communications–could now slam consumers with little chance of adverse consequences. In short, FCC's tariff-filing procedure is no deterrent to a determined slammer. Neither does it provide states, the telecommunications industry, or the public with any assurance concerning a long-distance provider's legitimacy.

While most state regulatory agencies have some licensing procedures and requirements for an entity to become a long-distance provider, those procedures/requirements vary widely. For example, in Georgia–a state with more restrictive measures–a switchless reseller must, among other activities, undergo two reviews and wait a period of time before receiving a permanent certificate. The telecommunications industry, to some extent, also attempts to weed out companies involved in slamming. For example, various facility-based carriers, generally based on their marketing philosophies and not consumer protection, undertake different antislamming measures including the use of third parties to verify requests for a PIC change.

However, what appears to be the most effective antislamming measure of all can be effected by consumers themselves–a PIC freeze. An individual consumer can contact the

local exchange carrier and ask that the consumer's choice of long-distance provider be "frozen." The consumer can lift the freeze at any time by recontacting the local carrier.

Penalties Imposed on Slammers

FCC's punitive actions against slammers are far less extensive than those of some state regulatory agencies in the same general time period. For example, in 1997, the FCC obtained consent decrees from nine companies nationwide that paid $1,245,000 in fines for slamming. But in May 1997, the California Public Utilities Commission suspended one firm for 3 years for slamming, fined it $2 million, and ordered it to refund another $2 million to its customers. Further, in 1997, the FCC issued a Notice of Apparent Liability to another firm amounting to $80,000 for apparent slamming. But in February 1998, the Florida Public Service Commission voted to require the same firm to show cause why it should not be fined $500,000 for slamming.

CASE STUDY

We did a limited investigation of four of Daniel H. Fletcher's eight known companies[8] that operated as switchless resellers between 1993, when he apparently entered the business, and 1996. Through each company, Mr. Fletcher apparently slammed or attempted to slam many thousands of consumers, including 544,000 at one time. This one effort occurred after (1) Sprint cancelled its business relationships with two Fletcher companies–Christian Church Network, Inc. and Long Distance Services, Inc.–and (2) Mr. Fletcher transferred the two companies' customer base, through a third Fletcher company–Phone Calls, Inc. (PCI), to another long-distance provider for servicing. As further evidence of the extent of Mr. Fletcher's dealings, industry records, although incomplete, indicate that between 1993 and 1996 the Fletcher companies billed their customers over $20 million in long-distance charges.

By mid-1996, industry firms, including such large facility-based carriers as Sprint, began to end their business relationships with Mr. Fletcher's companies because of his customer's slamming complaints and/or his companies' nonpayment for long-distance network usage. AT&T recognized a problem with Mr. Fletcher and his business practices during April 1996, but it continued service to Long Distance Services, Inc. until November 1, 1997, when it discontinued service for nonpayment for network usage.

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[8]The eight switchless resellers were CCN, Inc.; Christian Church Network, Inc., doing business as Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc.

Mr. Fletcher's companies have also come under regulatory scrutiny by several states and the FCC. For example, in 1997 the Florida Public Service Commission cancelled the right of the Fletcher-controlled PCI to do business in the state and fined it $860,000 for slamming. In June 1997, the FCC, citing numerous complaints and evidence of forged or falsified LOAs, issued an Order to Show Cause and Notice of Opportunity for Hearing regarding Mr. Fletcher and his eight companies. In that order, the FCC, in effect, directed Mr. Fletcher and his companies to show cause why the FCC should not require them to stop providing long-distance services without prior FCC consent and why the companies' operating authority should not be revoked. Since Mr. Fletcher waived his right to an evidentiary hearing when he did not provide the FCC a written appearance, stating he would appear for such hearing, the FCC could have entered the order citing its final enforcement action. However, the FCC did not finalize its order until after we briefed it on our findings, in April 1998.

It appears that all eight known Fletcher-controlled companies were out of business by the end of 1996. However, our investigation identified several instances of Mr. Fletcher's continued involvement since then in the telecommunications industry. Because Mr. Fletcher knowingly used false information to conceal his identity and the location of his companies and residence(s), he has not been located.

Madam Chairman, this completes my prepared statement. I would be happy to respond to any questions that you or other members of the Subcommittee may have.

Statement of

William E. Kennard, Chairman
Federal Communications Commission

Before the

United States Senate
Committee on Governmental Affairs
Permanent Subcommittee on Investigations

on

Slamming

April 23, 1998

the issue of telephone slamming, the practice of changing a consumer's preferred carrier without the consumer's knowledge and express consent. Slamming deprives individual and business consumers of a basic right -- the right to use their carrier of choice. This abuse of consumer rights has become a major problem in the industry. Slamming is more than just an unfair or questionable business practice -- it is illegal. It is against the law to switch someone's service without their consent and, even before slamming was made illegal by statute two years ago, it already was a violation of Commission rules. The Commission is committed to eliminating this practice. Today, I'll explain what we have done and what we intend to do to ensure that a few industry players do not decrease the considerable benefits that vigorous competition has brought to consumers.

The Extent of Slamming

As Commissioner Susan Ness testified before this subcommittee in February, the Commission receives more complaints about slamming than any other telephone-related complaint. In 1997, we handled approximately 45,000 telephone-related complaints. Over 20,000 of those complaints -- almost as many as for all other categories combined -- were about slamming. Many consumers don't complain to the FCC or a state commission and, unfortunately, some might not even become aware of the change because they don't read their bills closely. Most of the complaints to the FCC were about changes in long distance service,

but we're seeing complaints about slamming of intraLATA (or "short-haul") toll service in areas where carriers are competing for presubscription. Consumers are angry, and rightfully so. Consumers commonly use words such as "abused," "cheated," "pirated," "hi-jacked," and "violated" to describe how they feel. The practice brings the industry into disrepute and leaves consumers frustrated with a system that should be able to provide them the full and undisputed benefits of competition.

How does slamming occur? In some cases, there is just a legitimate error, such as a transposition of telephone number digits. But more often, slamming incidents involve deceptive sweepstakes, misleading forms, forged signatures, and telemarketers who do not understand the word "no." An especially deceptive method of slamming is conducted by carriers with trade names that sound like a calling plan. These companies try, through slick telemarketing, to induce consumers to switch service by making it appear that their service will stay with the underlying carrier while they are put on a different (and more favorable) rate plan. Some consumers even report that the telemarketer has claimed to be employed by the local telephone company, or to have special FCC approval to offer a service.

Our Current Rules

What are we doing about slamming? The FCC has long taken slamming very seriously. Even before the 1996 Telecommunications Act made the practice illegal, we adopted orders to ensure consumers' right to use their preferred carrier. In crafting these rules, the Commission carefully balanced the twin goals of consumer protection and unfettered

competition. Clear, forceful rules are the first prong of our anti-slamming efforts. But we must be careful not to adopt rules that deter the benefits that consumers have received from the vigorous competition that exists in today's interexchange market.

The rules and policies leave no doubt as to a carrier's obligations before switching a consumer's service and a consumer's rights if an unauthorized switch does occur:

* A carrier must obtain the consumer's express written or verbal authorization before it may lawfully submit a change order.

* If that authorization is written, the document -- a Letter of Agency (LOA) -- must conform to our rules as to what information must appear on the document in clear language. Just as important, our rules prohibit promotional language from appearing on the document, and require that the LOA be used only to switch service. In other words, we prohibit combining LOAs with contest entry forms, which some carriers previously used in a deceptive manner.

* If the consumer's authorization is verbally to a telemarketer then the carrier may not submit the change order until it has separately verified the authorization by one of four methods:

(1) obtaining a written authorization;

(2) obtaining confirmation from the subscriber via a toll-free number provided exclusively for this purpose;

(3) verifying the subscriber's order through an independent third party; or

(4) mailing a "welcome package" -- a letter that the consumer receives that confirms the oral request by the consumer; unless the consumer expressly

countermands the change in carrier by returning a postage-paid card, the change goes into effect after two weeks.

Thus, your service may not lawfully be changed simply because you tell a telemarketer "okay" -- there must be a subsequent verification of that authorization.

* If a consumer is switched without authorization, the local telephone company must credit any fees imposed for the switch, and the slamming carrier must re-rate any calls that the consumer made to conform to the rates of the consumer's preferred carrier.

Our Proposed Rules

The Communications Act now gives the Commission additional authority with respect to slamming. The Telecommunications Act of 1996 added Section 258, which makes it unlawful for any telecommunications carrier to submit or execute a change in a subscriber's carrier selection, except in accordance with the Commission's verifications procedures. That law also provides that any carrier that violates these procedures, and collects charges for telecommunications service from a subscriber after such violation, shall be liable to the subscriber's properly authorized carrier for all charges collected. The 1996 Act requires the slamming carrier to pay all revenues it has received from the consumer and turn them over to the authorized carrier. The Congress thereby saw to it that the slamming carrier would reap no benefit from its illegal actions.

Although the 1996 Act created a statutory mechanism for eliminating the financial incentive for carriers to slam consumers, we have not ceased our efforts to ensure that our

rules make slamming both unlawful and uneconomic. More needs to be done. The Act did not explicitly provide remedies for consumers that have been slammed. Moreover, Section 258 did not provide guidance on how to restructure the complex arrangements between carriers who submit carrier change orders and those who implement them, without slowing down competition or restricting consumer choice. As a result, the Commission first released a Further Notice of Proposed Rulemaking to implement Section 258.

Among the rules that we are considering is one absolving the consumer from all responsibility for paying the slamming carrier for calls made during a limited time after the unauthorized change. Moreover, we intend to ensure that the slammed subscriber does not lose premiums, such as airline mileage bonuses, because of the unauthorized switch. We also tentatively concluded that the "welcome package" method of verifying a telemarketing authorization should be eliminated. Deceptive telemarketing followed by a welcome package verification invites consumer abuse. And we have sought public comment on whether rules are needed to address preferred carrier freezes. With a freeze, local carriers must obtain consumer authorization to block future carrier changes, unless the consumer gives his or her prior written or oral consent to the blocking carrier -- not just to the requesting carrier. Finally, we have proposed to apply the verification requirement to in-bound telemarketing -- that is, where the consumer has called the carrier to request that it submit a change order. This action would eliminate an opportunity for an unscrupulous carrier to induce consumers to call it and receive a deceptive telemarketing pitch. I expect the Commission to take action on these proposals by mid-June.

Enforcing Our Rules

Enforcement is the second prong of our anti-slamming campaign. In 1994, when it became apparent that slamming was a source of considerable consumer abuse, the Commission took swift enforcement action against carriers accused of slamming, and has been doing so ever since. We use consumer complaints to track which carriers are slamming, and we serve every slamming complaint that we receive on the carriers allegedly involved. On several occasions we have adopted expedited service of slamming complaints. We also maintain contact with state commissions and attorneys general to ensure that we have timely information about carriers that ignore our rules.

When our information indicates a pattern of slamming behavior by a carrier, our staff begins a formal investigation. Our primary enforcement tools to conduct such investigations are forfeitures and consent decrees. Since 1994, the Commission has taken formal enforcement actions against 17 companies for slamming. We have imposed forfeitures totaling $280,000 against four companies, entered into consent decrees with ten companies with combined payments of $1.260 million, and have pending proposals to assess $280,000 in penalties against two carriers. We are currently investigating several other carriers.

Last year, in its policy statement regarding forfeiture guidelines, the Commission established a base forfeiture of $40,000 per slamming violation. The Commission stated that it retained the discretion to issue a higher or lower forfeiture, to issue no forfeiture, or to apply alternative or additional sanctions as permitted by law.

As the above data show, the Commission repeatedly has employed consent decrees in this area. Under the consent decrees, the carriers agree not just to pay money to the Treasury, but also to take actions beyond what our rules require to ensure that the activities that led to the problem do not recur. Consent decrees may, for example, require additional verification procedures for all change orders and monetary restitution to slammed subscribers that exceeds the amount required by our rules and policies.

We also have a third tool for situations when it becomes clear that the carrier just does not intend to operate within our rules: we can withdraw its operating authority. Last year the Commission instituted this unprecedented action against a group of commonly-owned companies that were the subject of over 1,000 consumer complaints, most alleging unauthorized changes in the consumers' primary interexchange carrier. In addition to the alleged slamming incidents, these companies refused to accept or respond to Official Notices of Informal Complaint, failed to designate agents for the receipt of official notices, failed to provide legitimate business addresses, and failed to file tariffs. We believe that strong action such as this will act as a powerful deterrent to other carriers who are considering whether to violate our rules safeguarding consumers.

Efficient Use of Staff

Our staff continually looks for ways to increase operating efficiencies in its investigatory activity. We have increased use of automated systems to handle informal complaints. Another example of our self-assessment is the Memorandum of Understanding

reached last year between our Common Carrier Bureau and our Compliance and Information Bureau (CIB). CIB has established two special enforcement teams, each with five employees, which work full-time on slamming enforcement. These teams conduct an in-depth review of those carriers that account for a disproportionate number of slamming complaints. Our staff is identifying new carriers that appear to be slamming and continuing enforcement actions against established companies. We are calling consumers to hear their stories and obtaining written documentation. Then, we will be prepared to initiate major enforcement actions to ensure that these carriers cease their unlawful operations. To the extent that any carrier doubts our commitment to rid the industry of this practice, our enforcement initiatives will put the entire industry on notice that carriers are expected to concentrate on self-regulation within our rules if they desire to continue operation as interstate carriers.

It has become apparent during the past year, however, that there are special situations in which the Commission must seek assistance from, or refer matters to, other agencies. Our discussions with these federal and state agencies, and with industry members generally, make clear that an opportunity for fraud exists in the telecommunications marketplace, and that the Commission alone may not be able to rid the industry of bad actors. The Commission recognizes the need to cooperate with law enforcement and other investigatory agencies in cases where criminal activity is suspected. Our staff is committed to sharing information of interest to these agencies and to such other inter-agency cooperation as the situation warrants.

Increasing Consumer Awareness

Another tool to combat slamming is increased consumer awareness. I firmly believe that competition has brought considerable benefits for consumers, and that an informed consumer is best able to take advantage of these benefits. The Commission has taken the lead in educating consumers about slamming and their rights in this area. Our outreach programs are designed to help consumers insist that carriers afford them their rights, without recourse to a regulatory agency. Examples of the Commission's outreach program include the Common Carrier Bureau's annual Scorecard publication, which identifies trends in consumer complaints on a company-specific basis. Although service of a complaint does not equate to a finding of wrongdoing, carriers who account for a disproportionate number of complaints relative to their size will find themselves identified. The Scorecard and other related information are available on our Website: http://www.fcc.gov/ccb/consumer_news/.

The Commission has also invested considerable staff resources in providing consumers with a live, one-stop information source at the Call Center in Gettysburg, Pennsylvania. Our Call Center staff is trained to answer consumer inquiries about all telephone-related (and other) subjects, and can provide written information quickly by fax or mail. The toll free number is 1-888-CALL FCC. I have attached information compiled by the Call Center about slamming inquiries. We also send out thousands of consumer brochures on slamming and complaint resolution in response to calls to our consumer information line in Washington, D.C. These efforts have significantly increased consumer awareness, with a

resulting increase in the number of slamming incidents reported to the Commission that, in turn, have provided us with information on how best to address the problem.

Additional Legislation

As you well know, Congress is considering additional legislation to eliminate slamming. I agree with Commissioner Ness's observation that proposals having particular merit include those that would provide for direct redress in the courts -- either through state-initiated class action suits or individual consumer remedies that could be enforced in small claims courts (as was done in the Telephone Consumer Protection Act). It may also be useful to amend the criminal code to send a powerful message of deterrence.

Whatever Congress decides on the issue of further legislation, I know that our objective is the same: to prevent this kind of intolerable abuse. I have explained how the Commission is employing the powerful tools that Congress already has provided, and I want to emphasize our commitment to use forcefully any additional measures that you and your colleagues on the Commerce Committee fashion to ensure that the true benefits of competition enure to consumers.

I would be happy to answer your questions.

Slamming Complaints Received at the FCC National Call Center

Carrier	January 1998	February 1998	March 1998	January thru March 1998
BUSINESS DISCOUNT PLAN, INC.	484	370	400	1254
AT&T CORP.	361	306	329	996
MCI COMMUNICATIONS CORPORATIONS	179	201	290	670
WILTEL	221	163	196	580
MINIMUM RATE PRICING, INC.	169	175	172	516
SPRINT COMMUNICATIONS COMPANY, L.P.	2	182	262	446
AXCES, INC	101	94	98	293
US REPUBLIC COMMUNICATIONS, INC.	70	89	77	236
WORLDCOM, INC.	64	67	93	224
LCI TELEMANAGEMENT GROUP	107	40	47	194
ONE STEP BILLING, INC.	54	57	82	193
BCI CORP.	64	47	71	182
LEAST COST ROUTING, INC.	62	35	73	170
TELEC, INC.	47	46	77	170
EXCEL TELECOMMUNICATIONS, INC.	52	45	67	164
FRONTIER COMM. SVCS.	45	32	71	148
VISTA TELECOMMUNICATIONS	37	24	58	119
CORPORATE SERVICES TELCOM, INC.	25	35	42	102
GROUP LONG DISTANCE, INC.	39	20	32	91
ADVANCED TELECOMMUNICATION NETWORK, INC.	11	27	43	81
ALL AMERICAN TELEPHONE,INC.	27	13	29	69
FURST GROUP, INC.	16	21	26	63
TOUCH 1 COMMUNICATIONS, INC.	28	8	24	60
ITC	22	14	23	59
LDD, INC.	15	11	31	57
LCI INTERNATIONAL TELECOM CORP.	4	22	30	56
SWITCHED SERVICE COMMUNICATIONS, L.L.C.	21	14	17	52
ACCUTEL COMMUNICATIONS, INC.	8	16	23	47
GTE	12	8	22	42
LDC TELECOMMUNICATIONS, INC.	12	15	15	42
DISCOUNT NETWORK SERVICES, INC.	8	17	16	41
LOCAL LONG DISTANCE	16	11	14	41
IXC LONG DISTANCE, INC.	12	8	18	38
NORTH AMERICAN TELCOM, INC.	15	12	9	36
LDS-VENTURES, INC.	12	9	14	35
WORLDCOM, INC. D/B/A LDDS WORLDCOM	16	9	10	35
LONG DISTANCE DIRECT, INC.	3	6	25	34
NATIONAL ACCOUNTS, INC.	10	14	10	34
ATLAS COMMUNICATIONS, LTD.	4	13	15	32
TELCO COMMUNICATIONS GROUP, INC.	10	10	11	31
ACCESS NETWORK SERVICES, INC.	15	7	8	30
COASTAL COMMUNICATION SERVICE, INC.	10	12	8	30
USA TELE CORP.	9	8	12	29
LONG DISTANCE SERVICES, INC.	5	9	14	28
THE PHONE COMPANY	7	6	14	27

Slamming Complaints Received at the FCC National Call Center

Carrier	January 1998	February 1998	March 1998	January thru March 1998
FTC COMMUNICATIONS, INC.	4	14	6	24
AMERITECH	3	9	11	23
CABLE & WIRELESS, INC.	9	2	12	23
ADVANTAGE TELEPHONE COMPANY	7	5	9	21
OLS, INC.	8	6	7	21
QAI, INC.	6	5	10	21
US WEST COMMUNICATIONS, INC.	9	7	5	21
COASTAL TELEPHONE COMPANY	9	1	10	20
AMERICA'S TELE-NETWORK, CORP.	7	4	8	19
I-LINK COMMUNICATIONS, INC.	8	3	7	18
INTERNATIONAL TELECOMMUNICATIONS CORP.	6	4	8	18
NORTH AMERICAN TELEPHONE NETWORK, INC.	5	7	6	18
QCC, INC.	4	5	9	18
MATRIX TELECOM, INC.	8	3	6	17
PANTEL COMMUNICATIONS, INC.	11	3	3	17
TELECOM	1	6	8	15
AMERICAN TEL GROUP, INC.	0	4	10	14
AMERICAN TELEPHONE NETWORK, INC.	7	0	7	14
QUEST COMMUNICATIONS CORP.	4	4	6	14
CARRIERS WHICH AVERAGED FEWER THAN ONE SLAM PER WEEK (162 CARRIERS)	168	137	242	547
CARRIER NAME NOT PROVIDED BY CALLER	3653	3115	4108	10876
TOTAL	6448	5690	7516	19654

EXHIBITS

FROM

FEBRUARY 18, 1998

HEARINGS

Federal Communications Commission
Washington, D.C. 20554

COMMISSIONER
SUSAN NESS

March 20, 1998

The Honorable Susan M. Collins
Chairman
Permanent Subcommittee on Investigations
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Chairman Collins:

Thank you for giving me an opportunity to appear before your Subcommittee's February 27, 1998 field hearing on slamming. I share your concern about slamming and your commitment to eradicate it, and believe the hearing highlighted ways in which both the Congress and the Federal Communications Commission can better protect the interests of consumers.

During the course of the hearing, several questions arose to which I was unable to provide a full answer. I am now in a better position to address these questions, from both you and Senator Durbin, and my further comments on these matters are set forth below. In each instance, I have given the page numbers from the preliminary, unedited transcript, where the questions can be found.

1. **Has the FCC requested more budget or additional staff to deal with the explosion of slamming complaints?** p. 107

The Commission has not asked for additional funds or staff specifically to deal with slamming complaints. We have, however, asked Congress for additional funds to fully implement the Commission's toll-free Call Center in Gettysburg, PA. That center assists consumers who call about telephone-related matters, including slamming.

Although the Commission has not requested additional funds to process slamming complaints, we have taken steps to reallocate existing resources to address these complaints. First, over a year ago, the Consumer Protection Branch of the Enforcement Division initiated a program to identify and act on slamming complaints on an expedited basis, rather than on

the "first come, first serve" basis previously applied to all telephone-related complaints. This accelerated handling of slamming complaints allowed us to quickly identify which companies were generating an unusual number of complaints so that we could immediately begin enforcement action. The program also alerted several carriers to problems associated with their telemarketers or sales agents.

Second, last fall the staffs of the Common Carrier Bureau and the Compliance and Information Bureau (CIB) executed a memorandum of understanding pursuant to which CIB staff will review certain slamming complaints in detail, including calling the complainants to obtain additional information. On the basis of that review, the Commission will initiate formal enforcement actions, through issuance of subpoenas and revocation of operating authority if necessary, against carriers subject to a large number of complaints.

Finally, during the past year the Consumer Protection Branch has implemented a new, "paperless" process for handling consumer complaints. This process uses electronic imaging and storage of complaints and carrier responses, and thus enables the staff and the carriers to resolve complaints more quickly by eliminating delays caused by copying documents and retrieving physical files.

2. **Is there a background check or licensing process for carriers?** p. 110

The Commission has no individual licensing process for companies wishing to provide domestic long distance service. There is, however, an application and authorization process required before a carrier may provide international service. The domestic authority is granted pursuant to a "blanket authorization," and the Commission may revoke the authority. One such revocation proceeding has been initiated.

3. **Does an IXC need approval from a state to start providing service?** p. 112

The Commission does not have information about the state requirements applicable to a carrier beginning service, but we believe that many states have such requirements. Presumably no state authority is needed to offer interstate services, just as no FCC authority (blanket or otherwise) is needed to offer intrastate services.

4. **What fee is applicable when someone files a tariff at the FCC?** p. 113

The fee is $600.00 per tariff filing. Carriers also pay annual regulatory fees based on their number of customers.

5. **Could the tariff fees be used to hire additional resources for enforcement?** pp. 113-114

No. The tariff filing fees and the regulatory fees are required by law to be deposited in the general U.S. Treasury account.

6. **Does the Commission have a formal process for exchanging slamming information with the state public utility commissions?** pp. 114-115

The Commission forwards to the states all complaints it receives dealing with matters exclusively within state jurisdiction. Because we have authority to resolve slamming complaints, we do not forward those complaints; in fact, states often forward such complaints to us. Our staff maintains contact with the states by participating in forums and meetings held by the National Association of Regulatory Utility Commissioners. The states, through their public utility commissions and attorneys general, actively participate in our rulemaking proceedings. Moreover, we invite states to participate in our public forums. In June 1997, for example, the Commission presented an all-day forum on problems that consumers encounter when local telephone companies provide billing for other entities. Panelists included representatives from two state commissions and two state attorneys general offices.

7. **How many long distance carriers have tariffs on file with the FCC?** p. 116

As of March 19, 1998, 1388 long distance carriers have filed tariffs to provide domestic long distance service. Not all of these carriers are necessarily offering services; some may be dormant or defunct.

8. **How long does it generally take to investigate a slamming complaint?** p. 116

We do not keep statistics on the length of time it takes to resolve complaints by subject matter. In the first quarter of this fiscal year, the average speed of disposal for an informal complaint was 280 days. The Bureau's goal is to reduce this number to 180 days by the end of the fiscal year, as the paperless processing system described above becomes fully operational. Personally, I think we should strive to resolve these complaints much more quickly.

9. **Which is more true: that the FCC hasn't been aggressive enough in using the tools it has, or that it needs more authority and more tools, to combat slamming?** p. 117

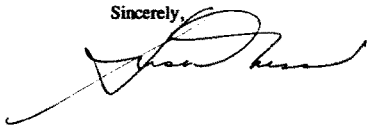
The Commission does not need more legal authority to combat slamming (although we have requested that Congress increase the statute of limitations for imposing forfeitures). The Commission is currently restructuring its enforcement procedures by involving the CIB staff in the investigation of carriers whose slamming activities warrant formal proceedings, such as revocations. We are aware that the advent of competition, while beneficial overall to consumers, has encouraged certain companies who do not respect our rules to enter this business. We have heightened enforcement activities to address such situations, including revocation proceedings and exchanging information with criminal law enforcement agencies when we encounter deliberate violations of the law and our rules.

I hope these answers respond fully to the matters we discussed. But more importantly, I

want to assure you of my strong commitment to aggressive enforcement of our slamming rules and to dedicate greater resources to prevention. I will continue to work with my colleagues to use the tools Congress gives us to attack and deter slammers and to safeguard consumer rights.

I encourage you to call on me if you need additional information, or if you have suggestions for other ways in which we can combat this problem more effectively.

Sincerely,



cc: Honorable Richard J. Durbin

8140 Ward Parkway
Kansas City, MO 64114
Telephone: (913) 624-6870
Fax: (913) 624-5375

John R. Hoffman
Senior Vice President
External Affairs

February 3, 1998

The Honorable Susan M. Collins
United States Senator
Chair, Permanent Subcommittee on Investigations
Government Affairs Committee
432 Hart Senate Building
Washington, D.C. 20510

Dear Chairwoman Collins:

Thank you for the opportunity to provide the Subcommittee with Sprint's views on the problem of unauthorized changes in subscribers' selections of long distance carriers (an abhorrent practice commonly known as "slamming"). Slamming is a plague on the competitive long distance marketplace, and it will undoubtedly spread to local telephone markets if and when competition develops there. How to solve the problem, though, is less clear.

The Federal Communications Commission (FCC), as well as other regulators, have been looking into ways to prevent slamming. Indeed, the FCC has already adopted aggressive rules requiring independent verification of telemarketing orders in order to minimize the opportunities for slamming. The FCC has also sought public comment on how it should implement the mandate of Congress in Section 258 of the Telecommunications Act of 1996. A copy of Sprint's September 15, 1997 Comments, and September 29, 1997 Reply Comments in that FCC proceeding (Common Carrier Docket No. 94-129) are enclosed for your information and file.

As the Subcommittee considers ways to eliminate the slamming problem, we would respectfully ask that you keep a couple things in mind. First, our research reveals that slamming allegations arise from several different causes. Some seem to result from confusion in the customer's household about who had the authority to authorize a change, some from "buyers remorse" (when a customer may authorize a change, but later regret and recant), and some from customers seeking to avoid having to pay change charges.

There are also, clearly, bad actors at work. Some customers have been known to assert they were slammed by various carriers at different times with the sole motive of obtaining free service for a period of time. On the other hand, there seems to be a

significant number of outlaw carriers who ruthlessly slam innocent customers, hoping they'll pay the bill without complaint. We need to eradicate those bad actors, who ignore the current rules and who will surely not be deterred by simply increasing civil and administrative penalties.

There are also the inadvertent slams. The fact is that when a long distance carrier advises a local telephone company that a customer has decided to change service, a lot of data is passed between them to accomplish the conversion. In the course of transferring this data, there is a real opportunity for error by either or both carriers. If a single digit is transposed in the customer's telephone number or the long distance carrier's identification code, the wrong customer could be connected to the wrong carrier, despite a valid order from the right carrier for the right customer. There is some evidence that such errors happen with some frequency, but the process is such that they are hard to detect and audit.

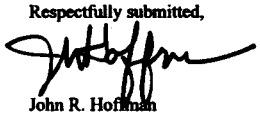
Which brings me to the second important point. That is the process by which customer long distance selections are changed is by submitting orders to the incumbent local telephone company. The telephone company, in order to be completely non-discriminatory, makes no judgment about the validity or appropriateness of any change order submitted to it, but simply executes it (hopefully, error free). Thus, unscrupulous actors knowingly can submit false orders to telephone companies, get the customers converted and hope they'll pay before discovering or complaining about the unauthorized service change. Indeed, the process somewhat seems to encourage such fraudulent submissions.

Thus, we suggest that an effective means to curb fraudulent slammers would be to put controls upon the submission of orders to telephone companies. In particular, we believe that a neutral third party can and should be inserted between the long distance carrier and local telephone company, who has the responsibility to verify all change orders before they are executed. This neutral third party—which could be the neutral Number Administrator created by the '96 Telecom Act— should be empowered to exercise judgment when it receive orders to assure they are accurate; for instance, it could require proof of independent verification of orders received from a new carrier, or could have the right to reject orders from carriers who've been proved to have fraudulently slammed unsuspecting customers in the past. Such a neutral third party could also eliminate the possibility of anticompetitive conduct by an incumbent telephone company that is also competing against long distance carriers.

We sincerely believe that these suggestions, if comprehensively and conscientiously, could end slamming altogether, because they are directed at the root cause of the problem. On the other hand, we are genuinely concerned that simply increasing civil and administrative penalties for slamming will not deter the bad actors, and will lead to endless litigation by others. In that regard, we believe that existing laws—not only directed at slamming, but others including wire fraud statutes—already contain significant penalties to prosecute the truly guilty.

Thus, Sprint is most anxious to work with the Subcommittee to find and implement a solution to this problem, and hope that you'll call upon us to contribute. Please call James E. Lewin, Jr., Vice-President-Government Affairs in Sprint's Washington Office (202/828-7412) at any time. Thank you very much.

Respectfully submitted,



John R. Hoffman

cc: The Honorable Sam Brownback
United State Senator

TESTIMONY OF AT&T CORP.
BEFORE THE COMMITTEE ON GOVERNMENT AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
U.S. SENATE
MARCH 13, 1998

AT&T commends Senator Collins and her staff for holding a field hearing on February 18, 1998 on the important issue of "slamming," which is the fraudulent practice of switching consumers from their preferred carrier without their consent. We appreciate the opportunity to submit these written comments to the subcommittee for the record.

AT&T estimates that in 1997, our competitors slammed nearly 500,000 of our 80 million customers. We regard this attack on our customers as intolerable, and we share the Congress' interest in finding ways to eradicate this practice without impairing existing and emerging legitimate competition in the telecommunications marketplace. While the federal government can help create the right incentives to discourage slamming, carriers can and should take aggressive steps of their own to stem the practice.

On March 3rd, AT&T announced bold, new initiatives to protect our own customers from unscrupulous slamming by other carriers and to minimize the possibility that we will be involved even inadvertently in slamming any other carriers' customers. These initiatives combine actions we are taking ourselves, and measures we have urged the FCC to adopt in its pending rulemaking on slamming under Section 258 of the Telecommunications Act of 1996. Public policy makers in Congress and the states have been increasingly concerned

about slamming. We hope our steps will be constructive as Congress continues to consider legislation to address this issue.

As an initial matter, the Congress should ensure that Section 258 of the Telecommunications Act of 1996 will be properly implemented by the FCC and that the resulting rules are enforced by both the Federal Communications Commission (FCC) and the states, before imposing new requirements. The Congress has already given the FCC full authority under Section 258 over carrier selection for local exchange and toll services, in addition to long distance service. The FCC has considerable expertise in this area, it has had a proceeding underway since July 1997 to modify its rules, and it is expected to issue an order in a matter of months. In all events, anti-slamming laws should take care not to stifle continued intense competition in the long distance market as well as emerging competition in the local exchange and toll market, which rewards consumers with lower prices, greater innovation and better service.

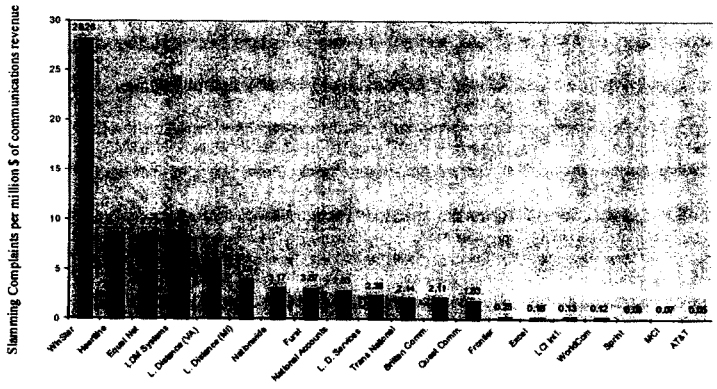
The Nature and Scope of Slamming

Slamming is a serious problem in the highly competitive long distance market, as AT&T's 500,000 customers who were slammed by our competitors last year would attest. Nevertheless, slamming statistics need to be placed in perspective ` against the backdrop of the nearly 53 million times customers changed long distance carriers in 1996 alone. This is not to minimize the harm of slamming; indeed, AT&T customers are the favorite targets of unscrupulous carriers that treat slamming as just one more marketing option. However, it is important to recognize that slamming regulations should not inadvertently or

disproportionately punish carriers that are doing their best to comply with legislative and regulatory requirements to control slamming.

In this regard, the Congress should be aware that AT&T has the best record in the industry, *i.e.*, we have the lowest relative incidence of slamming complaints as measured by the FCC, as the following chart demonstrates:

Slamming Complaint Ratios for Long Distance Companies With 200 or More Total Complaints for 1996



Source for data: FCC's Common Carrier Scorecard, December 1997, (P. 24 & Appendix B)

The FCC's December 1997 Common Carrier Scorecard Report further shows that AT&T had the best score of the 7 carriers and 21 resellers served with more than 100 complaints in 1996. As *Investors Business Daily* reported, quoting Jeffrey Kagen: "The slamming nightmares don't really come from the larger long-distance companies, they come from small, renegade resellers..." (*Investors Business Daily*, September 30, 1997).

What The Industry Can Do

As an industry leader, AT&T has a zero tolerance for slamming. The steps we announced on March 3rd give teeth to our commitment to deal with slamming in an aggressive and effective way. First, we have voluntarily and unilaterally suspended the use of outside agents for face-to-face consumer marketing efforts at local community events. We will not resume using those vendors until we are comfortable that they can meet our zero tolerance anti-slamming policy.

Second, as other testimony presented to the Subcommittee has underscored, the carriers that slam our customers are frequently resellers that lease time on AT&T's network to provide their service. We have announced that we will charge these resellers for the cost of handling each valid customer slamming complaint that they cause, and we will step up our monitoring of these resellers' marketing practices to ensure that they are not misrepresenting themselves as AT&T. If a customer who has been slammed by an AT&T reseller calls us, we always attempt to explain to the customer that AT&T had no knowledge of -- and did not consent to -- the change. As a follow-up, for instance,

we may ask the reseller to provide us with hard evidence that the reseller has met the FCC's verification requirements and that it was authorized to make the switch. We also may ask the reseller to re-rate the call if necessary.

Third, AT&T is taking steps to raise our customer's awareness further. After all, the offending companies are betting that consumers will either not notice that they have been slammed or will not know what to do about itFor years we have reached out to consumers to educate them about how to protect themselves against slamming, and we will continue those efforts. In 1994, for instance, we launched a national advertising campaign in English and Spanish for newspapers, TV and radio to advise consumers on how to protect themselves from slamming. In 1995, we produced a videotape in Spanish that was distributed nationwide through media outlets. Other more recent education initiatives have included direct mail to our customers in English, Spanish and 5 other languages and a widely distributed feature news article in Spanish.

Finally, earlier this month we established a toll-free slamming resolution center (# 1-800-538-5345) to provide dedicated service representatives, around-the-clock and seven days a week, to resolve any consumer slamming complaints involving AT&T. The center is committed to resolving most slamming inquiries on the first call and any that require further investigation within three business days. On April 1st, the center is scheduled to start handling business customer complaints as well.

We recognize, however, that private efforts cannot by themselves eradicate the practice of slamming. In that regard, AT&T strongly supports the FCC's

consumer education programs, including its on-line services available through the World Wide Web. We encourage the Congress to ensure that the FCC has adequate resources to enforce its rules and support those programs.

The FCC Should Require Third Party Verification for all Service and all Carrier Changes

AT&T has called for the FCC to require that all residential carrier changes – whether for long distance, toll or local exchange service – be verified by an independent third party before they are processed. This verification is now required under current FCC rules only when long distance companies call customers to solicit their business. AT&T is proposing that verification also take place when customers themselves initiate the call, submit a signed form requesting a change in service, or agree to have their service switched while attending a local event in the community. AT&T has begun to develop the systems and training necessary to implement third party verification on all residential changes following adoption of nationwide rules,. The cost of implementing this will not be negligible: AT&T estimates that it will cost up to $ 58.7 million annually (with an additional $ 5.5 million in start up costs) to implement verification measures for inbound calling alone. Nevertheless, we believe that if done industry-wide, it will stem slamming of customer-initiated calls.

A third party verification requirement is far preferable to requiring a customer to send in a signed, written authorization before being allowed to change carriers, as legislation in the House proposes (H.R.2120). Such a requirement would unduly burden consumers and carriers both with extra layers of

paperwork and bureaucracy, increasing the chance of error, delaying customer choice and, in some cases, preventing consumers from receiving the service they requested – a result that is clearly anti-consumer. Moreover, because many slammed customers receive no contact from the offending carriers, such a rule would not stop the most egregious violators. For these reasons, in 1991, the FCC rejected proposals to accept only written change orders.

Absolution of Consumers' Bills Is Unwarranted and Unnecessary

A number of parties that have submitted comments on the FCC's proposed rules, and legislation in the House (H.R. 2120), would require a carrier that has changed a customer without authorization to forgive or refund to the consumer the full amount of the consumer's long distance bills for the period the consumer received service from that carrier. AT&T believes that this proposal is unnecessary to restore subscribers to the economic position they would have enjoyed absent the disputed change. This is because current FCC rules already require the unauthorized carrier to re-rate its bill to the same level as the rates of the customer's chosen carrier. Additionally, under the FCC's rules slammed customers are entitled to be changed back to their chosen carrier at no cost to themselves. Absolving subscribers of all charges would therefore create a windfall to the consumer, and for this reason alone Congress should discourage the FCC from adopting this proposal .

Moreover, giving consumers free calling could also create strong economic incentives for fraud and abuse by some customers and would create immense

burdens on carriers and regulatory bodies by generating additional unwarranted slamming disputes. Finally, it would undermine slamming dispute resolution procedures because customers would lose any incentive to report unauthorized carrier changes promptly.

Carrier-to-Carrier Penalties Should be Strengthened

While absolving customers of charges would be unwarranted if only for the reasons just described, adoption of that proposal would also undercut Congress's intent in establishing a "lodestar" in Section 258 of the 1996 Act, which authorizes customers' preferred carriers to recover all unauthorized charges collected from those subscribers by slamming carriers. Undermining the Section 258 remedy would clearly be a step in the wrong direction in efforts t control slamming.

Indeed, to ensure that there will be sufficient incentives for private enforcement of anti-slamming requirements, AT&T has urged the Commission to adopt even stronger rules to compensate carriers whose customers have been slammed. Such a provision should also be inserted in S.1618 and any other slamming legislation. After all, slamming not only injures consumers, it also harms their chosen carrier which has lost the business – and, as a result revenues and profits – due to the malfeasance of its competitor. AT&T's proposal to establish a carrier-to-carrier damage remedy of $1,000 per valid slamming incident against carriers that violate anti-slamming rules would give injured carriers additional incentive to go after slamming carriers, supplementing the 1996 Act "lodestar" described above.

This carrier-to-carrier remedy would also complement private action by consumers, which is permitted under common law today and would be expanded under various bills pending in the Congress, including S.1618. In that regard, we have suggested that provision in S.1618 directing all consumer complaints to the FCC would overwhelm the agency's staff and budget. The proper forum is be the court system, and specifically the small claims courts that are experienced in deciding consumer complaints promptly and without burdensome or costly procedures.. In the District of Columbia, for instance, the filing fee is only $5 to for a claim up to $500, $10 for a claim up to $2,500, and $ 45 for a claim up to $5,000 – which fee is reimbursed if the plaintiff wins.

Unfortunately, the proposed procedures and penalties contained in various Congressional bills (S. 1618, S. 1137 and H.R. 2112) are much too stiff for AT&T to support. For instance, proposed minimum fines of $40,000 for a first "offense" and $150,000 thereafter provided in S. 1618 would be out of proportion to the harm caused by inadvertent slamming and would unreasonably punish AT&T and other larger carriers with the *best* record of performance. In addition, the proposal in S. 1618 that State Attorneys General be able to seek treble damages, rather than limit them to injunctive relief, could leave legitimate carriers that make an innocent mistake that affects large numbers of customers subject to ruinous damages.

Federal Preemption of Inconsistent State Anti-Slamming Statutes Is Essential

Any state regulation should mirror as closely as possible the federal regulations promulgated by the FCC. Many states have enacted or are in the process of enacting their own anti-slamming rules, before the FCC has completed its own rulemaking under Section 258 of the Telecommunications Act. For instance, the Maine legislature is considering a bill (LD-2093) that generally mirrors existing and proposed FCC verification procedures, except that it would also absolve the consumer of all charges if they are slammed. Other state statutes or regulations provide differing means of verification, time frames and penalties.

The Congress under Section 258 of the 1996 Act created a scheme by which the FCC would develop uniform rules governing both local and long distance carrier selection, and the states would have dual authority to enforce the FCC's rules for intrastate calling. Indeed, state enforcement of federal rules can effectively supplement industry and federal efforts to stem slamming. It is important that any new legislation carry forward this concept of uniform, national rules and federal preemption of inconsistent state regulation of anti-slamming requirements.

AT&T cannot stress enough the importance of providing for a uniform framework of legal and regulatory anti-slamming requirements in any federal legislation. Otherwise, AT&T and other national as well as regional carriers would have to separately comply with differing, and potentially inconsistent, carrier

selection procedures for each state, which would be extremely inefficient and expensive. The costs of compliance with such a "patchwork quilt" of state requirements could not be recovered by carriers through higher telephone service rates either in the already highly competitive long distance market or the emerging local exchange and toll markets. New competitors would have a strong disincentive to enter any of these markets. It would be more difficult and more expensive to develop education programs and to get that information into consumers' hands, and consumers would inexplicably have to cope with a double set of rules, depending on whether the carrier change was for long distance or local calling and, possibly, on whether the customer's state has more than one LATA . As local markets become competitive, the problem would be compounded for customers that want to receive both local service and long distance service from a single carrier.

In these circumstances, conflicting state regulation of anti-slamming requirements should give way to prevent those rules from impeding the federal anti-slamming policy and procedures promulgated by the FCC, or from otherwise thwarting the important federal interest in preserving and promoting robust competition in telecommunications.

A Neutral Body Should Administer Carrier Selection

The local companies have a vested interest in maintaining their monopoly positions, and they have already demonstrated their intent to use slamming concerns as an excuse to limit competition in their markets. For instance, in December 1995, Ameritech sent its customers a bill insert titled "Don't Get

Slammed", in which it offered to freeze their choice of local, local toll and long distance carriers. According to the Illinois Commerce Commission "there is no doubt that the bill insert was designed to help maintain [Ameritech's] monopoly in the [local toll] and local market in Illinois and to place [long distance carriers] at a competitive disadvantage in attempting to break into the market." ICC Docket 96-0075, 96-0084, April 3, 1996 Order at p. 6. Last September, the Illinois Court of Appeals unanimously affirmed the Commission's decision, stating that "the timing of Ameritech's bill insert and offer of [a carrier freeze] hindered the opening of the [local toll and local] market to competition and presented an additional hurdle to customer choice." *Illinois Bell Tel. Co. v. ICC*, Nos. 1-96-2146 et al. (Ill. App. Ct. September 5, 1997).

AT&T has urged the FCC to eliminate the local telephone companies' control over processing of customer changes in their local, local toll and long distance carriers. This could be accomplished by setting up an independent body to handle such changes. While the FCC already has the authority to evaluate such a proposal , it would clearly be beneficial to include in any legislation a requirement that the FCC conduct that analysis .

Conclusion

In conclusion, AT&T strongly supports efforts to curb slamming because of the harm to consumers and carriers alike. The FCC has the expertise to address and regulate slamming and has been mandated to do so pursuant to Section 258 of the Act. AT&T recommends that Congress encourage the FCC to extend its existing verification rules to inbound calling and to the local carrier selection

process and that the states look to the existing FCC rules and the forthcoming FCC rules and mirror them. Such mirroring will avoid unnecessary consumer confusion between federal and state rules for carrier selection and will avoid unwarranted costs, efforts and burdensome regulation on existing and newly emerging telecommunications carriers.

AT&T thanks the subcommittee for the opportunity to submit a written statement.

Statement of Frontier Corporation
to the U.S. Senate Permanent Subcommittee on Investigations
Regarding the Hearing Held on February 18, 1998
in Portland, Maine

Frontier Corporation is pleased to have this opportunity to submit testimony to the Permanent Subcommittee on Investigations of the U.S. Senate concerning the issue of telephone slamming. Frontier Corporation is a $2.5 billion company headquartered in Rochester, New York that provides integrated telecommunications services including long distance, local, wireless, data and Internet. Specifically, Frontier provides local telephone services in 13 states and is the fifth largest provider of long distance services nationally. In the state of Maine where this hearing is being conducted, Frontier is ranked as the fourth largest long distance company.

As this hearing seeks to examine the prevalence of telephone "slamming" and how consumers might be impacted by this activity, it is important for the Subcommittee to understand what constitutes slamming and what does not. Slamming should be defined as the intentional unauthorized switching of a consumer's long distance service. It is important to distinguish between intentional and unintentional for one very important reason. The majority of complaints received by the States and the FCC that address incidences of slamming (correctly defined as the intentional change of a consumer's carrier without that consumer's authorization) are in large part the result of actions by relatively few companies that do not have the interest of consumers in mind. Intentional incidences of slamming are those that any agency whether state or federal should be focusing on in protecting consumers.

Unintentional incidences, however, can and do occur in numerous ways. For example, when the consumer has proactively authorized a change but forgets he has done so, when the consumer uses an alternative long distance company on a "casual" basis or when either the local exchange carrier or long distance company makes a mistake in keying in the correct telephone number and inadvertently changes the wrong customer's long distance service.

As a major player in the long distance business Frontier adheres to the Federal Communications Commission presubscription rules, as well as any specific state statutes, pertaining to telemarketing procedures established to verify a customer's desire to change long distance service providers. As you may be aware, the FCC is in the process of revising its current rules and a decision on this is expected at any time. Of the four options now available, Frontier uses 1) third party verification or 2) a signed letter of authorization (LOA) to minimize potential slamming occurrences.

It is also important to highlight that whether Frontier field sales representatives, telemarketing employees or authorized agents talk to a potential customer, we do not tolerate any unethical behavior towards consumers. Employees or agents that engage in behaviors such as intentional slamming face immediate dismissal. In any situation in which Frontier can validate that it is indeed responsible for incorrectly changing a consumer's long distance service, we switch the consumer back to their preferred carrier at no charge and provide a credit for all long distance charges incurred by the customer for

the time they were switched to Frontier's long distance service. Additionally, Frontier maintains a department whose purpose is to receive, investigate and resolve agency complaints in this regard to provide pertinent data about the causes of slamming and to make certain we are aware of any internal problems that can then be quickly corrected.

Although use of the two previously noted verification options does work to reduce slamming complaints, they will never eliminate *unintentional* slamming that will occur regardless of how careful any company is in dealing with consumers. One reason that unintentional slamming does happen is attributable in some part to customer confusion. Individuals may indeed authorize a change and then simply forget that they did so. When provided with appropriate verification, they realize that perhaps they did authorize a change. Oftentimes, consumers may use an alternative long distance provider by calling casually using a 5 digit code and trying out a new service provider to see if it is to their liking. When they receive a bill from the alternative service provider they have indeed used, they may have forgotten about the calls and feel that they have been slammed. It is not unusual for a slamming complaint to be resolved when verification is produced indicating an household member did indeed authorize a change or that calls were made casually.

A second significant cause of unintentional slamming that we see in researching complaints is directly related to a change being made to the wrong customer's account inadvertently. To expand upon this, first let me explain that the long distance company must submit a change request to the local exchange carrier (after appropriate authorization

is received from the customer) to effectuate a change in service provider. The long distance company has no technical ability to effectuate a change, this can only be done by the local service provider. Oftentimes, the local exchange carrier unintentionally transposes digits of the telephone number causing the wrong consumer's long distance service to be changed. When this happens the consumer oftentimes believes that slamming has occurred and files a complaint against the long distance service provider. Meanwhile the long distance company accused of slamming has nothing to verify the change because they have never had a conversation with the customer, nor submitted a change request to the local service provider. Up to 20% of all slamming complaints Frontier investigates ultimately resulted from errors attributable to the local service provider making incorrect changes to a customer's account.

Responsible industry players, like Frontier, are not interested in offending customers or forcing them to take our long distance product if that is not what they desire. Our company has been in business for almost 100 years and would not engage in practices to devalue our name and reputation which we work vigorously to protect. The nature of the long distance business is too highly competitive to alienate potential customers, as we may want to gain them back sometime in the future. We attempt to win consumers over to Frontier with our competitive pricing plans, our high quality network, our customer care practices and our innovative billing in which we combine many services on one bill. Our product and service offerings are exceptional and therefore, Frontier has confidence it its ability to win customers without having to resort to co-opting customers from other providers by engaging in intentional slamming practices.

It is our opinion that the FCC rules are sufficient to protect consumers against those companies that are in the business to intentionally harm consumers. If long distance service providers adhere to the established federal verification rules and the FCC uses its enforcement authority to swiftly resolve complaints, including using the tools available to them such as fines and revocation of operating authority for those companies with a pattern of pernicious behavior, consumers will be adequately protected.

In providing advice to consumers about ways to avoid slamming, Frontier would suggest that consumers first of all be familiar with who their current long distance provider is and firmly communicate their desires to any telemarketer. In a competitive environment, a consumer's best defense is a good offense, and that is to educate themselves about companies that provide the best mix of products, services and prices to match their particular needs.

In researching this issue, it is important for the Subcommittee not only to determine that slamming does indeed occur, but to go further to investigate the root causes so that responsible companies, like Frontier who are working within the established rules are not burdened with new onerous requirements by either the FCC or Congress. I would hope the Subcommittee considers these issues in its deliberations. Frontier would be pleased to work with Congress in any way to address this issue and thanks the Subcommittee for the opportunity to provide written testimony.

TESTIMONY OF MCI COMMUNICATIONS CORPORATION
Presented by Wayne Huyard
President, Mass Markets
before the
SENATE GOVERNMENTAL AFFAIRS COMMITTEE
SUBCOMMITTEE ON PERMANENT INVESTIGATIONS
February 18, 1998
Field Hearing on Unauthorized Switching of Long Distance Carriers

Thank you very much for allowing MCI to provide a written statement for the hearing record examining the prevalence of telephone slamming--the unauthorized switching of a consumer's long distance provider.

I am Wayne Huyard, President of MCI's Mass Markets business unit. My organization is responsible for MCI's residential and small business sales, marketing, and customer service efforts.

The steady drumbeat of consumer horror stories about slamming reflects a consumer protection crisis. It threatens to impede telecommunications competition in a way that will ultimately be damaging for consumers and our industry. MCI recognizes that slamming prevention is one of the most important issues we need to address.

The interests of consumers and responsible telecommunications companies in this area are not inconsistent. In fact, our interests are aligned.

MCI has a compelling self-interest in supporting measures that crack down on slamming. Brand and reputation are crown jewels. Slamming threatens to steal them. We put our customers first. We won't win or keep customers if we don't act responsibly. So, we feel

comfortable supporting reasonable regulations in this area, because we already employ quality control measures that set the gold standard in the industry.

In addition, it's fair to say we have suffered millions of dollars in lost revenue by having large numbers of our customers converted away without customer authorization. So, we strongly support effective enforcement efforts as well.

Equally important, we are concerned that if consumers continue to face concerns about slamming, they will simply opt out of the process of exercising their right to change services. They will decide it's not worth it to exercise the choices that telephone competition promises. This would be a disaster for carriers like MCI that want to earn new customers through fair sales and marketing efforts. Ultimately, it would be a tragedy for consumers as well, who would be denied the benefits of competition, particularly as we move into an era where consumers will have competition for local as well as long distance services.

I'd like briefly to offer MCI's perspective on what we believe would be the single most effective measure to crack down on slamming. In addition, I'd like to raise our concerns about some disturbing trends that appear to be the misuse of legitimate consumer protection concerns for nakedly competitive purposes.

MCI believes that any legislative or regulatory action in this area must put consumers first, while not losing sight of the realities of a rational business environment. It cannot ignore the benefits that competition and flexible choice bring to the public. We must design solutions that weed out the bad actors, while not overburdening the industry with regulation that would

impose delay, bureaucracy, inefficiency, consumer-unfriendly hurdles or additional costs onto the process of changing telecommunications services.

MCI has actively participated in the pending FCC rulemaking that seeks to adopt more effective regulations relating to slamming prevention and enforcement. MCI believes this area cries out for a national set of solutions that apply to long distance, local toll, and local service carrier changes. A piecemeal approach would chill competition and create burdens that would outweigh changes. We believe Congress should retain federal preemption over this issue. We would oppose any measures that would permit the specter of inconsistent state regulation to raise impossible barriers to efficient business practices.

So, what should be done? MCI believes that Third Party Verification-or TPV-should be adopted as a nationwide requirement for all carrier switches. MCI's own experience with TPV convinces us that it is the single most consumer-friendly and effective approach to curbing slamming.

Third Party Verification involves telephone confirmation of carrier switches by an independent third party verification company. TPV is quick, consumer friendly, and effective. It confirms essential information about the customer's decision to switch in a one to two minute call. Importantly, the TPV company receives no commission or other financial incentives to confirm sales orders. It simply verifies customer choice.

Third Party Verification is an efficient process. It avoids order entry delays that are otherwise involved if written customer agreements must be gathered. It permits consumers to begin enjoying promised benefits sooner. TPV acknowledges the modern reality that consumers want to deal with phone service issues over the telephone.

Most importantly, TPV is a proven means of reducing unauthorized conversions. For example, just recently the California Public Utility Commission announced that long distance slamming overall in California is down roughly 50% for residential customers. That reduction, in large part, can be attributed to the fact that California enacted a new state law a year ago requiring third party verification for carrier switches.

MCI's own experience with TPV is instructive. We implemented TPV in 1992 for our outbound telemarketing sales. This resulted in a dramatic reduction in telemarketing complaints--to the point where only a tiny fraction of one percent of all MCI telemarketing sales results in complaints of any type.

However, in all candor, our other non-telemarketing sales channels that were not subject to TPV verification measures continued to be a source of concern. In particular, face to face and event sales efforts where MCI gathered written Letters of Authorization ("LOAs") were the source of a disproportionately large percentage of MCI's disputes and complaints.

We found that while "get it in writing" sales channels represented less than 20% of our residential sales activity, these same sales methods represented almost 50% of MCI's complaints.

We noticed the same trends throughout the industry, as most of the major enforcement actions revolved around forged LOAs, deceptive sweepstakes marketing, deceptive checks, and other forms of marketing that "got it in writing," but didn't protect the consumer.

Armed with these facts, MCI decided to make another major commitment to its own sales quality efforts. Early in 1996, MCI committed to the FCC that it would conduct TPV for virtually all its residential and small business sales activities, including inbound sales. By the fall of 1996, we were conducting TPV for virtually all our residential and small business sales.

The results have been dramatic. We've seen a substantial reduction of complaints from sales channels not previously subject to independent verification. Overall, MCI's commitment to TPV resulted in a year over year reduction of more than 50% in our complaint percentages. The bottom line is that MCI's commitment to TPV has greatly benefited both us and our customers.

Are we perfect? No. One complaint is too many. We're still doing whatever we can to improve our own sales quality. But given the fact that over 40 million customers switched their long distance service last year, it's inevitable that some level of complaint activity will occur. We believe that TPV is the consumer protection gold standard, and would urge consideration of rules that recognize its proven value.

We would also suggest consideration of an additional consumer protection step, and that is to ensure the validity of TPV verification by tape recording the verification transaction. MCI is currently preparing a test to determine the viability of recording these customer confirmations. We don't have any results yet, but recording may be the next level of protection to ensure that TPV transactions do, in fact, fairly confirm a customer's agreement to switch phone service.

MCI is aware that there are proposals to require written agreements from customers for all carrier switches. Any such approach would be a disaster from a customer perspective and a competitive perspective, and would, in fact, fail to address the main source of current slamming problems.

Contrary to common perception, industry slamming problems are not primarily related to telemarketing. Instead, the vast majority of reported enforcement actions across the country have involved sales methods using written LOAs. The real problem areas have been forged LOAs and deceptive LOA marketing techniques such as sweepstakes and deceptive checks.

Getting it in writing is not the solution. In fact, it's the primary problem.

Requiring written LOAs would harm consumers and impede competition. Today, the vast majority of MCI's sales, and much of the switching that occurs industry-wide, takes place over the phone. Requiring LOAs would frustrate consumer expectations of being able to authorize phone service selections over the telephone. It would delay consumer enjoyment of promised benefits. It would add significant costs associated with mailing and retrieving LOAs. The ultimate result would be a terrible damage to flexible, consumer friendly choice. Many customers would simply decide that it's too much trouble to switch. As a result, competition would suffer. In short, we urge rejection of any efforts to require written LOAs as the solution to the slamming epidemic.

MCI is also concerned that some interested companies and groups have been cynically using legitimate consumer concerns about slamming for their own competitive interests. Some carriers have actively promoted so-called PIC (Preferred Interexchange Carrier) Freezes as a solution to slamming by the long distance industry. A PIC Freeze is a service offered by a local telephone company to customers that typically provides that no change to the customer's primary interexchange carrier service can be made unless the customer affirmatively and personally contacts the local telephone company and requests the change.

Unfortunately, these innocent-sounding devices, and the processes surrounding them, have far too often been used not for the benefit of consumers, but by local carriers as a device to maintain their monopoly stranglehold on local and local toll customers.

We have seen a rash of efforts by local carriers to scare consumers into agreeing to PIC Freezes in an environment where the consumer 1) doesn't really understand what he or she is

agreeing to, and 2) doesn't realize that the local carrier will use the customer's assent to impose roadblocks to the customer's later interest in changing service providers.

Ameritech, for example, refused to switch customers who have previously elected PIC Freeze protection even after they both confirmed a service order from MCI, and then in a second transaction, had that order verified by an independent third party verification company. Ameritech then compounded this anti-consumer conduct by refusing to allow a service change unless the customer called Ameritech, and was forced to endure Ameritech's aggressive winback attempts to keep the customer from switching. No consumer should have to put up with these nakedly anti-competitive tactics, and MCI has sought to protect consumer interests by filing complaints against Ameritech with the Illinois, Michigan, and Wisconsin PUCs.

MCI has raised these concerns with the FCC in its pending rulemaking on slamming. We have proposed a series of measures that would ensure consumer protection, while at the same time prohibit the anti-competitive and discriminatory abuse currently occurring in the guise of slamming protection. We remain concerned, however, that some of the rhetoric surrounding this issue is generated by those interested in scaring consumers away from exercising the freedom of competition. We can't afford to overreact by imposing legislation or regulation that would render free and flexible consumer choice impossible. Ultimately, consumers would be the biggest loser if that were to happen.

We also believe that equally strong consumer protection measures need to be taken against local exchange carriers who delay or fail entirely to act on consumer service change requests. One of the most disturbing trends over the past year is the appalling performance of local exchange carriers when it comes to executing customer requests to switch local or local toll

services away from that local carrier. Consumers are experiencing weeks of delay and intentional intransigence, as the LECs desperately try to hold on to their monopoly customer base. Orders are being dropped, and both customers and competing carriers are being forced to fight through a gauntlet of inefficiency imposed by LECs. The net result is the same as slamming: the customer is prevented from selecting a competitive service provider. We would encourage Congress to attack this problem as well.

As we move into an era where the local telephone companies are becoming direct competitors of long distance companies, the rules and practices need to change. No longer is it reasonable to expect that local exchange carriers will execute service orders, or report consumer experiences, on a neutral and unbiased basis. Therefore, MCI believes that serious consideration should be given to the establishment of independent third party PIC Administration, to handle a host of critical functions-perhaps to include order processing, service change verification, PIC Freeze processing, and protection of customer information. The system right now permits the fox to guard the henhouse, and the results are ultimately damaging to consumers.

Finally, what can consumers do to protect themselves against slamming? Well, MCI and consumer groups have been emphasizing that consumers need to read their phone bill each month, just as they should their credit card bill. This is the best defense and can minimize disruption and expense. Consumers should know who they are doing business with over the telephone and should be very clear about their decision to accept or reject a telemarketing offer. Consumers should understand that, currently, a telephone carrier selection will be verified by one of four methods: 1) obtaining customers' written authorization (LOA); 2) receiving authorization via an 800 number; 3) sending new customers prepaid, returnable postcards within 3 days of request for

change; and, 4) getting customers' oral authorization verified by a third party (TPV).

In addition, consumers can periodically confirm who their current carrier is by calling 700/555-4141, for free, from their home (billed) telephone number. Also, consumers should carefully read provisions contained in promotions or ads that may result in changing their carrier when signing up for contests, prizes, or when responding to direct mail solicitations.

Last, if consumers are asked by their local exchange carrier if they want a PIC Freeze on their existing carrier selections, they need to understand what it means relative to options for selecting a new carrier.

MCI applauds the Subcommittee's interest in this important matter. We remain committed to doing whatever we can, both in our internal practices and in our external advocacy, to ensure that American consumers are treated fairly and enjoy the benefits of telecommunications competition.

Thank you.

STATEMENT OF
RICHARD G. HULSEY
Principal, SYNAPSE Networking, Lewiston, Maine
Maine Telecommunications Users Group (MTUG)
Chair, Communications Fraud Prevention

★ ★ ★

Comments re: Unauthorized Long Distance switching

I am a principal in a Telecommunications Consulting firm - Synapse Networking Inc. based in Lewiston, Maine. I am also on the Board of the Maine Telephone Users Group (MTUG) and coordinate Toll Fraud Prevention Activities (http:www.mtug.org.)

For the past seven years we have provided communications consulting and management services to over one hundred clients with locations in Maine, New Hampshire, Vermont Massachusetts, Connecticut, Pennsylvania, Indiana, Puerto Rico and Germany.

For a number of our clients we have an ongoing relationship performing the day to day functions of managing the communications infrastructure - mostly for companies with multiple locations.

I offer mostly a perspective of slamming from the viewpoint of the business community.

We receive between 15 and 25 calls per month from telemarketers of long distance services.. These people typically call a location of our clients and are referred to us for screening.

I now estimate the following segmentation of callers:

25% legitimate

- proper identification of the company calling
- reasonable presentation of what is being offerred

50% "Sleazy"

- proper identification of the company
- misleading rationale
- "FCC has mandated a 'Single Bill'"
- "FCC allows contracts to be broken" etc.

25% Pure slamming attempts

- "I am from Bell Atlantic Services Corporation and I need to confirm your telephone numbers."

Some of the callers are really smooth.

Two years ago our client, The Dunlap Corporation, received a call in one of it's offices from a reseller of a major carrier service. He spoke to a temporary receptionist and convinced her to say "yes" to a questions asking if the office wanted to realize additional savings now.

In this case - after two months of disputing the bill I actually heard the tape of the conversation. The receptionist did say "yes". After putting the client back to the proper carrier we froze the "PIC" for each line and negotiated a settlement. The next bill from the carrier had a balance of $ 0.01. We taped two pennies to the invoice and remitted payment and requested a receipt.

This is a serious issue to small, medium and large companies with a large cost as a result of slamming.

- Professional fees or internal costs to try to prevent slamming; and to resolve these issues when it occurs.

- the cost to get the services back to where they belong
- In almost all cases - the additional costs of the calls processed by the slammer
- In some cases, the clients commitment to it's intended carrier is jeopodized This can result in a breach of contract and/or underutilization penalties.

I want to emphasize how smooth these people are.
Two weeks ago someone in my office received a call on our account.
They identified themselves as Bell Atlantic Service Corporation.
They asked for our telephone numbers and were given all but one. I overheard the request for the last number, took the call and started questioning the caller. When I ask the location, call back number and supervisor they hung up."

Within twenty minutes we received a legitimate call from Bell Atlantic's Telemarketing Group in Marlboro, Mass.

In Maine with intralata -pre-subscription since last fall, the potential problems have increased by a factor of two.

We understand that most contract provisioning and change of carriers - both legitimate and not authorized is done by computer transactions between carriers and local exchange carriers. With the magnitude of such transactions, individual verification is probably not feasible. However, there are some specific actions that could significantly mitigate the problem.

We recommend the following be considered for in potential legislation:

1. The seller of long distance/800 services must obtain written confirmation of the order from an authorized representative of the buyer - and not a check endorsement.
2. The seller must retain such authorization on file for five years.
3. Penalties - should be severe for a seller not having written authorization when an end user complains of slamming e. g. $ 50,000.00 fine.

4. The underlying carrier of authorized resellers should also have a share in the responsibility and consequences for the actions of authorized resellers.

Enclosure: Documentation of a incident (Dunlap Insurance)
(3 pages)

DUNLAP INSURANCE

ACTION PLANS

Location: Somersworth

Report Date: 7-24-95

Project #: S-003-95

Status: Complete

Project: Review of ETI charges

Responsibility: SYNAPSE/ETI

* * * * * * *

7-24-95 After discussions with Jim Arel and Chris Gorman, Dick Hulsey drafted a memo for ETI network services questioning the authorization of a change in carrier to ETI/Network Services.

(See attached for details.)

8-9-95 Dick Hulsey participated in a conference call with Paul Cody at ETI and Jim Arel. A recording of a call to Dunlap's Somersworth office that will document that an order was placed.

(See attached for details.)

One to two weeks later, Paul Cody at ETI called with the recording. Conferenced all parties and the recording was reviewed documenting the authorization.

11-20-95 Regarding final bill

Paul Cody has agreed that $305-43 would be final payment on account even though there may be some additional July usage.

Reviewed with Jim Sullivan with ETI (800-528-7151). He checked with Paul Cody. They agreed to credit the outstanding balance. Letter was faxed confirming credit amount. Faxed a copy to Trudy and Julie.

SYNAPSE
37 Park Street, Lewiston, ME 04240

Principals
RICHARD G. HULSEY
JOSEPH A. LOUGHRAN
ROBERT R. ROY

Executive Assistant
KELLY P. WIGHT

Technical Consultant
GARY WILSON

TELEPHONE
207-786-5221

FAX
207-784-1724

July 24, 1995

ETI/Network Services
P. O. Box 041212
Detroit, MI 48204-1212

Dear Sirs/Madame:

1. The Dunlap Agency has retained SYNAPSE, a Communications Consulting firm, to address an issue with your company regarding Dunlap's Somersworth, NH office.

2. On 5-30-95, the interstate calls made from Dunlap's Somersworth office were routed vis-à-vis equal access to your company - which we assume is an aggregator/reseller of AT&T services.

3. These interstate calls were process by your company until 7-18-95 when the PIC was changed back to Dunlap's vendor.

4. To Dunlap Corporations's knowledge, no Dunlap employee authorized a change of carrier to ETI/Network Services.

5. The change has resulted in the following:

   a. A cost per minute approximately 20% more than the cost per minute provided under the existing contract with its selected vendor;
   b. Loss of usage towards Dunlap's commitment to its selected vendor;
   c. Costs for presumably unauthorized PIC changes to your company;
   d. cost for changing back to its carrier;
   e. Professional fees to have this matter resolved.

6. We request the following:

   - Any documentation that you have that the Dunlap Agency had ordered services from your company.

   If that documentation shows to Dunlap's management satisfaction that an employee did in fact order services from your company, the following invoices will be paid:

   a. Period from 5-30-95 to 6-2-95 $39.79
   b. Period from 6-3-95 to 7-2-95 _____
   c. Period from 7-3-95 to 7-17 or 7-18-95 _____

7. If you cannot provide documentation that is satisfaction to Dunlap's management, then we will do the following upon receipt of your final bill:

   - Based upon the total minutes of usage, we will prepare an offer to settle this matter.

8. If we cannot satisfactorily resolve this matter, we will consider incurring the additional $120.00 of expense in order to file a Formal Complaint with the FCC pursuant to Title 47 - United States Code.

   Additionally, Dunlap plans to submit an RFP to the marketplace for network services for all nine New England offices in the fourth quarter of 1995. If this matter is not resolved, it will be a consideration when considering any AT&T services - regardless of the channel of distribution.

Sincerely,

Richard G. Hulsey
Principal

cc: Mr. Chris Gorman - Manager - Dunlap (Somersworth)
Mr. Jim Arel - Real Estate Manager - Dunlap (Auburn)

FCC Informal Complaints Branch - Enforcement Division
Common Carrier Bureau, FCC Stop Code 1600 AZ, Washington, DC 20554

NHPUC - 8 Old Suncook Rd, Concord, NH 03301

AT&T Corporation - Consultant Liaison Program, Peter Webster
National Programs Director, Rm 6359 B-1, 295 North Maple, Basking Ridge NJ 07920

(207) 287-1596
FAX (207) 287-1039
E MAIL: derek.davidson@state.me.us

Derek D. Davidson
Assistant Director
Consumer Assistance Division
MAINE PUBLIC UTILITIES COMMISSION
242 STATE STREET
18 STATE HOUSE STATION AUGUSTA, MAINE 04333
HOME PAGE: http://www.state.me.us/mpuc/homepage.htm

Senate Permanent Subcommittee on Investigations
EXHIBIT # 7

1998 Legislation
PUC-3
Gilbert W. Brewer
Tel. 287-1398

An Act Relating to the Protection of Maine Consumers in the Telecommunications Market

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, it is necessary that the State immediately prohibit misleading and abusive market practices by telecommunications carriers; and

Whereas, the Public Utilities Commission lacks authority to take effective consumer protection measures to protect Maine telecommunications consumers; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

SECTION 1. 35-A M.R.S.A. §7106 is enacted to read as follows:

§ 7106 Consumer protection

1. Policy. It is the policy of this State to ensure that all customers are protected in the telecommunications marketplace. The provisions in this section and the enforcement authority granted to the commission are designed to achieve a standard that:

A. Ensures that customers are protected from deceptive practices;

B. Is applicable to all local exchange telephone service, interexchange telecommunications service, and other telecommunications services provided by telephone utilities in this state; and

C. Is consistent with the regulations prescribed by the Federal Communications Commission and the Telecommunications Act of 1996 (PL 104-104).

2. Unauthorized change of carrier. This subsection governs any change of a consumer's telephone utility that is not authorized by that consumer. For the purposes of this section, "telephone utility" includes any telephone utility, as defined in section 102, subsection 19, and any other provider of local or intrastate telecommunications services, including personal communications services.

A. No telephone utility may initiate the change of a customer's local or intrastate carrier unless the change is verified by one of the following methods:

(1) Written authorization from the customer;

(2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order;

(3) Oral authorization obtained by an independent third party; or

(4) Upon request of a customer, mailing to that customer an information package consistent with 47 C.F.R. Section 64.1100(d) that contains a postage-prepaid postcard or mailer, without receiving a cancellation of the change order from the customer within 14 days after the date of the mailing;

This section will most likely be removed

B. When a customer's service is changed to a new telephone utility, the new telephone utility shall maintain a record of nonpublic customer-specific information that establishes that the customer authorized the change. If the Federal Communications Commission requires verification, telephone utilities shall use the verification methods required by the Federal Communications Commission.

C. If a telephone utility initiates a change that is not made or verified consistent with this section or commission rules adopted under this section, that carrier, upon request by the customer, shall reverse the change within five business days or any other time established by commission rule.

D. A telephone utility that has initiated an unauthorized customer change shall:

(1) Pay all usual and customary charges associated with returning the customer to the customer's original telephone utility;

(2) Return to the customer any amount paid to the carrier by the customer or on the customer's behalf; and

(3) Upon request, provide all billing records to the original telephone utility from which the customer was changed to enable the original telephone utility to comply with this section and any commission rules adopted under this section.

The customer subjected to an unauthorized change is not responsible for any charges associated with the unauthorized change, including charges for usage subsequent to the change, if the customer contacts either the customer's local exchange carrier, the customer's previous provider of intrastate service, or the telephone utility that initiated an unauthorized change in service within thirty days after receipt of the customer's first bill containing charges by the telephone utility that initiated the unauthorized change. The

telephone utility that initiated the unauthorized change is responsible for any payment to access providers or to an underlying carrier where applicable. Failure of the customer to provide timely notice will relieve the telephone utility that initiated the unauthorized change of any obligations under this paragraph.

3. Penalty. This subsection governs penalties for violations.

A. The commission may impose an administrative penalty against any person who violates this section or a rule or order adopted pursuant to this section. The penalty for a violation may be in an amount not to exceed $5,000. Each day a violation continues constitutes a separate offense. The amount of the penalty must be based on:

(1) The severity of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;

(2) The history of previous violations; and

(3) The amount necessary to deter future violations.

B. If the commission finds that a telephone utility has repeatedly violated this section or rules adopted under this section, the commission shall order the utility to take corrective action as necessary. In addition, the commission may, if consistent with the public interest, suspend, restrict, or revoke the registration or certificate of the telephone utility, thereby denying the telephone utility the right to provide service in this state.

C. Penalties collected by the commission under this section must be deposited in the Public Utilities Commission Reimbursement Fund under section 117.

4. Rules. The commission may adopt nondiscriminatory and competitively neutral rules to further implement this section. These rules are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

SUMMARY

This bill enhances the protections available to telecommunications consumers in the state. It prohibits the industry practice of "slamming," which involves the change of a consumer's telecommunications carrier without the consumer's prior authorization. The bill also authorizes the Public Utilities Commission to adopt rules to supplement the slamming prohibition and to otherwise protect telecommunications consumers from deceptive practices in the telecommunications market. The bill specifies the applicable penalties for a violation of the slamming prohibition or any Commission rules adopted pursuant to this bill.

E X H I B I T S

F R O M

APRIL 23, 1998

HEARINGS

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

In the Matter of	)	
	)	File No. ENF-97-04
Long Distance Services, Inc.	)	
	)	NAL/Acct. No. 716EF0003
Apparent Liability for Forfeiture	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 1996; Released: December 17, 1996

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. By this Notice of Apparent Liability for Forfeiture ("NAL"), we initiate enforcement action against Long Distance Services, Inc. ("LDSI") and its affiliated companies.[1] For the reasons discussed below, we find that LDSI apparently willfully or repeatedly violated Commission rules and orders[2] by changing the primary interexchange carrier ("PIC") designated by Dr. Stan Altman ("Altman") of New York, New York and Gerrold DeBoe ("DeBoe") of Pompano Beach, Florida without Altman's or DeBoe's authorization.[3] Based upon our review of the facts and circumstances surrounding the violations, we find that LDSI is apparently liable for a forfeiture in the amount of eighty thousand dollars ($80,000).

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[1] Long Distance Services, Inc. appears to be affiliated with several companies, including CCN, Inc., Church Discount Group, Inc., Discount Calling Card, Inc., Donation Long Distance, Inc., Monthly Discounts, Inc., and Phone Calls, Inc. These companies have numerous locations, including locations at 2117 L Street, N.W., No. 293, Washington, D.C. 20027 and P.O. Box 1597, Rowlett, Texas 75030.

[2] 47 C.F.R. § 64.1100 and 64.1150; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995) (*LOA Order*), *recon. pending*; Policies and Rules Concerning Long Distance Carriers, 7 FCC Rcd 1038 (1992) (*PIC Change Order*), *recon. denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985) (*Allocation Order*), *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985) (*Waiver Order*).

[3] The practice of changing a customer's PIC without the customer's authorization is commonly referred to as "slamming."

II. THE COMMISSION'S PIC CHANGE RULES AND ORDERS

2. In its *Allocation Order* and subsequent *Reconsideration Order* and *Waiver Order*,[4] the Commission set forth rules and procedures for implementing equal access[5] and customer presubscription[6] to an interexchange carrier ("IXC").[7] The Commission's original allocation plan required IXCs to have on file a letter of agency ("LOA") signed by the customer before submitting PIC change orders to the local exchange carrier ("LEC") on behalf of the customer.[8] After considering claims by certain IXCs that this requirement would stifle competition because consumers would not be inclined to execute the LOAs even though they agreed to change their PIC, the Commission modified the requirement to allow IXCs to initiate PIC changes if they had "instituted steps to obtain signed LOAs."[9] When it continued to receive a large volume of complaints concerning the unauthorized PIC changes, the Commission revised its rules again in 1992.[10] Specifically, while the Commission recognized the benefits of permitting a telephone-based industry to rely on telemarketing to solicit new business, it required IXCs to institute one of the following four confirmation procedures before submitting PIC change orders generated by telemarketing: (1) obtain the consumer's written authorization; (2) obtain the consumer's electronic authorization by use of an 800 number; (3) have the consumer's oral authorization verified by an independent third party; or (4) send an information package, including a prepaid, return postcard, within three days of the consumer's request for a PIC change, and wait 14 days before submitting the consumer's order to the LEC, so that the consumer has sufficient time to

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4 *See supra* proceedings cited at note 2.

5 Equal access for interexchange carriers ("IXCs") is that which is equal in type, quality and price to the access to local exchange facilities provided to AT&T and its affiliates. *United States v. American Tel. & Tel.*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983) (*Modification of Final Judgement* or "*MFJ*"). "Equal access allows end users to access facilities of a designated [IXC] by dialing '1' only." *Allocation Order*, 101 FCC 2d at 911.

6 Presubscription is the process by which each customer selects one primary interexchange carrier from among several available carriers, for the customer's phone line(s). *Allocation Order*, 101 FCC 2d at 911, 928. Thus, when a customer dials "1," only the customer accesses the primary IXC's services. An end user can also access other IXCs by dialing a five-digit access code (10XXX) or a seven-digit access code (10XXXX). *Id.* at 911; Administration of the North American Numbering Plan, Notice of Proposed Rulemaking, 9 FCC Rcd 2068, 2076-77 (1994).

7 Pursuant to the *MFJ*, the Bell Operating Companies were ordered to provide equal access to their customers, where technically feasible, by September 1986. *Allocation Order*, 101 FCC Rcd 15 911.

8 An LOA is a document, signed by the customer, which states that the customer has selected a particular carrier as that customer's primary long distance carrier. *Allocation Order*, 101 FCC 2d at 929.

9 *Waiver Order*, 101 FCC 2d at 942.

10 *PIC Change Order*, 7 FCC Rcd at 1038-1039.

return the postcard denying, cancelling or confirming the change order.[11] Hence, the Commission's rules and orders require that IXCs either obtain a signed LOA or, in the case of telemarketing solicitations, complete one of the four telemarketing verification procedures before submitting PIC change requests to LECs on behalf of consumers.

3. Because of its continued concern over unauthorized PIC changes, the Commission recently prescribed the general form and content of the LOA used to authorize a change in a customer's primary long distance carrier.[12] The Commission's current rules prohibit the potentially deceptive or confusing practice of combining the LOA with promotional materials in the same document.[13] The rules also prescribe the minimum information required to be included in the LOA and require that the LOA be written in clear and unambiguous language.[14] The rules prohibit all "negative option" LOAs[15] and require that LOAs and any accompanying promotional materials contain complete translations if they employ more than one language.[16]

III. THE ALTMAN AND DEBOE COMPLAINTS

A. The Altman Complaint.

4. On August 30, 1996, the Commission received correspondence from Altman alleging that LDSI had converted his prescribed long distance service provider from AT&T Corporation ("AT&T") to LDSI without his authorization.[17] Altman says he first realized his long distance service had been switched when he was making a phone call. He checked his most recent billing statement and discovered that US Billing ("USBI"), a billing agent for LDSI, was charging for his long distance calls instead of AT&T, his previously selected carrier. Altman requested a copy of USBI's authorization to switch his service and received an LOA, allegedly

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11 *See* 47 C.F.R. § 64.1100; *PIC Change Order*, 7 FCC Rcd at 1045.

12 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995).

13 *See id.* at 9574-75. Checks that serve as an LOA are excepted from the "separate or severable" requirement so long as the check contains certain information clearly indicating that endorsement of the check authorizes a PIC change and otherwise complies with the Commission's LOA requirements. *Id.* at 9573.

14 *See id.* at 9564-65.

15 *See id.* at 9565-66. "Negative option" LOAs require consumers to take some action to avoid having their long distance telephone service changed.

16 *See id.* at 9581.

17 Dr. Stan Altman, Informal Complaint No. IC-96-16679 (August 30, 1996). Altman also included a copy of the "Official Registration Form and L.O.A." upon which LDSI relied as the basis for requesting NYNEX-New York to change his primary long distance carrier.

signed by his wife, Claire Haaga Altman, and containing the Altman's home telephone number.[18] The LOA contained incorrect information regarding his wife's age, name, work number, and their home address.[19] Ms. Altman provided a copy of her driver's license as proof of the authenticity of her signature.[20] According to Altman, the telephone account in question is in Dr. Altman's name only. Altman states, however, that the current New York Telephone Directory lists his wife's maiden name and their former address, even though they have moved twice since the directory listing was published.[21]

5. On September 17, 1996 the Common Carrier Bureau's Consumer Protection Branch[22] directed LDSI to provide specific information regarding the conversion of Altman's telephone service.[23] LDSI has neither responded to the staff's request nor sought an extension of time in which to submit the requested information.[24]

B. The DeBoe Complaint.

6. On June 11, 1996 the Commission received a written complaint from DeBoe alleging that LDSI had converted his prescribed long distance service provider from LDDS WorldCom ("WorldCom") to LDSI without his authorization.[25] DeBoe states he contacted his local carrier, BellSouth, when he discovered he was being charged higher long distance rates. When BellSouth informed DeBoe that his long distance service had been changed from WorldCom to LDSI, DeBoe requested proof that he authorized the change. After contacting USBI, he was sent a copy of an LOA, which Deboe claims contains a forged signature. DeBoe provided a copy of his driver's license as proof of the authenticity of his signature.[26]

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[18] *See* Attachment 1.

[19] In his complaint Mr. Altman states that they moved from the address listed on the LOA in 1988.

[20] *See* Attachment 1.

[21] *See* Informal Complaint No. 96-16679 (August 30, 1996).

[22] Formerly known as the Informal Complaints and Public Inquiries Branch.

[23] Notice of Informal Complaint No. IC-96-16679 (September 17, 1996).

[24] Notice of Informal Complaint No. IC-96-16679 (September 17, 1996).

[25] Gerrold DeBoe, Informal Complaint No. IC-96-07879 (June 27, 1996). DeBoe also includes a copy of the "Official Registration Form and L.O.A." upon which LDSI relied as the basis for requesting BellSouth Telecommunications, Inc. to change his primary long distance carrier.

[26] *See* Attachment 2.

7. The Consumer Protection Branch directed LDSI to provide specific information regarding the conversion of DeBoe's telephone service on June 27, 1996.[27] LDSI has neither responded to the staff's request nor sought an extension of time in which to submit the requested information.

IV. DISCUSSION

8. We have evaluated the information submitted in connection with the Altman and DeBoe informal complaints and conclude that LDSI is apparently liable for forfeiture for willful or repeated violation of the Commission's rules and PIC change requirements. We find LDSI's apparent actions particularly egregious. It appears that on or about July 12, 1996 and March 28, 1996, LDSI submitted PIC change requests to NYNEX-New York (NYNEX) and BellSouth based on apparently forged LOAs, resulting in the conversion of Altman's and DeBoe's telephone service from AT&T and WorldCom, respectively, to LDSI. The statements and information provided by Altman and DeBoe indicate that the LOAs were not executed by the complainants and that LDSI lacked the requisite authorization to request a PIC change to Altman's or DeBoe's long distance service. With regard to Altman's complaint, there is no similarity between the signature of Claire Haaga Altman on her driver's license and her purported signature on the LOA form that LDSI used as the basis for the PIC change submitted to NYNEX. Furthermore, Dr. Stan Altman, not his wife, is the subscriber to the phone service at issue. With regard to DeBoe's complaint, there is no similarity between the signature on either DeBoe's complaint or his driver's license and his purported signature on the LOA form that LDSI used as the basis for the PIC change submitted to BellSouth. Under these circumstances, we conclude that LDSI's apparent actions were in willful or repeated violation of the Commission's PIC change rules and orders and that a forfeiture penalty is appropriate.[28]

9. As a general matter, the unauthorized conversion of a customer's presubscribed long distance carrier continues to be a wide-spread problem in the industry.[29] We are particularly troubled by what appears to be a common practice by some IXCs of relying on unverified LOAs, which turn out to be falsified or forged, to effect changes in consumers' long distance service. The pervasiveness of the problem suggests that our current administration of the law has not produced sufficient deterrence to non-compliance and the carriers have little incentive to curtail practices that lead to consumer complaints. Furthermore, as a practical matter, the carriers' responses to alleged unauthorized conversion complaints rarely provide a detailed explanation or justification of the carrier's actions. Therefore, to draw industry's attention to the seriousness of the problem and to provide incentives to comply with the Commission's rules and orders, we intend to scrutinize consumer complaints and to take prompt enforcement action, including the

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[27] Notice of Informal Complaint No. IC-96-07879 (June 27, 1996).

[28] We also note that the LOA language on the "Official Registration Form and L.O.A." does not conform to Section 64.1150 of the Commission's rules. 47 C.F.R. § 64.1150.

[29] From January 1, 1995 to December 31, 1995, of the 33,191 informal complaints filed, 11,586 were for alleged unauthorized conversions of the customer's presubscribed long distance carrier.

imposition of substantial monetary fines, when the facts indicate that a carrier has failed to take the necessary steps to ensure that LOAs are valid and duly authorized. If carriers intend to rely on a LOA to request a PIC change, they will be responsible for ensuring its validity and its compliance with our rules designating proper LOA form and content.

10. Section 503(b)(2)(B) of the Communications Act authorizes the Commission to assess a forfeiture of up to one hundred thousand dollars ($100,000) for each violation, or each day of a continuing violation, up to a statutory maximum of one million dollars ($1,000,000) for a single act or failure to act.[30] In exercising such authority, the Commission is required to take into account "the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."[31] For purposes of determining an appropriate forfeiture penalty in this case, we regard the conversion of Altman's and DeBoe's telephone lines as two violations. After weighing the circumstances surrounding the violation, we find that LDSI is apparently liable for a forfeiture of forty thousand dollars ($40,000) for the unauthorized conversion of the Altman line and forty thousand dollars ($40,000) for the conversation of the DeBoe line, resulting in a total forfeiture of eighty thousand dollars ($80,000). LDSI will have the opportunity to submit evidence and arguments in response to this NAL to show that no forfeiture should be imposed or that some lesser amount should be assessed.[32] We will give full consideration to any financial information provided by LDSI before assessing a final forfeiture amount.

V. CONCLUSIONS AND ORDERING CLAUSES

11. We have carefully reviewed the information submitted in connection with Dr. Stan Altman's and Mr. Gerrold DeBoe's informal complaints and conclude that on or about July 12, 1996, and March 28, 1996, LDSI apparently converted or caused a local exchange carrier to convert Altman's and DeBoe's telephone lines without Altman's and DeBoe's authorization through the use of apparently forged LOAs. We further conclude that LDSI thereby apparently willfully or repeatedly violated Commission rules governing primary interexchange carrier conversions, and that its conduct warrants a forfeiture in the amount of eighty thousand dollars ($80,000).

12. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of Communications Act of 1934, as amended, 47 U.S.C. § 503(b), Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, and the authority delegated in Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Long Distance Services, Inc. and its affiliated companies ARE HEREBY NOTIFIED of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars ($80,000) for willful

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30 47 U.S.C. § 503(b)(2)(B).

31 47 U.S.C. § 503(b)(2)(D).

32 47 U.S.C. § 503(b)(4)(C); 47 C.F.R. § 1.80(f)(3).

of an Apparent Liability for Forfeiture in the amount of eighty thousand dollars ($80,000) for willful or repeated violation of the Commission's PIC change rules and orders.

13. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty days of the release of this Notice, Long Distance Services, Inc. or its affiliated companies SHALL PAY the full amount of the proposed forfeiture[33] OR SHALL FILE a response showing why the proposed forfeiture should not be imposed or should be reduced.

14. IT IS FURTHER ORDERED that a copy of this Notice of Apparent Liability for Forfeiture SHALL BE SENT by certified mail to Mr. Daniel Fletcher, President of Long Distance Services, Inc., 2117 L Street, N.W., No. 293, Washington, D.C. 20037 and P. O. Box 1597, Rowlett, Texas 75030.

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney

Regina M. Keeney
Chief, Common Carrier Bureau

[33] The forfeiture amount should be paid by check or money order drawn to the order of the Federal Communications Commission. Reference should be made on Long Distance Services. check or money order to "NAL/Acct. No. 716EF0003." Such remittances must be mailed to Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box. 73482, Chicago, Illinois 60673-7482.

ATTACHMENT 1

HAAGA, C 16 PARK AVE NEW YORK NY 10006 212-686-0312

OFFICIAL REGISTRATION FORM AND L.O.A.

SIGNATURE (REQUIRED) C Haaga DATE 1-11-96

PRINT NAME C. Haaga AGE 32

ADDRESS 16 Park Ave

CITY NY STATE NY ZIP 10006

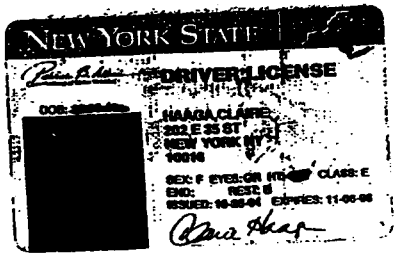
HOME PHONE (REQUIRED) (212) 686-0312

WORK PHONE (REQUIRED) (718) 352-7696

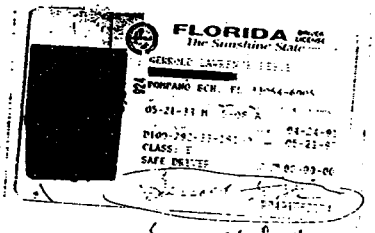
OA2657

I want to receive a Discount Calling Card which will be billed to my local telephone bill each month as a one call or other for any charges and monthly fee. I also authorize LOSER LOLDY Corporation ("corporation") and/or its assigned thereby, successively, to act as my agent in dealing with my local telephone company (local exchange carrier) and any long distance carrier for the implementation of communications services. I understand my local telephone company will charge a nominal fee to switch my long distance carrier and that these charges will be fully reimbursed by corporation upon receipt of my invoice. Each local exchange and/or long distance carrier is hereby instructed to make my customer service records and any other pertinent information available to corporation or me. I am eighteen or over and authorized for the phones above.

I also want to save money on consumer products/services and authorize DTC/CDC Monthly Discounts to initiate debit entries to my account and depository for up to ninety cents a day on a monthly basis. This authority is to remain in full force and effect until DTC/CDC Monthly Discounts and depository have received written notification from me of its termination in such time and in such manner as to afford both a reasonable opportunity to act on it.



ATTACHMENT
2



Sunshine DeBoe

as you can See this is mine

DEBOE, GERROLD 4141 NE 16TH AVE POMPANO BEACH FL 33064 954-785-4527

NOT This

OFFICIAL REGISTRATION FORM AND L.O.A

SIGNATURE(REQUIRED) Gerrold DeBoe DATE 2/2/5

PRINT NAME GERROLD DE BOE AGE 62

ADDRESS [redacted]

CITY POMPANO BCH. STATE FL ZIP 33064

HOME PHONE (REQUIRED) (954) 785-4527

WORK PHONE (REQUIRED) 074896 (954) 785-4527

I want to receive a Discount Calling Card which will be billed to my local telephone bill each month as card call or other for any charges and monthly fee. I also authorize LOSE to act as my agent in dealin with my local telephone company (local exchange carrier) and my long distance carrier for th implementation of communications services. I understand my local telephone company will charge nominal fee to switch my long distance carrier and that these charges will be fully reimbursed by LOSI upon receipt of my invoice. Each local exchange and/or long distance carrier is hereby instructed to mak my customer service records and any other pertinent information available to LOSE or me. I am eightee or over and authorized for the phones above.

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

In the Matter of	)	
	)	File No. ENF-97-04
Long Distance Services, Inc.	)	
	)	NAL/Acct. No. 716EF0003
Apparent Liability for Forfeiture	)	

ORDER OF FORFEITURE

Adopted: May 7, 1997 ; Released: May 8, 1997

By the Chief, Common Carrier Bureau:

1. On December 17, 1996, we released a Notice of Apparent Liability[1] in the above-captioned proceeding. We concluded therein that Long Distance Services, Inc. ("LDSI") or its affiliated companies[2] had apparently changed the primary interexchange carriers ("PICs") designated by Dr. Stan Altman ("Altman") of New York, New York and Gerrold DeBoe ("DeBoe") of Pompano Beach, Florida in violation of the Commission's rules and orders.[3] We found LDSI apparently liable for forfeiture in the amount of eighty thousand dollars ($80,000) for its willful or repeated violations of the Commission's rules and PIC-change requirements and allowed 30 days from the NAL's release date for LDSI to respond, either by paying the forfeiture

1 Long Distance Services, Inc., Notice of Apparent Liability for Forfeiture, DA 96-2102 (Com.Car.Bur. released Dec. 17, 1996) ("NAL").

2 A number of companies are currently incorporated under the name "Long Distance Services, Inc." This Notice concerns the company that was incorporated in the Commonwealth of Virginia on January 10, 1994 under the name "Long Distance Services, Inc.," and whose executive officer and/or registered agent is Daniel Fletcher. We also note that there appears to be a number of names under which Long Distance Services, Inc. marketed its services, such as "Long Distance Services of Virginia," "Charity Long Distance," and "Church Long Distance." Companies believed to be affiliated with LDSI are CCN, Inc., Church Discount Group, Discount Calling Card, Inc., Donation Long Distance, Inc., Monthly Discounts, Inc., Monthly Phone Services, Inc., and Phone Calls, Inc.

3 47 C.F.R. §§ 64.1100, 64.1150; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995), *recon pending*; Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd 1038 (1992), *recon. denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 911 (1985), *recon. denied*, 102 FCC 2d 503 (1985); Investigation of Access and Divestiture Related Tariffs, 101 FCC 2d 935 (1985). The unauthorized conversion of a customer's PIC is known in the industry as "slamming."

amount or explaining why the forfeiture should be reduced or not imposed at all. LDSI failed to provide any response to the NAL.

2. The facts and circumstances leading to the issuance of the NAL are recited therein and need not be reiterated at length. This proceeding was initiated by the Altman and DeBoe complaints, each of which alleged that LDSI had, without authorization, converted the PIC from the complainants' chosen long distance carrier to LDSI. Altman and DeBoe stated in their respective complaints that the letters of agency ("LOAs") used to switch the PICs to LDSI contained forged signatures and incorrect personal information. Subsequently, the Enforcement Division of the Common Carrier Bureau ("Bureau") sent letters to LDSI requesting that LDSI provide specific information regarding the allegations listed in the Altman and DeBoe complaints.[4] LDSI did not respond to the staff's request for the information. Based upon the information in the Altman and DeBoe complaints, the Bureau issued an NAL against LDSI pursuant to Section 503(b) of the Act,[5] for willful or repeated failure to comply with the Commission's PIC-change rules and orders.

3. In the absence of any information offered by LDSI identifying facts or circumstances to persuade us that there is any basis to reexamine the NAL, or mitigating circumstances sufficient to warrant a reduction of the $80,000 forfeiture penalty, the Bureau will enter a forfeiture for said amount against LDSI for its willful and repeated failure to comply with the Commission's PIC-change rules and orders.

4. Accordingly, IT IS ORDERED pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), Section 1.80(f)(4) of the Commission's rules, 47 C.F.R. § 1.80(f)(4), and the authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that Long Distance Services, Inc., or its affiliated companies, SHALL FORFEIT to the United States Government the sum of eighty thousand dollars ($80,000) for violating the Commission's rules and orders governing primary interexchange carrier conversions when it converted or caused a local exchange carrier to convert the Altman's telephone line on or about July 12, 1996, and the DeBoe's telephone line on or about March 28, 1996, without their authorization and through the use of apparently forged LOAs. Payment shall be made in the manner provided for in Section 1.80 of the Commission's rules within 30 days from the release of this Order.[6] If the forfeiture is not paid within the period specified, the case will be referred to the Department of Justice for collection pursuant to Section 504(a) of the Communications Act.[7]

4 Notice of Informal Complaint No. 96-16679 (September 17, 1996).

5 47 U.S.C. § 503(b).

6 47 C.F.R. § 1.80. Such forfeiture amount should be paid by check or mail order drawn to the order of the Federal Communications Commission. Reference should be made on Long Distance Service, Inc.'s check or money order to "NAL/Acct No. 716EF0003." Such remittance should be mailed to the Forfeiture/Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois, 60673-7482.

7 47 U.S.C. § 504(a).

5. IT IS FURTHER ORDERED that a copy of this Order of Forfeiture shall be sent by certified United States mail, return receipt requested, to Daniel Fletcher, Phone Calls, Inc. and Monthly Phone Services, Inc., 201 West Broad Street, Suite 181, Falls Church, Virginia, 22206, and to Daniel Fletcher, Long Distance Services, Inc., 2117 L Street, N.W., No. 293, Washington, D.C. 20037, and to Daniel Fletcher, P.O. Box 1597, Rowlett, Texas 75030.[8]

FEDERAL COMMUNICATIONS COMMISSION

Regina M. Keeney
Chief, Common Carrier Bureau

8 Because LDSI has not confirmed the accuracy of, or answered mail at, any of its many addresses, we are serving it at three of its most recently known addresses.

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

In the Matter of	)	
	)	
CCN, Inc.,	)	
Church Discount Group, Inc.,	)	
Discount Calling Card, Inc.,	)	
Donation Long Distance, Inc.	)	
Long Distance Services, Inc.,	)	
Monthly Discounts, Inc.,	)	
Monthly Phone Services, Inc., and	)	
Phone Calls, Inc.,	)	CC Docket No. 97-144
	)	
	)	
Order to Show Cause and	)	
Notice of Opportunity for Hearing	)	

ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING

Adopted: June 12, 1997; Released: June 13, 1997

By the Commission:

I. INTRODUCTION

1. In this Order to Show Cause and Notice of Opportunity for Hearing (hereafter, "Show Cause Order"), we initiate enforcement action against CCN, Inc., Church Discount Group, Inc., Discount Calling Card, Inc., Donation Long Distance, Inc., Long Distance Services, Inc.,[1] Monthly Discounts, Inc., Monthly Phone Services, Inc., and Phone Calls, Inc. (collectively, the "Fletcher Companies").[2] As discussed below, the information obtained as a result of the staff's investigation of numerous consumer complaints filed against the Fletcher Companies persuades

[1] A number of companies are currently incorporated under the name "Long Distance Services, Inc." This Show Cause Order concerns the company that was incorporated in the commonwealth of Virginia on January 10, 1994 under the name "Long Distance Services, Inc.," and whose executive officer and/or registered agent is Daniel Fletcher. We also note that there appear to be a number of names under which Long Distance Services, Inc. marketed its services, such as "Long Distance Services of Virginia," "Charity Long Distance," and "Church Long Distance."

[2] For purposes of this Order, the term "Fletcher Companies" includes any successors or assigns of the Fletcher Companies.

us that an evidentiary hearing is required to determine whether the operating authority of the Fletcher Companies should be revoked and whether the principal or principals of the Fletcher Companies[3] and the Fletcher Companies should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission.

II. BACKGROUND

2. The Fletcher Companies operate as common carriers subject to Title II of the Act. Specifically, the Fletcher Companies currently provide or have provided resale interstate long distance telecommunications services to consumers in various states around the country[4] including, but not limited to, Alabama, California,[5] Florida, Louisiana, Maryland, New York, Pennsylvania, and Virginia. Under the regulatory scheme established by the Act and the Commission's *Competitive Carrier* proceeding, the Fletcher Companies are classified as

[3] As discussed in more detail below, Daniel Fletcher appears to be the principal owner and operator of each of the Fletcher Companies. Other individuals who appear to be connected with the Fletcher Companies in some capacity as either principals or officers are Robert Motter and Sandra Plant.

[4] The Fletcher Companies have recently been the subject of enforcement actions in several states. On January 17, 1997, the Alabama Public Service Commission ("APSC") held a hearing to show cause why Phone Calls, Inc.'s certificate of public convenience and necessity should not be revoked for failure to comply with the rules and regulations established by the APSC. The APSC cited, among other things, numerous complaints received from consumers alleging that Phone Calls, Inc. had switched their long distance service providers without their authorization. No representative from Phone Calls, Inc. appeared at the hearing, and on February 3, 1997, the APSC entered an order revoking and cancelling Phone Calls, Inc.'s certificate, and directing Phone Calls, Inc. to cease and desist from providing telecommunications service intrastate in Alabama. *See* Order of Revocation, Alabama Public Service Commission, Feb. 3, 1997. Further, on January 15, 1997, the New York Public Service Commission ("NYPSC") took emergency action to suspend the intrastate operating certificate of Phone Calls, Inc. for 30 days pending a demonstration by the company that its certificate should not be permanently revoked. The NYPSC stated that pending final action, Phone Calls, Inc. may not acquire new intrastate customers, and that no telephone carriers may switch intrastate customers to Phone Calls, Inc. The NYPSC cited the growing number of consumer complaints charging that Phone Calls, Inc. had changed consumers' primary interexchange carriers without their authorization. *See* Press Release, New York Public Service Commission, Jan. 15, 1997. Additionally, on December 13, 1996, the Louisiana Public Service Commission held hearings concerning Phone Calls, Inc. and Charity Long Distance (*see supra* note 1). *See* Notices of Hearing, Louisiana Public Service Commission, Nov. 8, 1996. On December 2, 1996, the Illinois Public Service Commission revoked Phone Calls, Inc.'s intrastate operating authority for failure to file annual reports, and on August 23, 1996, the South Carolina Public Service Commission ordered Phone Calls, Inc. to show cause why its certificate of public convenience and necessity should not be revoked. *See* Order of Revocation, Illinois Public Service Commission, Dec. 2, 1996; Order Granting Rule to Show Cause, South Carolina Public Service Commission, Aug. 23, 1996.

[5] We note that on November 22, 1996, the Attorney General of California sent a letter to the Attorney General of Virginia, with a copy to the Commission, concerning several complaints from California consumers whose long distance service providers were changed by Long Distance Services, Inc. without the consumers' authorization. The Attorney General of California stated in his letter that Long Distance Services, Inc. had not responded to requests for information by law enforcement agencies. *See* Letter from Daniel E. Lungren, Attorney General, State of California, to Office of the Attorney General, Virginia, Nov. 22, 1996 (Attachment, Valerie Patterson, Informal Complaint, File No. 97-08268 (Dec. 4, 1996).

nondominant interexchange carriers.[6] As such, they are considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of Section 214 of the Act.[7] Accordingly, the Fletcher Companies may "construct, acquire, or operate" any transmission line for domestic telecommunications service without obtaining prior written authorization from the Commission.[8]

3. At all times relevant to this enforcement action, the Fletcher Companies were required to file and maintain with the Commission tariffs containing schedules of the charges, terms, and conditions of their common carrier offerings in the manner prescribed by Section 203

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[6] In the *Competitive Carrier* proceeding, the Commission distinguished two kinds of carriers -- those with market power (dominant carriers) and those without market power (nondominant carriers). *See* Policy and Rules Concerning Rates for Competitive Carrier Services and Facilities Authorizations Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980) (*First Report and Order*). In a series of orders issued in the *Competitive Carrier* proceeding, the Commission relaxed its tariff filing and Section 214 facilities authorization requirements for nondominant carriers, and focused its regulatory efforts on constraining the ability of dominant firms to act contrary to consumer welfare. *See* Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982); Order on Reconsideration, 93 FCC 2d 54 (1983) (*Second Report and Order*); Third Report and Order, 48 Fed. Reg. 46, 791 (1983) (*Third Report and Order*); Fourth Report and Order, 95 FCC 2d 554 (1983) (*Fourth Report and Order*), *vacated AT&T Co. v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *cert. denied, MCI Telecommunications Corp. v. AT&T Co.*, 509 U.S. 913 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Fifth Report and Order*); Sixth Report and Order, 99 FCC 2d 1020 (1985) (*Sixth Report and Order*), *vacated MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985) (collectively referred to as the *Competitive Carrier* proceeding).

[7] In the course of the *Competitive Carrier* proceeding, the Commission revised Section 63.07 of the Commission's rules to "authorize" any nondominant domestic interstate carrier to construct, acquire, or operate any transmission line so long as it obtained the necessary authorizations from the Commission for use of radio frequencies. 47 C.F.R. § 63.07; *Fifth Report and Order*, 98 FCC 2d at 1210. On occasion, this action has been referred to by the Commission as "blanket" or "automatic" authorization. *E.g., Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3280 (1995). In an order released on January 13, 1997, the Commission proposed to repeal Section 63.07 of the Commission's rules in light of its proposal to no longer require nondominant domestic interstate carriers to obtain Section 214 authorization for the construction, acquisition, or operation of new lines between domestic points, or for transmission over such lines. *See* Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996 (Section 214 -- Extensions of Lines), CC Docket No. 97-11, FCC 97-6 (rel. Jan. 13, 1997).

[8] In the *Second Report and Order*, the Commission found that the requirements of Section 214 as they applied to nondominant carriers did little to serve the purposes of the Act and actually deterred the introduction of innovative and useful services, as well as new market entrants. *See Second Report and Order*, 91 FCC 2d at 65. The Commission later concluded that market forces, together with the Section 208 complaint process and the Commission's ability to reimpose facilities-authorization requirements, were sufficient to protect the public interest. *Fourth Report and Order*, 95 FCC 2d at 578.

(a) of the Act and the Commission's rules and orders.[9] In addition, as common carriers, the Fletcher Companies are required by Section 413 of the Act to file with the Secretary of the Commission the name of a designated agent for service of all notices and process, orders, and requirements of the Commission, and by Section 416(c) of the Act to observe and comply with all Commission orders.[10]

4. The Commission has consistently emphasized the critical importance of enforcement through its complaint process to ensure that common carriers do not charge unjust and unreasonable rates, engage in unjust, unreasonable, or unreasonably discriminatory practices, or otherwise conduct their common carrier operations in a manner that may be harmful to consumers and to competition.[11] The Commission has established rules and procedures specifically designed to enable consumers to bring to the Commission's attention allegations of misconduct by carriers and to obtain relief from rates and practices found to be unlawful or otherwise contrary to the public interest.[12] Pursuant to these rules, the Common Carrier Bureau's

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[9] Section 10 of the 1996 Act provides the Commission with authority to forbear from applying the provisions of Title II, including the tariffing provisions, subject to certain, limited exceptions. On October 31, 1996, the Commission released the *Tariff Forbearance Order*, in which it adopted a complete detariffing policy for the domestic interstate, interexchange services of nondominant, interexchange carriers, pending a nine-month transition period. Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Second Report and Order, CC Docket No. 96-61, FCC 96-424 (rel. Oct. 31, 1996) (*Tariff Forbearance Order*), *stayed sub nom. MCI Telecommunications Corp. v. FCC*, Consolidated Cases 96-1459, 96-1477, 97-1009, Feb. 13, 1997; *recon. pending*. Because the alleged violations at issue in this proceeding predate the Commission's adoption of a complete detariffing policy, which in any event was stayed by the court, the Fletcher Companies were responsible for filing tariffs for all their domestic interstate, interexchange services.

[10] 47 U.S.C. §§ 413; 416(c). Section 416(c) states that "[i]t shall be the duty of every person, its agents and employees, and any receiver or trustee thereof, to observe and comply with such orders so long as the same shall remain in effect."

[11] *See, e.g., Tariff Forbearance Order* at para. 36 (noting that administration of the Section 208 complaint process should protect consumers from carrier rates and practices that violate Sections 201 and 202 of the Act); Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to be Followed When Formal Complaints are Filed Against Common Carriers, CC Docket No. 96-238, Notice of Proposed Rulemaking, FCC 96-460, para. 88, rel. Nov. 27, 1996 (*Formal Complaints NPRM*) (proposing rules of practice and procedure which, by providing a forum for prompt resolution of complaints of unreasonable, discriminatory, or otherwise unlawful conduct by telecommunications carriers, will foster robust competition in all telecommunications markets).

[12] Pursuant to Section 208 of the Act, any person has a right to complain to the Commission concerning "anything done or omitted to be done by any common carrier" subject to the provisions of the Act. Under the Commission's rules, such a complaint may be either "informal" or "formal." 47 U.S.C. § 208. In the recent *Formal Complaints NPRM*, discussed *supra*, the Commission proposed rule modifications to improve the speed and effectiveness of its formal complaints process. *See Formal Complaints NPRM*, *passim* (proposing changes to *inter alia*, Sections 1.720 -1.735 of the Commission's Rules, 47 C.F.R. §§ 1.720 - 1.735). The Commission's informal complaint rules and procedures are designed primarily to benefit consumers by requiring common carriers to respond promptly to complaints about rates, practices, or other conduct believed to violate the Act or our rules and orders.

("Bureau") Enforcement Division, upon receipt of a consumer complaint, routinely issues an "Official Notice of Informal Complaint" ("Official Notice") to all carriers identified in the complaint or that may, in the staff's view, assist in the resolution of the complaint. The Official Notice requires the common carrier to satisfy or answer the complaint and respond to the Commission's Official Notice with a written report, a copy of which must be sent directly to the complainant. The Official Notice also outlines the following consequences of failing to respond to the Official Notice within the time specified:

> Failure of any person to answer any lawful Commission inquiry is considered a misdemeanor punishable by a fine under Section 409(m) of the Communications Act, 47 U.S.C. § 409(m). Further, failure to comply with any order of the Commission can result in prosecution under Section 401(b) of the Act, 47 U.S.C. § 401(b). Section 501 of the Act, 47 U.S.C. § 501, and Section 503(b)(1)(B) of the Act, 47 U.S.C. § 503(b)(1)(B), provide for forfeiture penalties against any person who willfully fails to follow the directives of the Act or of a Commission order. The Commission can impose forfeiture penalties of up to $1,100,000 for certain types of violations.

A. Consumer Complaints Against the Fletcher Companies

5. In 1993, the Commission began receiving complaints from consumers alleging, *inter alia*, that certain of the Fletcher Companies had changed their primary interexchange carriers or "PICs" from their presubscribed carriers to one of the Fletcher Companies without their knowledge and authorization, a practice commonly referred to as "slamming."[13] Most of these complaints contain allegations that the Fletcher Companies used misleading and, in some cases, fraudulent, marketing practices in order to effect the unauthorized PIC changes. In particular,

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See Sections 1.716 - 1.718 of the Commission's Rules, 47 C.F.R. §§ 1.716 - 1.718. Recently, Commission staff have implemented internal changes designed to facilitate faster processing of informal complaints. *See, e.g.*, Public Notice, "Common Carrier Bureau Simplifies Process for Consumers' Slamming Complaints," DA 96-728, May 9, 1996.

[13] The Commission has long prohibited the practice of slamming, and has promulgated rules and issued orders designed to protect consumers from unauthorized PIC changes. *See* 47 C.F.R. §§ 64.1100 and 64.1150; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, 10 FCC Rcd 9560 (1995) (*LOA Order*), *recon. pending*; Policies and Rules Concerning Long Distance Carriers, 7 FCC Rcd 1038 (1992) (*PIC Change Order*); *recon. denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket 83-1145, Phase I, 101 FCC 2d 911 (1985) (*Allocation Order*); *recon. denied*, 102 FCC 2d 503 (1985) (*Reconsideration Order*); Investigation of Access and Divestiture Related Tariffs, Phase I, 101 FCC 2d 935 (1985) (*Waiver Order*). The Commission's PIC-change rules and orders require, among other things, that interexchange carriers ("IXCs") obtain signed letters of agency ("LOAs") or, in the case of telemarketing solicitations, complete one of four telemarketing verification procedures before submitting PIC-change requests to local exchange carriers ("LECs") on behalf of consumers. *See PIC Change Order*, 7 FCC Rcd at 1038-39. The Commission has initiated numerous enforcement actions against carriers found to have engaged in the practice of slamming. *See, e.g., Cherry Consent Decree*, 9 FCC Rcd 2086 (1994).

a number of consumers have provided information in their complaints[14] indicating that the Fletcher Companies converted their long distance service providers by submitting, directly or through marketing agents, forged or falsified letters of agency ("LOAs") to the local exchange carriers responsible for effecting the PIC changes.

6. In certain complaints filed against Phone Calls, Inc. ("PCI"), consumers allege that PCI not only converted their long distance providers to PCI without their authorization through the use of forged or falsified LOAs, but that PCI also billed them for long distance calls that they did not place to unfamiliar telephone numbers.[15] In some cases, complainants provided copies of telephone bills that contain charges for calls to numbers that the consumers claim were not working numbers.[16]

7. In still other complaints filed against Discount Calling Card ("DCC"), consumers allege that they were enrolled in a so-called "discount calling card service" offered by DCC, and assessed monthly fees for the service without their knowledge or authorization.[17] It appears that

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[14] *See, e.g.*, Patricia Day, Informal Complaint, File No. IS-96-15849 (Aug. 3, 1996) (The signature on the copy of the LOA that Day requested and received from U.S. Billing, the billing agent for many of the services provided by the Fletcher Companies, is a forgery according to Day and contains incorrect information regarding Day's age, zip code, and street name.); Johnny C. Johnson, Informal Complaint, File No. IC-96-07820 (June 12, 1996) (The copy of the LOA that Johnson obtained contains what appears to be the forged signature of Carla Parham, Johnson's former roommate. The printed name and signature on the LOA used to change Johnson's long distance telephone service is spelled "Carla Tarham."); Andy Gayford, Informal Complaint, File No. IS-96-11050 (Aug. 5, 1996) (The copy of the LOA Gayford obtained bears the printed name and signature of an individual named "Carl Shogren," whom Gayford cannot identify. The LOA also contains a phone number that had not been assigned to Gayford as of the date noted on the LOA, as well as an unfamiliar street address that lacks a house number.) Numerous other complaints describe circumstances in which consumers have been unable to determine which of the various Fletcher Companies was responsible for requesting the unauthorized changes in their long distance service providers. Typically, only the name of the billing agent for the Fletcher Companies appears on the consumers' telephone bills, and the billing agents have been either unable or unwilling to provide specific information about the identity or whereabouts of the carrier on whose behalf the bill was rendered. *See, e.g.*, Stephen R. Crosby, Informal Complaint, IC-96-12904 (Aug. 17, 1996) (Crosby's bill includes the name of U.S. Billing, a billing agent for the Fletcher Companies, but does not identify the company responsible for assessing the charges).

[15] *See, e.g.*, Rosemary A. Fleming, Informal Complaint, File No. IC-97-0829 (Dec. 19, 1996); Madeline Valdes, Informal Complaint, File No. IC-97-04240 (Nov. 25, 1996). We note that on December 16, 1996, the Louisiana Public Service Commission ("LPSC") issued a "Telephone Consumer Alert" concerning PCI's billing practices. The LPSC announced its investigation into numerous complaints by consumers about charges assessed by PCI for mysterious calls, usually two separate calls, about 32 days apart, to the same telephone number, at the same time of day, for 33 minutes each. For each of these calls, the bill totalled $9.86, and the amount owed to PCI for the two calls, including taxes, was $20.31. Apparently, none of these consumers placed the calls in question. The LPSC cautioned telephone customers to check their bills for October through December 1996 to ascertain whether they had been charged for any such calls. *See* Louisiana Public Service Commission Press Release, Dec. 16, 1996.

[16] *See, e.g.*, Madeline Valdes, Informal Complaint, cited *supra* note 15.

[17] *See, e.g.*, Harold Pierce, Informal Complaint, File No. IC-96-14353 (July 16, 1996).

these consumers were able to determine the existence of DCC and their involvement with the unauthorized charges only after contacting the billing agents listed on their telephone bills,[18] who would typically inform them that the discount calling card service fee had been billed on behalf of one of the Fletcher Companies.[19]

8. The complaints described in the paragraphs above are just examples of the numerous consumer complaints filed against the Fletcher Companies since 1993 that reflect a pervasive pattern of questionable business and marketing practices under the Commission's rules. In accordance with the rules and procedures described above, the Bureau's Enforcement Division forwarded each of the consumer complaints filed against the Fletcher Companies to the appropriate company with the requisite Official Notice.[20] Records maintained by the Bureau's Enforcement Division reveal that the Fletcher Companies failed to respond to the vast majority of the Notices issued by the staff. The Appendix to this Show Cause Order identifies those Official Notices that have not been responded to by various Fletcher Companies.

9. In the few instances in which the Fletcher Companies filed responses to the Commission's Official Notices, the responses were poorly prepared, failed to "satisfy" the complaints within the meaning of Sections 208 of the Act and 1.717 of our rules,[21] and otherwise fell far short of the information required by the staff to further investigate the complaints and make determinations about the carriers' compliance with the Act and our rules and orders. Generally, the responses contain what amount to vague denials of the complainants' allegations and convey virtually no specific information about the carriers' practices or about any facts and circumstances pertinent to the complainants' allegations. Moreover, the responses appear designed to further mislead the Commission and to frustrate the staff's efforts to obtain information about the Fletcher Companies and their practices toward consumers, rather than a legitimate attempt to resolve the complaints. For example, in June 1995, in response to an Official Notice concerning a slamming complaint filed by Israela R. Franklin of Rydal,

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[18] *See, e.g.*, Frances L. Olin, Informal Complaint, File No. IC-96-08602 (Mar. 4, 1996). Olin was "astounded and upset" when she reviewed her telephone bill and discovered that it included a charge from "Integretel," a billing agent for the Fletcher Companies, for $5.97 for a calling card that she had not ordered.

[19] *See, e.g.*, Jean T. Branno, Informal Complaint, File No. IC-95-19916 (June 19, 1995).

[20] Because none of the Fletcher Companies had filed with the Secretary of the Commission the name of a designated agent for service of Official Notices as required by Section 413 of the Act, the Commission served the Official Notices on business addresses gleaned from, among other things, inquiries made to LECs and to the Fletcher Companies' billing agents.

[21] 47 C.F.R. § 1.717. Section 1.717 provides in pertinent part:

> [T]he Commission will forward informal complaints to the appropriate carrier for investigation. The carrier will, within such time as may be prescribed, advise the Commission in writing, with a copy to the complainant, of its satisfaction of the complaint or its refusal or inability to do so ....

Pennsylvania, against CCN, Inc. ("CCN") on November 10, 1994,[22] CCN filed a letter signed by "Dan Fletcher," stating only that CCN had obtained the LOA that it relied upon to switch Franklin's long distance provider from an "independent marketing agency."[23] The letter does not identify the marketing agency involved; nor does it list a business address or telephone number at which Fletcher could be reached. Consistent with Fletcher's usual practice, the return address on the letter is merely a post office box.

10. Since June 1996, a number of Official Notices issued by the staff to the Fletcher Companies concerning consumer complaints have been returned to the Commission by the U.S. Postal Service marked "unclaimed," "moved," or "refused."[24] Starting in June 1996, the staff attempted repeatedly to contact representatives of the Fletcher Companies by telephone but was unable to complete calls to any of the telephone numbers designated by the Fletcher Companies. On August 20, 1996, an individual identifying himself as "Dan Fletcher," apparently aware of the staff's repeated efforts to contact him and his companies regarding the unresolved consumer complaints, left a voice mail message on the telephone line of an Enforcement Division staff member in which he represented that all Official Notices concerning complaints filed against the Fletcher Companies should be mailed to the following address: Long Distance Services, 2117 L Street, N.W., No. 293, Washington, D.C., 20037. The individual further stated that any Official Notices sent to this new address would be received and responded to promptly. Subsequently, the Commission mailed Official Notices to the address designated by Fletcher. To date, neither the Fletcher Companies nor Dan Fletcher himself have responded to any of these Official Notices either in writing or by telephone.[25]

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[22] Israela R. Franklin, Informal Complaint, File No. IC-95-02775 (Nov. 10, 1994). In reviewing her telephone bill, Franklin discovered that U.S. Billing, a company previously unknown to her, had billed her for long distance calls rather than Sprint Communications Company, her pre-selected long distance service provider. She contacted U.S. Billing and was told that CCN, a Fletcher Company "also known as Consumer Discount Group," was her new long distance provider. Neither CCN nor Consumer Discount Group was identified on Franklin's telephone bill.

[23] *See* Letter from Daniel Fletcher, CCN Long-Distance, to Israela R. Franklin (June 21, 1995). Most of the remaining responses were to complaints by consumers alleging that DCC had enrolled them in and charged them for a discount calling card service without their authorization. DCC's responses generally assert that the complainants at issue authorized and requested the calling cards, but contain no specific information to support DCC's assertions.

[24] *See, e.g.*, Notice of Informal Complaint of Richard Lavinthal, File No. IC-96-01338 (June 6, 1996); Notice of Informal Complaint of Patricia A. Jackson, File No. IC-96-28594 (Jan. 3, 1997); Notice of Informal Complaint of Jerry Suchy, Sr., File No. IC-97-02506 (Jan. 3, 1997).

[25] Based on the staff's investigation, the address provided in the voice mail message left by the individual identifying himself as "Dan Fletcher" is that of a mail drop location, "Mailboxes, Etc." *See infra* note 29. Representatives of Mailboxes, Etc. reported that the individuals who leased the mail drop on behalf of Long Distance Services failed to pay the requisite fees, and that consequently, Mailboxes, Etc. is no longer accepting mail on behalf of Long Distance Services. Recently, the staff obtained a new address at which to serve Official Notices of Informal Complaint filed against PCI and Monthly Phone Services, Inc.: 201 West Broad Street, Suite 181, Falls Church, Virginia, 22206. The staff mailed Official Notices relating to approximately 500 informal complaints to this address. Subsequently, the majority of these Notices were returned to the Commission marked either "moved, left no address"

11. In renewed efforts to reach principals of the Fletcher Companies regarding the growing number of consumer complaints, Enforcement Division staff obtained "Dun & Bradstreet" reports.[26] These reports reveal what is best described as a tangled web of corporate entities with Daniel Fletcher as the common thread. For example, "Daniel H. Fletcher" is listed in a report as the president of PCI, while "Daniel *M.* Fletcher" is listed in separate reports as the registered agent for Long Distance Services, Inc. ("LDSI") and DCC. According to the reports, some of the Fletcher Companies share the same business address, with certain of the companies indicating multiple business addresses. For instance, the reports list 3220 "N" Street, N.W., Suite 100, Washington, D.C., as a business address for PCI, LDSI,[27] and DCC.[28] Another address, 2200 Wilson Boulevard, Suite 102-H, Arlington, Virginia, is shared by PCI and Monthly Discounts, Inc.

12. The staff's investigation has disclosed that all of the addresses listed in the Dun & Bradstreet reports for the Fletcher Companies are mail drop locations rather than business locations maintained or operated by the Fletcher Companies.[29] Information contained in the Dun & Bradstreet reports reveals that in May 1996, a representative of PCI informed Dun & Bradstreet that it operated 5,000 square feet at the 3220 N Street, N.W., Washington, D.C. location[30] and that PCI employed 90 people.[31] Dun & Bradstreet advised the staff, however, that

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or "return to sender -- not at this address."

[26] Dun & Bradstreet, a corporation that provides business-to-business information and services for marketing and commercial credit and collections, maintains a business information database covering 41 million companies worldwide. Dun & Bradstreet's reports provide details about these companies to help customers assess business risks and opportunities.

[27] LDSI is also listed at 1728 Wisconsin Avenue, Suite 300, Washington, D.C. *See* Dun & Bradstreet Report, Oct. 25, 1994. According to Dun & Bradstreet, which no longer quotes a credit rating for LDSI, attempts in late 1994 to confirm that the company operated an active business at the Wisconsin Avenue address were unsuccessful. *Id.*

[28] Dun & Bradstreet reports indicate that although DCC described itself to Dun & Bradstreet being in the "retail gifts/novelties" business, no trade experiences had been reported to Dun & Bradstreet by vendors. *See id.* Nor, according to Dun & Bradstreet, did local area and business directories include listings for DCC. *Id.*

[29] The following addresses have been determined to be mail drop locations: 2117 L Street, N.W., #293, Washington, D.C., 20037; 3220 N Street, N.W., #100, Washington, D.C. 20007; 1718 M Street, N.W., #143, Washington, D.C., 20036; 1728 Wisconsin Avenue, N.W., #222 and #300, Washington, D.C., 20007; 1730 North Lynn Street, #A-09, Arlington, Virginia, 22209; 2200 Wilson Boulevard, #102-H and #303, Arlington, Virginia, 22201. We note that some of the other addresses obtained as a result of the staff's investigation are post office boxes, *e.g.*, P.O. Box 9169, Arlington, Virginia, 22199. The staff recently obtained a Letter from the Better Business Bureau of Washington, D.C., dated January 22, 1997, indicating that the Better Business Bureau had determined that all of the addresses used by the various Fletcher Companies are either post office boxes or belong to mail receiving/forwarding firms. The Fletcher Companies have apparently failed to respond to Better Business Bureau requests that they provide a *bona fide* physical location for their business operations.

[30] As noted in paragraph 11, *supra*, this address was also used by LDSI and DCC.

its investigation disclosed that the address provided to it by PCI and the other Fletcher Companies is simply a mail drop location. The reports obtained from Dun & Bradstreet further indicate that repeated efforts by Dun & Bradstreet representatives to contact PCI representatives regarding this information proved futile.[32]

13. Like the addresses described above, the telephone numbers provided by the Fletcher Companies have required Commission staff as well as consumers to maneuver a complex maze of interrelated companies in an effort to contact principals or representatives of the Fletcher Companies. Basil D. Hunt of St. Louis, Missouri, for example, asserts in his slamming complaint that even though his telephone bill identified PCI as the company that carried his long distance calls, he reached a company identifying itself as "Charity Long Distance" when he called the toll-free number on his bill to inquire about the unauthorized conversion of his long distance service provider.[33] Similarly, other consumers have been frustrated in their efforts to contact company representatives at purported customer service telephone numbers designated by the Fletcher Companies.[34] For example, numerous consumers report that the Companies' telephone numbers were not in service, while other consumers complain that the phone lines were continuously busy or went unanswered, despite ringing for minutes at a time.[35] In some instances, consumers were told to call or write to a customer service center in Rowlette, Texas. None of the consumers who called or sent correspondence to this center, however, received assistance with their complaints.[36]

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32 *See* Dun & Bradstreet Report, July 10, 1996.

33 *Id.* Information obtained from the Virginia State Corporation Commission indicates that PCI voluntarily terminated its corporate existence on October 11, 1996. We also note that according to the Virginia State Corporation Commission, DCC was terminated by the state of Virginia on September 1, 1996, for failure to pay the requisite fees and/or file an annual report. *See* Certificates, Virginia State Corporation Commission, Sept. 1, 1996; Oct. 11, 1996.

34 Basil D. Hunt, Informal Complaint, File No. IS-96-16959 (Aug. 14, 1996). *See also* Joanne Berke, Informal Complaint, File No. IS-96-13569 (Aug. 20, 1996) (Berke called a telephone number purportedly belonging to PCI, but was told that the responsible carrier was Charity Long Distance. Berke states that the designated number for Charity Long Distance was answered by a recording, but she could not leave a message because the voice mailbox was full.).

35 *See, e.g.*, Susan W. Kujawa, Informal Complaint, File No. IS-97-00636 (Oct. 7, 1996) (Kujawa called the toll-free number on her bill from PCI and reached a company identifying itself as Charity Long Distance. She called the same number a month later, and was informed that the name of the company was PCI.). Elizabeth A. Papazian, Informal Complaint, File No. IS-96-23715 (Apr. 1, 1996) (Papazian called the billing agent named on her telephone bill, Zero Plus Dialing, Inc. ("Zero Plus"), and was referred by Zero Plus to Consumer Discount Group and PCI, two of the Fletcher Companies.).

36 *See, e.g.*, Rosemary A. Fleming, Informal Complaint, cited *supra* note 15; Mark P. Rockmore, Informal Complaint, File No. IS-96-13629 (Aug. 5, 1996).

37 *See, e.g.*, Bruce E. Malcolm, Informal Complaint, File No. 97-08273 (Dec. 20, 1996).

B. The Fletcher Companies' Tariff Filing Practices

14. The staff's review of the files maintained by the Bureau's Competitive Pricing Division revealed that only two of the Fletcher Companies, DCC and PCI, had tariffs on file with the Commission at any time relevant to this proceeding. On November 29, 1994, DCC filed Transmittal No. 1 to introduce its Tariff F.C.C. No. 1, which established the rates, terms, and conditions for the provision of DCC's domestic calling card service within the United States.[37] On August 1, 1996, PCI, which was incorporated in the state of Virginia on December 27, 1995, filed its "Original Tariff F.C.C. No. 1" to establish the rates, terms, and conditions for the provision of domestic resale interexchange telecommunications service. Based on the Competitive Pricing Division's records and the complaints before us, however, it appears that PCI provided telecommunications service prior to August 2, 1996, the effective date of Tariff F.C.C. No. 1. For example, complainants Consuelo Guera of Manvel, Texas, and Basil D. Hunt of Saint Louis, Missouri, who allege that PCI switched their long distance providers from AT&T Corporation ("AT&T") to PCI without their authorization, received telephone bills indicating that PCI had carried their domestic long distance calls between March 31, 1996 and June 19, 1996,[38] prior to the effective date of PCI's Tariff F.C.C. No. 1.

15. Besides PCI and DCC, there are no indications that any other Fletcher Company has ever had a domestic tariff on file with the Commission. Nevertheless, the staff's investigation revealed that at least one Fletcher Company, LDSI, apparently provides or has provided domestic telecommunications service at rates not established by tariff, in violation of Section 203(a) of the Act.[39] For example, complainant Nisar Ahmad of Severna Park, Maryland, who asserts that LDSI switched his long distance provider from AT&T to LDSI without his authorization, submits a copy of a bill from LDSI for numerous domestic calls carried by LDSI between May 15 and May

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[37] DCC's Tariff F.C.C. No. 1, which became effective November 30, 1994, establishes the rates, terms, and conditions for the provision of DCC's domestic calling card service within the United States. The tariff provides that calling card service will be billed in one-minute increments plus a flat per-call charge; a monthly service fee also applies.

[38] Consuelo Guera, Informal Complaint, File No. IS-96-17786 (Sept. 9, 1996) (billed for calls made between May 6 and May 20, 1996); Basil D. Hunt, Informal Complaint, File No. IS-96-16959 (Aug. 14, 1996) (billed for calls made between June 6 and June 19, 1996).

[39] Section 203(a) provides in pertinent part:

> Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers ... and showing the classifications, practices, and regulations affecting such charges ....

23, 1996.[40] We note that even if LDSI, as one of the Fletcher Companies, could properly provide service pursuant to PCI's Tariff F.C.C. No. 1, that tariff did not become effective until August 2, 1996.

III. DISCUSSION

16. Under the pro-competitive, deregulatory framework established by the Act and the Commission's implementing rules and orders, nondominant carriers enjoy significant flexibility in their provision of telecommunications services and products. This flexibility, however, is balanced by the Act and our rules and orders with requirements designed to promote fair competition in all markets, and to ensure that consumers derive the full benefit of such competition and are otherwise protected against harmful rates and practices.[41] Slamming is one of the most prevalent types of illegal practices by common carriers.[42] The Commission has declared the practice of slamming through the use of forged or falsified LOAs to be particularly egregious because it undermines the competitive nature of the interexchange marketplace and deprives consumers of their right to select the services of particular interexchange carriers to satisfy their long distance service needs.[43] Carriers have been strongly admonished not to engage in slamming, and many have been the subject of enforcement actions, including significant forfeitures, when they have failed to heed the Commission's warnings.[44]

17. In the instant case, it appears that the Fletcher Companies are either unwilling or unable to conduct lawful common carrier operations -- even within the broad parameters established by the Act and our rules and orders governing nondominant carriers. Many of the consumer complaints described in this Show Cause Order involve allegations that one or more of the Fletcher Companies changed consumers' primary interexchange carriers without their authorization, in violation of the Commission's slamming rules and orders. The Commission's PIC-change rules and orders require, among other things, that interexchange carriers obtain signed LOAs or, in the case of telemarketing solicitations, complete one of four telemarketing

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[40] *See, e.g.*, Nisar Ahmad, Informal Complaint, File No. IS-96-16481 (Sept. 6, 1996) (providing copy of telephone bill showing numerous domestic calls carried by LDSI). *See also* Geraldine Wade, Informal Complaint, File No. 97-06034 (Nov. 18, 1996).

[41] *See, e.g.*, Section 201(b) of the Act; 47 C.F.R. Parts 32; 61, and 64.

[42] *See., e.g.*, Common Carrier Scorecard, Federal Communications Commission, Common Carrier Bureau, Enforcement and Industry Analysis Divisions, Fall 1996 (stating that during 1995, slamming was the number one consumer complaint category handled by the Enforcement Division's Consumer Protection Branch).

[43] *See, e.g.*, LDS, Inc. (not affiliated with Daniel Fletcher), Notice of Apparent Liability for Forfeiture, DA 96-2101(rel. Dec. 17, 1996).

[44] *See, e.g.*, Excel Telecommunications, Notice of Forfeiture, DA 96-1009 (rel. June 21, 1996).

verification procedures before submitting PIC-change requests to LECs on behalf of consumers.[45] Viewed together, the multitude of consumer complaints, most of which have gone unanswered by the Fletcher Companies, provide substantial evidence that the Fletcher Companies have ignored the PIC-change verification procedures prescribed under the Commission's rules and orders, and have also routinely submitted PIC-change requests to LECs based on forged or falsified LOAs.

18. To further compound the egregious nature of their slamming practices through the apparent use of forged or falsified LOAs and other misleading practices, the Fletcher Companies have failed to respond to, and in some cases refused to accept. Official Notices issued by the staff in response to consumer complaints. Our records show that LDSI, PCI, and DCC each failed to respond to at least 20 Official Notices of Informal Complaint and refused to accept numerous others.[46] The Fletcher Companies also failed to designate agents for the receipt of official notices, orders, or other correspondence issued by the Commission, as required by Section 413 of the Act. Moreover, it appears that Daniel Fletcher and the Fletcher Companies have deliberately acted to frustrate the staff's efforts to investigate consumer complaints and inquire into the Companies' practices by failing to provide legitimate business addresses or telephone numbers where Fletcher or his companies might be reached.

19. The Fletcher Companies' apparent failure to file tariffs to establish rates and charges for the common carrier service offerings that have been implicated in the numerous consumer complaints filed with the Commission, in violation of Section 203(a) of the Act, raises additional troubling questions about the operations of the Fletcher Companies. Files maintained by the Bureau's Competitive Pricing Division reflect that only two of the Fletcher Companies -- DCC and PCI -- have filed tariffs with the Commission.[47] Nevertheless, as evidenced by the numerous slamming complaints we have received, at least one Fletcher Company, LDSI, has provided domestic interexchange services without having appropriate tariffs on file with the Commission. In this regard, we note that although this Commission recently adopted a complete detariffing policy for the domestic services of nondominant, interexchange carriers,[48] the Fletcher Companies were nonetheless required to follow Section 203(a) of the Act concerning the filing of tariffs by nondominant carriers.

20. The totality of the information obtained as a result of the staff's investigation persuades us that an evidentiary hearing is required to determine whether the continued operation

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[45] *See PIC Change Order*, 7 FCC Rcd at 1038-39.

[46] *See* Appendix.

[47] Moreover, as stated *supra* note 37, DCC's tariff only establishes rates for domestic calling card service. PCI had a tariff on file for domestic interexchange service, but the company voluntarily terminated its corporate existence on October 11, 1996. *See supra* note 32.

[48] *See supra* note 9 (*citing Tariff Forbearance Order*).

of the Fletcher Companies as common carriers would serve the public convenience and necessity within the meaning of Section 214 of the Act. Further, the egregious nature of the Fletcher Companies' apparently unlawful common carrier activities and their demonstrated refusal to respond to official inquiries and correspondence from the Commission raise a reasonable likelihood of the defiance of a revocation order,[49] particularly under the deregulatory framework established by the Act and our rules and orders. Therefore, pursuant to Section 312(b) of the Act, the principal or principals of the Fletcher Companies and the Fletcher Companies will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued.[50]

21. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i), 214, and 312 of the Communications Act of 1934, as amended, the principal or principals of the Fletcher Companies ARE DIRECTED TO SHOW CAUSE why the operating authority bestowed on CCN, Inc., Church Discount Group, Inc., Discount Calling Card, Inc., Donation Long Distance, Inc., Long Distance Services, Inc., Monthly Discounts, Inc., Monthly Phone Services, Inc., and Phone Calls, Inc. pursuant to Section 214 of the Communications Act of 1934, as amended, and the Commission's *Competitive Carrier* proceeding should not be REVOKED.

22. IT IS FURTHER ORDERED that the principal or principals of the Fletcher Companies and the Fletcher Companies ARE DIRECTED TO SHOW CAUSE why an order directing them TO CEASE AND DESIST FROM THE PROVISION OF ANY INTERSTATE COMMON CARRIER SERVICES without the prior consent of the Commission should not be issued.

23. IT IS FURTHER ORDERED that the hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order, upon the following issues:

> (a) To determine the facts and circumstances surrounding the primary interexchange carrier changes made or requested by the Fletcher Companies that are the subject of various informal complaints listed in the Appendix to this Show Cause Order.

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[49] *See* Cease and Desist Order to be Directed Against Terrance R. Noonan, 67 FCC 2d 62, 64-65 (1977) (the issuance of an order restraining an individual from future unlicensed operations is not only authorized by Section 312(b) of the Act, but is also in the public interest based on facts and circumstances demonstrating reasonable likelihood of defiance of a revocation order).

[50] If, for example, it is determined that the serious concerns raised in this Show Cause Order are proven, the cease and desist order could preclude Daniel Fletcher and any other principal of the Fletcher Companies from holding an ownership interest in or exercising operational control over any common carrier - either directly or indirectly - without our prior consent.

(b) To determine the facts and circumstances surrounding Long Distance Services, Inc.'s, Phone Calls, Inc.'s. and Discount Calling Card, Inc.'s failure to accept and/or respond to Official Notices of Informal Complaint issued by the staff that are identified in the Appendix to this Show Cause Order, and the Companies' inadequate responses to certain Official Notices of Informal Complaint.

(c) To determine the facts and circumstances surrounding Long Distance Services, Inc.'s failure to file tariffs covering its interstate telecommunications service offerings during the period from May 1, 1996 to the present.

(d) To determine the facts and circumstances surrounding the Fletcher Companies' failure to file with the Secretary of the Commission the name of a designated agent for service of all notices and process, orders, and requirements of the Commission.

(e) To determine, in view of the evidence adduced on issues (a) through (d) above, whether any or all of the Fletcher Companies violated one or more of the following provisions of the Communications Act of 1934, as amended, and the Commission's rules: 47 U.S.C. §§ 203(a), 208(a), 413, and 416(c) and 47 C.F.R. §§ 1.717, 64.1100, and 64.1150.

(f) To determine, in view of the evidence adduced on the foregoing issues, whether the continued operation of the Fletcher Companies as common carriers would serve the public convenience and necessity.

(g) To determine, in view of the evidence adduced on the foregoing issues, whether the issuance of an order restraining the principal or principals of the Fletcher Companies and the Fletcher Companies from future provision of interstate common carrier services is in the public interest.

24. IT IS FURTHER ORDERED that the Chief, Common Carrier Bureau, shall be a party to the designated hearing. Pursuant to Section 312(d) of the Communications Act of 1934, as amended. both the burden of proceeding and the burden of proof shall be upon the Common Carrier Bureau as to issues (a) through (g) inclusive.

25. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be eard, the principal or principals of the Fletcher Companies, pursuant to Section 1.91(c) of the

Commission's Rules,[51] SHALL FILE with the Commission within 30 days of the mailing of this Show Cause Order a WRITTEN APPEARANCE stating that the Fletcher Companies' principals or other legal representative will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If the Fletcher Companies fail to file a written appearance within the time specified, the Fletcher Companies' right to a hearing SHALL BE DEEMED TO BE WAIVED. In the event the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, SHALL TERMINATE the hearing proceeding and CERTIFY this case to the Commission in the regular course of business, and an appropriate order shall be entered.

26. IT IS FURTHER ORDERED that, if it is determined that any or all of the Fletcher Companies have willfully or repeatedly violated any provision of the Act or the Commission's rules cited in this Show Cause Order, it shall further be determined whether an Order for Forfeiture shall be issued pursuant to: (1) Section 503(b) of the Communications Act of 1934, as amended,[52] in the amount of: (a) $15,000 for each unauthorized conversion of complainants' long distance service in violation of 47 C.F.R. §§ 64.1100 and/or 64.1150; b) $5,000 for each failure to respond to an Official Notice of Informal Complaint or inadequate response to an Official Notice of Informal Complaint in violation of 47 U.S.C. §§ 208(a) and 416(c) and 47 C.F.R. § 1.717; c) $1,000 for violation of 47 U.S.C. § 413; and (2) Section 203(e) of the Communications Act of 1934, as amended,[53] in the amount of $6,000 for each failure to comply with the requirements of 47 U.S.C. § 203(a), plus $300 for each and every day of the continuance of each such violation.

27. IT IS FURTHER ORDERED that this document constitutes a NOTICE OF OPPORTUNITY FOR HEARING pursuant to Section 503(b)(3)(A) of the Communications Act of 1934, as amended,[54] for violations of 47 U.S.C. §§ 208(a), 203(a), 413, and 416(c), and 47 C.F.R. §§ 1.717, 64.1100, and 64.1150.

28. IT IS FURTHER ORDERED that a copy of this ORDER TO SHOW CAUSE AND NOTICE OF OPPORTUNITY FOR HEARING shall be sent by certified mail, return

[51] 47 C.F.R. § 1.91(c).

[52] 47 U.S.C. § 503(b).

[53] 47 U.S.C. § 203(e).

[54] 47 U.S.C. § 503(b)(3)(A).

receipt requested, to Daniel Fletcher, Phone Calls, Inc., and Monthly Phone Services, Inc., 201 West Broad Street, Suite 181, Falls Church, Virginia, 22206.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Appendix

[illegible]	COMPLAINANT'S NAME	NOIC SENT	CARRIER
[illegible]	Netter, Susan	12/5/96	DCC
96-23996	Fuhrman, Ben J.	12/5/96	DCC
96-24942	Armstrong, Joseph D.	12/13/96	DCC
96-24950	Thompson, Mary	12/13/96	DCC
96-24965	Treatman, David	12/13/96	DCC
96-25028	Reddinger, Faye G.	12/13/96	DCC
96-25350	Paradise, Robert	12/13/96	DCC
96-25766	Pilgrim, Artentious	12/13/96	DCC
96-27201	Walker, Lily R.	12/20/96	DCC
96-27318	Worth, Jane H.	12/20/96	DCC
96-27544	Kemnitz, Gwyndolen T.	1/3/97	DCC
96-28543	Carlson, Susan M.	1/3/97	DCC
96-28594	Jackson, Patricia A.	1/3/97	DCC
96-28755	Madeira, Peggy	1/10/97	DCC
96-30634	Wilson, Donald E.	1/17/97	DCC
96-33753	Iparraguirre, Alicia	2/7/97	DCC
96-34403	Garcia, Donna C.	2/21/97	DCC
97-02495	Thompson, Mark	1/3/97	DCC
97-05732	Kannengiesser, Virginia	1/31/97	DCC
97-08321	Ahmed, Taslim	2/21/97	DCC
96-02938	Steven G. Zahn	7/30/96	LDS
96-07820	Johnson, Johnny C.	6/12/96	LDS
96-11050	Gayford, Andy	7/29/96	LDS
96-12904	Crosby, Stephen R.	8/27/96	LDS
96-15849	Day, Patricia	9/10/96	LDS
96-16841	Ahmad, Nisar	9/17/96	LDS
96-26049	Hayes, William	12/10/96	LDS
96-26362	Rewega, Wayne K.	12/10/96	LDS
96-31155	Peachey, Ruth Ann	1/24/97	LDS
96-31249	Olausson, Steffan	1/24/97	LDS
96-31772	Marino, Luis Gustavo	1/24/97	LDS
96-31787	Bauchiero, Carlos R.	1/24/97	LDS
96-31802	Hiller, Catherine T.	1/24/97	LDS
96-33040	Shein, Dina	2/7/97	LDS
96-33055	Li, Yen	2/7/97	LDS
96-33067	Baron, Luis F.	2/7/97	LDS
96-33068	Salmans, Gloria	2/7/97	LDS
96-33138	Coviensky, Matilda & Moe	2/21/97	LDS
96-33164	Fisher, Leona M.	2/26/97	LDS
96-33725	Rosen, Robert R.	2/7/97	LDS
97-02506	Suchy, Jr. Jerry	1/3/97	LDS
96-31769	Bridge, Patti T.	1/24/97	PCI
96-31832	Allcock, Esther	1/24/97	PCI
96-33046	Bennett, Diane S.	2/7/97	PCI

Customer Service and Support Center
Specialized Markets

Room 2B
5000 Hadley Rd.
So. Plainfield, NJ 07080
1 800 251-0103
FAX: 908 668-3464

April 9, 1996

Mr. Daniel Fletcher
1728 Wisconsin Ave
Ste. 300
Washington, DC 20007

Dear Mr. Fletcher,

We are very concerned about the unprecedented volume of orders you have submitted on your SDN plan MCN 160990 that you have forwarded to AT&T via electronic mail since March 1, 1996. During March alone, you submitted in excess of 35,000 orders, which is more than three times the number of orders that you submitted on a per month basis in January and February of this year, and in excess of the total number of orders that you submitted in all of 1995. Most of these orders appear to be residential in nature, which is unusual for SDN. Beyond mere volume, however, we are concerned regarding whether or not proper authorization as required by the FCC's rules for changing an end-user's primary interexchange carrier were followed with respect to these orders. We are also concerned that this huge number of orders may have taken quite some time to amass that any authorization that was obtained is now too aged.

As you know, you must be prepared to show AT&T (as the underlying carrier) a copy of the applicable Letters of Agency ("LOA") as proof of proper authorization if we so request. We wish to minimize your administrative burden, however, and in lieu of requesting a copy of the LOA which corresponds to each order we therefore request that you provide (as representative sample) within five (5) business days the original LOA's executed by end-users with respect to the following subset of orders:

MCN 160990
96CCN1251ND
1252
1253
1254
1255
1256
1257
1258
1259
1260

Please note, however, that if the requested LOA's are not submitted within the stated time frame, the orders will be rejected as unauthorized. Once submitted, the LOA's will be reviewed promptly for compliance with the FCC rules and you will be advised of the result of that review.

Sincerely,

Suzanne Sendrakowski

Suzanne Sendrakowski
Manager

cc: C. Williams, Jr

Long Distance Services, Inc.
3220 N Street, NW, Suite 100
Washington, DC 20007

Senate Permanent Subcommittee on Investigations
EXHIBIT # 25b

TO: Rod Hall, AT&T
FROM: Daniel Fletcher
DATE: April 9, 1996
RE:

Dear Rod:

Per our conversation yesterday, our CPA's and investment bankers need verification of the number of customers/BTN's which we have transmitted to AT&T since March 1, 1996 (our records indicate 540,000+, with another 95,000 or so coming today). They do not need the number of orders processed, just transmitted.

They also need verification of the number of customers/BTN's we transmit to AT&T each week for the next few weeks only, to establish an average/track record of our growth.

Please FedEx this verification letter to me at the address above as soon as possible. Please call me at 202-973-2197 first to discuss, etc., as we discussed.

Sincerely,

Daniel Fletcher

Daniel Fletcher
President
202-973-2197
703-243-9799 (FAX)

*** FAXED to 908-668-6139 ... Page 1 of 1 ***

Long Distance Services, Inc.
3220 N Street, NW, Suite 100
Washington, DC 20007

TO: Suzanne Sendrakowski, AT&T S.M.D.
FROM: Daniel Fletcher
DATE: 4/9/96
RE: 1,000 Requested LOA's

Dear Ms. Sendrakowski:

Enclosed are the Letters of Agency (LOA's) which you have requested. For the sake of time and space, they have been printed two-per-page.

Please call to confirm your receipt hereof and to update me as to what PNR/batch number AT&T (Front End Center) has processed of the 5,505 which we have transmitted as of today.

Sincerely,

Daniel Fletcher
President

Enclosures

Via Federal Express Overnight Delivery to:

Suzanne Sendrakowski
AT&T S.M.D.
5000 Hadley Road, Room 2-A-89
South Plainfield, NJ 07080

(908) 668-3637

BARR, MICHELE RR 2 BOX 204 HILLSVILLE VA 24343 540-398-2477

OFFICIAL REGISTRATION FORM AND L.O.A

SIGNATURE (REQUIRED) Michele Barr DATE 2-9-96

PRINT NAME MICHELE BARR AGE 28

ADDRESS Rt 2 Box 204

CITY Hillsville STATE VA ZIP 24343

HOME PHONE (REQUIRED) (5 4 0) 3 9 8 - 2 4 7 7

043177 WORK PHONE (REQUIRED) (5 4 0) 9 5 2 - 2 1 3 1

I want to receive a Discount Calling Card which will be billed to my local telephone bill each month as a card call or other for any charge and monthly fee, and subsequently for DOS's 10XXX and/or 800-0+ service accordingly. I also authorize LOSE/ILD/LDW (hereinafte "companies") and/or as assigned thereby, successively, to act as my agent in dealing with my local telephone company (local exchang carrier) and my long distance carrie: for the implementation of communications services. I understand my local telephone coreper will charge a nominal fee to switch my long distance carrier and that these charges will be fully reimbursed by companies upon recei of my invoice. Each local exchange and/or long distance carrier is hereby instructed to make my customer service records and an other pertinent information available to companies or me. I am eighteen or over and authorized for the phones above.

I also want to save money on consumer products/services and authorize DTC/CDC/Monthly Discounts to initiate debit entries to m account and depository for up to thirty cents a day on a monthly basis. This authority is to remain in full force and effect until DTC/CDC Monthly Discounts and depository have received written notification from me of its termination in such time and in such manner as t afford both a reasonable opportunity to act on it.

We will notify you at the HOME PHONE # above or by mail. LIMIT ONE (1) L.O.A. PER HOUSEHOLD

JONES, FARON RR 2 BOX 288-B CANA VA 24317 703-755-4709

OFFICIAL REGISTRATION FORM AND L.O.

SIGNATURE (REQUIRED) Faron R. Jones DATE 1-29-96

PRINT NAME Faron R. Jones AGE 32

ADDRESS Rt. 2 Box 288-B

CITY CANA STATE VA ZIP 24317

HOME PHONE (REQUIRED) (7 0 3) 7 5 5 - 4 7 0 9

043173 WORK PHONE (REQUIRED) ( ) -

I want to receive a Discount Calling Card which will be billed to my local telephone bill each month as a card call or other for any ch and monthly fee, and subsequently for DOS's 10XXX and/or 800-0+ service accordingly. I also authorize LOSE/ILD/LDW (hereina "companies") and/or as assigned thereby, successively, to act as my agent in dealing with my local telephone company (local exch carrier) and my long distance carrier for the implementation of communications services. I understand my local telephone cor will charge a nominal fee to switch my long distance carrier and that these charges will be fully reimbursed by companies upon r of my invoice. Each local exchange and/or long distance carrier is hereby instructed to make my customer service records an other pertinent information available to companies or me. I am eighteen or over and authorized for the phones above.

I also want to save money on consumer products/services and authorize DTC/CDC/Monthly Discounts to initiate debit entries account and depository for up to thirty cents a day on a monthly basis. This authority is to remain in full force and effect until DTC Monthly Discounts and depository have received written notification from me of its termination in such time and in such manner afford both a reasonable opportunity to act on it.

[illegible] HOME PHONE # [illegible] LIMIT ONE (1) L.O.A. PER HOUSEH

Senate Permanent Subcommittee on Investigations
EXHIBIT # 25d

Long Distance Services, Inc.
3220 N Street, NW, Suite 100
Washington, DC 20007

cc. Carl Williams

~~TO: Suzanne Sendrakowski, AT&T~~
FROM: Daniel Fletcher
DATE: April 12, 1996
RE:

Dear Suzanne:

We still have not received the letter which you said you overnighted on Tuesday. Please fax a copy of same to me at 703-243-9799 sometime today. You also might want to verify that you are sending letters to the correct address, indicated above.

Secondly, we appreciate the verbal notification that AT&T has decided to reject all orders/PNR's after 96CCM1247; however, be sure to provide us with written notification of said decision. Be aware that of the approximately 6,000 PNR's sent to AT&T, only a fraction thereof (5% or so) had the "extended" L.O.A. Unless there is another reason for AT&T's decision not to process our orders, you need to indicate such in writing.

Sincerely,

Daniel Fletcher
President

cc: Carl Williams

*** Page 1 of 1 ***

Charlie,
This was not communicated to the customer.
I indicated that we would reject all orders if LOAs were not provided. The customer subsequently told us to cease proceedings, as you know.
Please advise how to proceed.
Thank you -
Suzanne

FEB-23-98 MON 14:31 FAX NO. 99036109 P.08

P.01

(6)

Long Distance Services, Inc.
3220 N Street, NW, Suite 100
Washington, DC 20007

cc: Carl Williams
~~TO: Suzanne Sendrakowskiy AT&T~~
FROM: Daniel Fletcher
DATE: April 12, 1996
RE:

Dear Suzanne:

We still have not received the letter which you said you overnighted on Tuesday. Please fax a copy of same to me at 703-243-9799 sometime today. You also might want to verify that you are sending letters to the correct address, indicated above.

Secondly, we appreciate the verbal notification that AT&T has decided to reject all orders/PNR's after 96CCR1247; however, be sure to provide us with written notification of said decision. Be aware that of the approximately 6,000 PNR's sent to AT&T, only a fraction thereof (5% or so) had the "extended" L.O.A. Unless there is another reason for AT&T's decision not to process our orders, you need to indicate such in writing.

Sincerely,

Daniel Fletcher
President

cc: Carl Williams

* Page 1 of 1 ***

Senate Permanent Subcommittee on Investigations
EXHIBIT # 25e

Faxed 4/16/96

AT&T

April 16, 1996

Mr. Daniel Fletcher
Long Distance Services, Inc.
3220 N Street NW Suite 100
Washington, DC 20007

Dear Daniel,

This will confirm the voice mail message I left for you on Thursday, April 11 and will also respond to your memo to Rod Hall dated April 9.

AT&T has received request to advise your CPAs and investment bankers the number of orders submitted by Long distance Services, Inc. to AT&T. We are puzzled by that request since you instructed AT&T not to process any orders submitted by Long Distance Services. Furthermore, since you have instructed AT&T to reject all of your orders, an undetermined number of orders are backlogged in attmail and will not be detached. We will begin the process of returning those orders to you once we have received your instructions in writing.

AT&T is not in a position to advise your CPAs and investment bankers of any order-related figure.

Please call me on 908-668-3637 if you have any questions.

Sincerely,

Suzanne Sendrakowski

Suzanne Sendrakowski
Center Manager

cc: C. Williams
R. Saunders

AT&T

April 16, 1996

Mr. Daniel Fletcher
Long Distance Services, Inc.
3220 N Street NW Suite 100
Washington, DC 20007

Dear Daniel,

This will confirm your response to my letter of April 9, 1996 and your subsequent conversations Rod Hall and myself. You provided in response to my letter copies of approximately 1,000 Letters of Agency ("LOA") forms entitled "Registration Form and L.O.A." which appear to have previously been scanned into a database and then reproduced. This is not sufficient for proof of authorization purposes because the FCC rules provide that the LOA form may not be combined with any sort of commercial inducement. Furthermore, the size and font of the print constituting the authorizing language must be comparable to that of any associated commercial inducement. We are concerned that in the absence of the forms actually signed by the end-users, we cannot meaningfully ascertain whether or not these rules were followed. You have, nevertheless, refused to provide the actual LOA's and in lieu of producing them have stated that you will provide us with a letter directing us to reject and return your orders so that you may provision them with another carrier. We await your letter and pursuant to your instructions will process no further orders until we receive it.

We are, in any event, concerned regarding the content of the reproduced LOAs that you did provide to AT&T. Designation of this document as an "Official Registration Form and L.O.A." appears to violate the FCC rule that the LOA not be combined with any sort of commercial inducement. Furthermore, the LOA does not clearly inform the subscriber that it is authorizing a change in its primary interexchange carrier and does not clearly identify the carrier to which the switch is being made.

Finally, the last paragraph of the LOA appears to contain a commercial inducement of some sort ("I also want to save money on consumer products/services...."), and is again in violation of the rule that all such inducements be separate or severable from the LOA itself.

Please call me on 908-668-3637 if you would like to discuss this matter.

Sincerely,

Suzanne Sendrakowski

Suzanne Sendrakowski
Center Manager

cc: C. Williams

AT&T

April 25, 1996

Daniel Fletcher
Long Distance Services, Inc.
3220 N. Street NW
Suite 100
Washington, DC 20007

Dear Daniel,

This letter is in response to your memo dated 4/23/96 which I received today.

Per your instructions and confirmed in my letter dated April 16, AT&T has rejected all orders sent by Long Distance Services. Since you did not respond to the faxes I sent you, my request for original LOAs or my telephone messages, we have begun the process of returning those orders to you. The last PNR/Batch processed was 96CCN1247ND(dated), 96CCN4768ND(numerically).

Please call me on 908-668-3637 if you have any questions.

Sincerely,

Suzanne Sendrakowski
Center Manager

cc: C. Williams

AT&T

795 Folsom Street
San Francisco, California 94107-12
Phone 415 442-2600

July 24, 1996

Mr. Daniel Fletcher, President
Long Distance Services, Inc.
3220 N Street, Suite 100
Washington, D.C. 20007

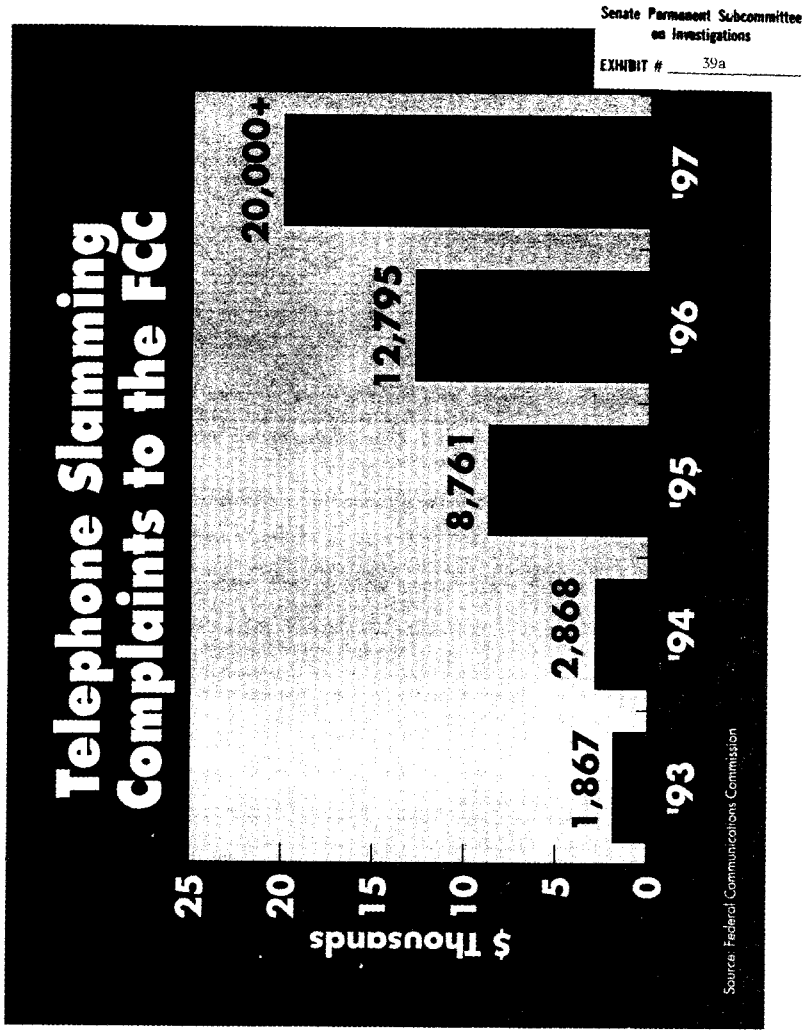
Dear Daniel:

I am responding to your fax of July 18, 1996, regarding the LOA issue. Over the course of our discussion on this, I have provided you with information from the FCC Common Carrier Docket No. 94-129 on the essential elements contained in the LOA. I suggested you obtain a copy of it and review it with your legal counsel to determine your obligations as a reseller.

It is not, however, AT&T's responsibility to render an opinion on whether or not your LOA meets the requirements of the FCC docket. At this time, AT&T trusts that you will be complying with those requirements unless there is evidence to the contrary. As I indicated in my letter to you of July 8, 1996, AT&T continues to reserve the right, as your underlying carrier, to demand proper proof of authorization from your end-users, where appropriate, and to decline to process orders for which such proof is not forthcoming.

Sincerely,

Sharon L. De Mills
AT&T Account Manager
Specialized Markets Division


Senate Permanent Subcommittee on Investigations
EXHIBIT # 39a
Telephone Slamming Complaints to the FCC
$ Thousands
25
20
15
10
5
0
1,867
2,868
8,761
12,795
20,000+
'93
'94
'95
'96
'97
Source: Federal Communications Commission

Senate Permanent Subcommittee on Investigations
EXHIBIT # 39b

PSI Communications, Inc.
11654 Plaza America Drive, Suite 320
Reston, Va 20190

1/24/98

FEDERAL COMMUNICATIONS COMMISSION OFFICE OF SECRETARY
JAN 20 '98

January 20, 1998
BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Common Carrier Bureau

Dear Mr. Canton:

The accompanying tariff material, issued by PSI, Communications, Inc. is sent to you for filing in compliance with the Communications Act of 1934, as amended. the material contained in this filing consists of tariff pages as indicated by the check sheets listed below:

FCC Tariff No. 1 introduce's PSI Communications, Inc.'s domestic interstate message telecommunications services.

In accordance with Commission guidelines for domestic non-dominant carriers, Tariff FCC no. 1 is filed on a 3 1/2" disk in Word Perfect 5.1 format.

In accordance with Section 61.20(b) of the Commission's Rules, this original letter, FCC Remittance Advice Form and the appropriate fee were sent via overnight delivery on this date to the FCC in care of the Mellon Bank, Pittsburgh, Pennsylvania. Please acknowledge receipt of this transmittal and filing fee by returning a date-stamped copy of the enclosed duplicate of this cover letter in the self addressed stamped envelope provided for this purpose.

In accordance with Section 61.20(c) of the Commission Rules, copies of this letter and the underlying tariff pages on diskette were also sent this date via overnight delivery to the Chief-Tariff Review Branch and the FCC Contractor

Please address any inquiries or further correspondence regarding this filing to my attention at PSI Communications Inc., 11654 Plaza America Drive, Suite 320, Reston, Va. 20190, Telephone (703) 740-0613.

Yours truly,

Ron Ryan
Consultant to
PSI Communications, Inc.

Enclosures Tariff on 3.5" Diskette (Tariff FCC No. 1)

cc: Chief, Tariff Review Branch (diskette)

PUBLIC NOTICE

Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

News media information: (202) 418-0500 Recorded listing of releases and texts: (202) 418-2222 Unofficial

TARIFF TRANSMITTAL
PUBLIC REFERENCE LOG

This is an unofficial list of tariff transmittals (and relatedinformation) received by the OPA-ROD, Tariff Public Reference Room, and is available for inspection and copying along with the transmittals in the Public Reference Room (Room 250).This list is prepared for staff use and released for the convenience of the public. The Commission does not guarantee the completeness or accuracy of this list. Any questions should be referred to the Public Reference Room at (202) 418-1933.

NON-DOMINANT

ISSUED	CARRIER	FILING#	TRANS#	FCC#	EFFDATE	#DISK	#CD	#PAGES	NTC	61.38	61.49	PUS	PETN-DUE	S
1/20/98	PSI COMM., INC.	1		1	1/21/98	1		1	1	0	0	LJB		

SYNOPSIS

THE ALL NEW MUSTANG CONVERTIBLE

OR $20,000 IN CASH!

SAVE up to 50%!

Members Receive

"CONSUMER SAVINGS"

GROCERIES - HOTEL/MOTEL
CRUISES - VACATION CONDOS
ELECTRONICS - LOWEST AIR FARES

BONUS - SAVE UP TO 30% ON
LONG DISTANCE CALLING CARD CALLS!

AND RECEIVE HIGH QUALITY TV SERVICE!

SAVE up to 50%!

Must be over 18 -. Void Where Prohibited - No Purchase Necessary to Register

•••••• THIS IS NOT A CONTEST OR SWEEPSTAKES ••••••

SPONSORED BY DTC


Register Here
CHEROKEE GIVEAWAY
OR $20,000 IN CASH!
SAVE 50%!
BONUS
SAVE 50%!

PILOT MOUNTAIN NC 27041

OFFICIAL REGISTRATION FORM AND L.O.A.

SIGNATURE (REQUIRED) [redacted] DATE 1-26-96

PRINT NAME [redacted] AGE 47

ADDRESS [redacted]

CITY PILOT MOUNTAIN STATE NC ZIP 27041

HOME PHONE (REQUIRED) ([redacted]) [redacted]

051736

WORK PHONE (REQUIRED) ([redacted]) [redacted]

I want to receive a Discount Calling Card which will be billed to my local telephone bill each month as a card call or other for any charges and monthly fee, and subsequently for DOS's 10XXX and/or 800-0+ service accordingly. I also authorize LOSE/ILD/LDW (hereinafter "companies") and/or as assigned thereby, successively, to act as my agent in dealing with my local telephone company (local exchange carrier) and my long distance carrier for the implementation of communications services. I understand my local telephone company will charge a nominal fee to switch my long distance carrier and that these charges will be fully reimbursed by companies upon receipt of my invoice. Each local exchange and/or long distance carrier is hereby instructed to make my customer service records and any other pertinent information available to companies or me. I am eighteen or over and authorized for the phones above.

I also want to save money on consumer products/services and authorize DTC/CDC/Monthly Discounts to initiate debit entries to my account and depository for up to thirty cents a day on a monthly basis. This authority is to remain in full force and effect until DTC/CDC/ Monthly Discounts and depository have received written notification from me of its termination in such time and in such manner as to afford both a reasonable opportunity to act on it.

Senate Permanent Subcommittee on Investigations

EXHIBIT # 39e

Phone Calls

ACCT NUMBER
JULY 11, 1996
DETAIL OF CHARGES — PAGE 14

NO	DATE	TIME	PLACE CALLED	AREA	NUMBER	*-	MIN	AMOUNT
7	6 6	747PM	KIRKSVILLE MO			E	59.0	29.20 #
8	6 6	918PM	UNIONVILLE MO			E	19.0	9.60 #
9	6 7	534PM	WEIRTON WV			E	3.0	1.76
10	6 9	134PM	STUART FL			N	7.0	3.72
11	6 9	232PM	STUART FL			N	2.0	1.27
12	6 19	530PM	KIRKSVILLE MO			E	23.0	11.56 #

TOTAL ITEMIZED CALLS FOR PHONE CALLS **98.05**

Phone Calls

ACCT NUMBER
JULY 11, 1996
DETAIL OF CHARGES — PAGE 13

SUMMARY OF CHARGES FOR PHONE CALLS

ITEMIZED CALLS (SEE DETAIL)	98.05
CHARGES BEFORE TAXES	98.05
FEDERAL TAX	2.94
STATE AND LOCAL TAXES	5.35
TOTAL	**106.34**

PHONE CALLS BILLING INQUIRIES 1-800-204-4100

ITEMIZED CALLS FOR PHONE CALLS

NO	DATE	TIME	PLACE CALLED	AREA	NUMBER	*-	MIN	AMOUNT
1	5 29	546PM	KIRKSVILLE MO			E	9.0	4.70 #
2	5 29	910PM	UNIONVILLE MO			E	7.0	3.72 #
3	6 1	1217PM	UNIONVILLE MO			E	17.0	8.62 #
4	6 2	950PM	NEVADACITY CA			E	17.0	8.62
5	6 4	651PM	COLUMBIA MO			E	9.0	4.70 #
6	6 5	935PM	LANCASTER MO			E	21.0	10.58 #

- See Reverse

US Billing Inc charges November 19, 1995

This portion of your bill is provided as a billing service for US Billing Inc. US Billing Inc. is a billing agent for long distance service providers. Toll charges are computed based upon the rate schedule of the long distance toll service provider whose name is printed above the call or group of calls shown below in the toll detail section of the bill.

US Billing Inc toll charges

No.	Date	Time	Call type	Place	Number	Minutes	Cost	T
LongDistanceServices								
1	Oct 27	4:02PM	Day	To ATLNTIC CY NJ		1	.78	A
2	Oct 27	7:01PM	Evening	To ATLNTIC CY NJ		1	.78	A
3	Oct 28	10:18AM	Nite/wknd	To ATLNTIC CY NJ		1	.78	A
4	Oct 28	1:13PM	Nite/wknd	To ATLNTIC CY NJ		4	2.25	A
5	Oct 28	1:27PM	Nite/wknd	To ATLNTIC CY NJ		4	2.25	A
6	Oct 29	10:56AM	Nite/wknd	To WPALMBEACH FL		21	10.58	A

Continued

COMPANIES SERVED WITH MORE THAN 210 FCC SLAMMING COMPLAINTS IN 1997*

Carrier	Complaint Ratio**	Number of Complaints
LDM Systems, Inc.	16.86	489
Long Distance Services (MI)	15.32	1670
Trans National Telephone	10.00	1090
American Business Alliance	8.13	886
Heartline Communications	7.03	766
Minimum Rate Pricing	5.50	600
Long Distance Services VA)	5.19	566
Equal Net Corporation	4.30	262
Brittan Communications	4.06	443
The Furst Group	4.02	438
L.D. Services, Inc.	3.39	370
Atlas Communications	2.17	237
Integrated Tele Services	2.11	230
LDC Telecommunications	1.96	214
Group Long Distance	1.96	214

* Service of a complaint does not necessarily indicate wrongdoing by the served carrier.

** Complaints per million of revenue, based on 1996 telecommunications revenue. Since carriers with less than $109 million are not required to publicly report their revenue, $109 million was assumed. As a result, the carrier's complaint ratio may be lower than its true complaint ratio.

ENFORCEMENT DIVISION, COMMON CARRIER BUREAU
FEDERAL COMMUNICATIONS COMMISSION

Slamming Enforcement Actions

Notices of Apparent Liability Issued for Slamming Violations

Company Name	Proposed Forfeiture Amount
Heartline Communications, Inc.	$200,000
Minimum Rate Pricing, Inc.	80,000

Forfeiture Orders Issued for Slamming Violations

Company Name	Forfeiture Amount
Excel Telecommunications, Inc.	$80,000
Long Distance Services, Inc. (Troy, Michigan)	80,000
Long Distance Services, Inc. (Virginia)	80,000
Target Telecom, Inc.	40,000

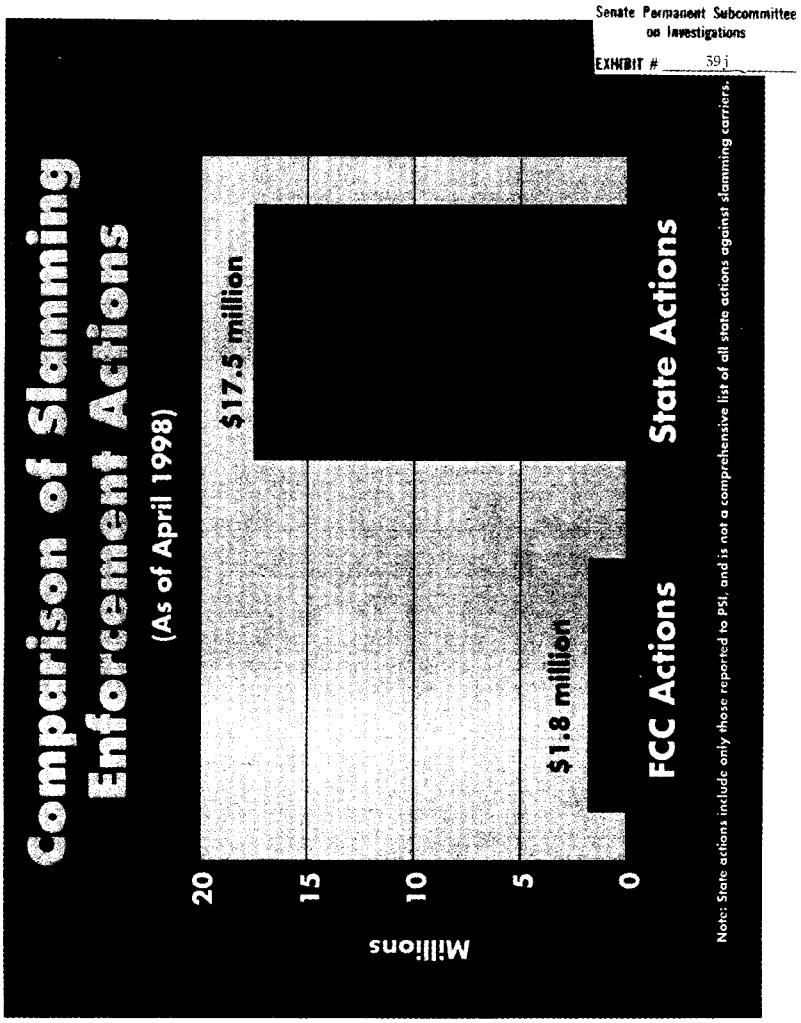
Consent Decrees

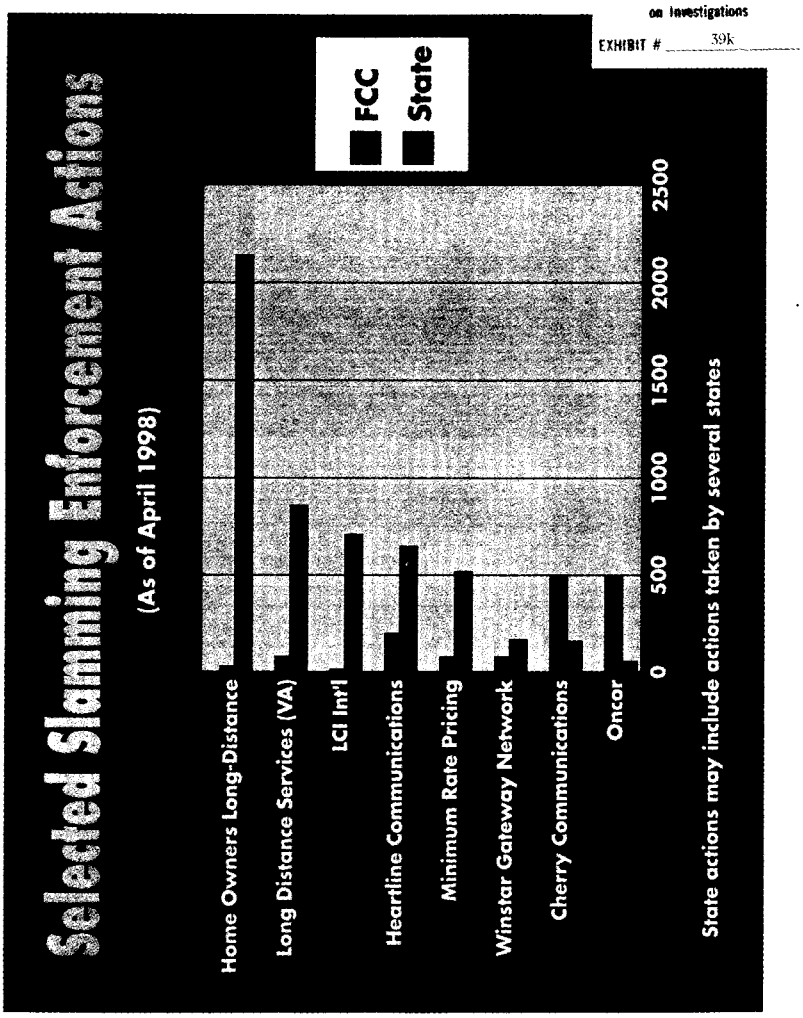
Company Name	Voluntary Payments to the U.S. Treasury*
AT&T Corporation	$30,000
Cherry Communications, Inc.	500,000
Home Owners Long Distance, Inc.	30,000
LCI International Worldwide Telecommunications	15,000
Matrix Telecom, Inc.	30,000
MCI Telecommunications Corp.	30,000
Nationwide Long Distance, Inc.	30,000
Operator Communications, Inc. d/b/a Oncor	500,000
TELCAM, Telecommunications Company of the Americas	15,000
Winstar Gateway Network, Inc.	80,000

* The companies listed under Consent Decrees also voluntarily agreed to provide additional consumer protections.

Other Actions

The Commisison has proposed to revoke the operating authority of the following group of carriers owned and/or operated by Daniel Fletcher: CCN, Inc.; Church Discount Group, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc.


Senate Permanent Subcommittee on Investigations
EXHIBIT # 39 j
Comparison of Slamming Enforcement Actions
(As of April 1998)
Millions
20
15
10
5
0
$17.5 million
$1.8 million
FCC Actions
State Actions
Note: State actions include only those reported to PSI, and is not a comprehensive list of all state actions against slamming carriers.



United States General Accounting Office

GAO

Report to the Chairman, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, U.S. Senate

April 1998

TELECOMMUNICATIONS

Telephone Slamming and Its Harmful Effects

GAO/OSI-98-10

GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of Special Investigations

B-279628

April 21, 1998

The Honorable Susan M. Collins
Chairman, Permanent Subcommittee
on Investigations
Committee on Governmental Affairs
United States Senate

Dear Madam Chairman:

This letter responds to your request of January 6, 1998, and in subsequent discussions, that we assist the Subcommittee by (1) determining which entities or companies engage in telephone slamming violations—the unauthorized switching of a customer from one long-distance provider to another; (2) determining the process by which the providers defraud consumers; and (3) reviewing what the Federal Communications Commission (FCC), state regulatory entities, and the telecommunications industry have done to curtail slamming. In addition, you asked that we present a case study of a long-distance company that repeatedly slammed consumers as a standard business practice.

Telephone customers who are victims of intentional slamming[1] can be harmed in a number of ways ranging from having to pay higher, sometimes exorbitant, long-distance rates to being unable to use the calling cards of their provider of choice. Determining the prevalence of telephone slamming is very difficult because no central repository for slamming complaints exists. But according to the FCC, slamming is a growing problem: The complaints received by the FCC have grown from under 2,000 in 1993 to over 20,000 in 1997. Further, one local telephone exchange company (another general recipient of slamming complaints) reported receiving over 80,000 complaints in the first 9 months of 1997 alone. Indeed, Daniel H. Fletcher, the owner/operator of the companies discussed in our case study (see app. I), apparently slammed over 500,000 consumers, through his companies, in one effort.

Results in Brief

All three types of long-distance providers—facility-based carriers, which have extensive physical equipment; switching resellers, which have one or more switching stations; and switchless resellers, which have no

[1]Sometimes, legitimate mistakes are made in transcribing data that result in slamming, but these mistakes are not paramount to the slamming issue and can be easily rectified.

equipment[2]—have incentives to engage in slamming. However, switchless resellers—having the least to lose and the most to gain—most frequently engage in intentional slamming, according to the FCC, state regulatory agencies, and the telecommunications industry. Intentional slamming is accomplished by deceptive practices. These include falsifying documents that authorize a switch and misleading customers into signing such a document.

The FCC, state regulatory agencies, and the telecommunications industry each rely on the others to be the main forces against intentional slamming. However, with regard to the FCC, its antislamming measures effectively do little to protect consumers from slamming. Although representatives of state regulatory agencies and the industry view a provider's FCC tariff—a schedule of services, rates, and charges—as a key credential, the FCC places no significance on the tariffs that long-distance providers are required to file with it before providing service. Although the FCC in 1996 attempted to regulate tariffs out of existence,[3] the D.C. Circuit Court stayed that FCC regulation in 1997 as a result of a lawsuit.[4] The FCC now accepts tariffs; however, it does not review the tariff information.

Thus, having a tariff on file with the FCC is no guarantee of a long-distance provider's integrity or of FCC's ability to penalize a provider that slams consumers. Indeed, as part of our investigation and using fictitious information, we easily filed a tariff with the FCC and could now, as a switchless reseller, slam consumers with little chance of being caught.

State regulatory measures that could preclude slamming range from none in a few states to extensive in others. Industry's antislamming measures appear to be more market-driven. However, a "PIC freeze"—an action that consumers can take by contacting their local exchange carrier and "freezing" their choice of Primary Interexchange Carriers (PIC), or long-distance providers—effectively reduces the chance of intentional slamming.

[2]Facility-based carriers, e.g., AT&T (American Telephone and Telegraph), MCI Telecommunications Corporation, and Sprint, have the physical equipment including hard lines and switching stations necessary to take in and forward calls. Switching resellers lease capacity on a facility-based carrier's long-distance lines, resell long-distance services, and have one or more switching stations. Switchless resellers also lease capacity and resell long-distance services but have no equipment and little or no substantive investment in their companies.

[3]47 C.F.R. section 61.20.

[4]MCI Telecommunications Corp. v. FCC, No. 96-1459.

Daniel H. Fletcher, the company owner/operator discussed in our case study, apparently entered the business of long-distance reselling in 1993. Between then and 1996—by when most industry firms ended dealings with his eight companies, his companies had slammed or attempted to slam hundreds of thousands of consumers, some likely more than once. In that period, according to incomplete industry records, Fletcher companies billed their customers at least $20 million in long-distance charges and left at least $3.8 million in unpaid bills to industry firms, including long-distance networks, with which they were doing business. Another long-distance provider obtained a $10-million judgment[5] against one Fletcher company.

Background of the Slamming Problem

In July 1997, the FCC estimated that U.S. consumers could choose from over 500 long-distance service providers. Slamming subverts that choice because it changes a consumer's long-distance provider without the consumer's knowledge and consent. It distorts telecommunications markets by enabling companies engaged in misleading practices to increase their customer bases, revenues, and profitability through illegal means. In addition, slammed consumers are often overcharged, according to the FCC and the industry; are unable to use their preferred long-distance service; cannot use calling cards in emergencies or while traveling; and lose premiums (e.g., frequent flyer miles or free minutes of long-distance calls) provided by their properly authorized provider.

Collectively, slamming increases the costs to long-distance providers and other firms involved in this industry. Their increased costs occur when slamming victims refuse to pay the charges of unauthorized service providers or when slammers themselves take the profits and leave unpaid bills, sometimes amounting to millions of dollars.

Determining the prevalence of slamming is extremely difficult. Although the FCC began receiving slamming complaints after the divestiture of AT&T in 1985,[6] no central repository exists for slamming complaints; and no entity, in our opinion, has made a significant effort to estimate the prevalence of slamming. Contributing to the uncertainty concerning the prevalence of slamming, some consumers, who do not review their

[5]Phone Calls, Inc. v. Atlas Communications, Ltd., No. CIV. A. 96-5734, 1997 U.S. Dist. LEXIS 12321 (E.D. Pa. Aug. 8, 1997).

[6]At that time, facility-based carriers began to compete for presubscription agreements with potential customers as a result of the equal access rules and the procedures imposed on the long-distance telephone industry by the FCC and the courts.

monthly telephone bills closely, are unaware that they have been slammed. Others may be aware that they were slammed but take no corrective action, such as filing a complaint.

Customers can voluntarily change their long-distance company—or Primary Interexchange Carrier (PIC)—by contacting, or submitting an "order" to, the local exchange carrier. Long-distance companies can also legitimately process a PIC change to which the customer has agreed through either a written or verbal authorization.[7]

What Entities Engage in Slamming and Why Do They Do It?

The three types of long-distance providers are facility-based carriers such as AT&T, MCI, and Sprint; switching resellers; and switchless resellers. According to representatives of the FCC, numerous state regulatory agencies, and the industry, those who most frequently engage in intentional slamming are switchless resellers. They have the least to lose by using deceptive or fraudulent practices because they have no substantive investment in the industry. Nevertheless, the economic incentives for slamming are shared by all long-distance providers.

Facility-based carriers have an economic incentive to slam because they have high fixed costs for network equipment and low costs for providing service to additional consumers. Thus, providing service to additional consumers, even without authorization, adds to a carrier's cash flow with little additional cost. Conversely, those same high fixed costs represent a strong commitment to the long-distance industry and a need to maintain the trust, and business, of their existing customers.

Resellers—switching and switchless—also provide long-distance service to their customers. Switching resellers maintain and operate switching equipment to connect their customers to the networks of facility-based carriers. Switchless resellers, however, have no equipment and generally rely on facility-based carriers and other resellers to service their customers. Resellers make a profit by selling long-distance services to their customers at rates that are higher than the fees the resellers pay to facility-based carriers for handling their customers' calls. Both switching and switchless resellers have an economic incentive to slam because additional customers increase their profits.

[7]Written authorization is obtained by using a letter of agency (LOA), whose sole purpose is to authorize a local exchange carrier to initiate a PIC change. The LOA must be signed and dated by the subscriber requesting the change. (47 C.F.R. section 64.1150(b)) Verbal authorizations are usually initiated by a telemarketer.

Further, unscrupulous telemarketers, that contract with a long-distance provider, may slam consumers to increase their commissions (e.g., a flat fee for every customer switched).

However, entrepreneurial criminals engaged in slamming operations prefer acting as switchless resellers to generate fast profits and to make criminal prosecution more difficult. They have few, if any, overhead costs and need little, if any, financial investment in their businesses. In addition, the cost of filing the required tariff—or schedule of services, rates, and charges—with the FCC to initiate a business is inexpensive; and an unscrupulous individual can avoid that cost altogether. The unscrupulous reseller can then slam customers, collect payments from them, and run—leaving unpaid bills to the facility-based carrier and other entities, such as billing companies, that assisted the reseller. If the reseller did not submit correct information to the FCC or state regulatory agencies, the likelihood of getting caught and prosecuted is negligible.

The owner/operator of our case-study companies used such tactics. (See app. I.) His eight known switchless reselling companies operated at various times between 1993 and 1996, charged their customers at least $20 million, and have been fined hundreds of thousands of dollars by state regulatory agencies and the FCC. However, neither the FCC nor we were able to locate him in 1997 or to date in 1998 because he has concealed his whereabouts.

How Is Slamming Accomplished?

Both business and individual consumers must select a PIC to provide their long-distance service through their local exchange carrier. Intentional slamming is thus possible because the legitimate ways a consumer's PIC are changed (see following section) can be manipulated easily and in a fraudulent manner.

Slamming can occur through deceptive marketing practices—whether by facility-based carriers, resellers, or telemarketers acting on their behalf—by which consumers are misled into signing an authorization to switch their PIC. Unscrupulous telemarketers or long-distance providers may also falsify records to make it appear that the consumer agreed verbally or in writing to the switch. It is also possible to slam consumers without ever contacting them, such as by obtaining their telephone numbers from a telephone book and submitting them to the local exchange carrier for changing. As an FCC Commissioner stated before a U.S. Senate subcommittee, "slamming scenarios involve [, among other

methods,] deceptive sweepstakes, misleading forms, forged signatures and telemarketers who do not understand the word no."[8]

What Have the FCC, State Regulators, and the Industry Done to Curtail Slamming?

Although the FCC, most states, and the telecommunications industry have some antislamming rules and practices in place, each relies on the others to be the main forces in the antislamming battle. Of the antislamming efforts, those by some states are the most extensive. However, we found no effective antislamming effort to keep unscrupulous individuals from becoming a long-distance provider. For example, the FCC does not review information submitted to it in tariff filings that may alert it to unethical applicants. In addition, the FCC lags far behind some individual state regulatory agencies in the amount of fines imposed on companies for slamming.

Antislamming Measures

The FCC

The FCC first adopted antislamming measures in 1985[9] and has subsequently promulgated regulations to improve its antislamming efforts. For example, in 1992 as a result of an increase in telemarketing, the FCC required long-distance providers to obtain one of four forms of verification concerning change-orders generated by telemarketing.[10] Verification would occur upon

- the customer's written authorization;
- the customer's electronic authorization placed from the telephone number for which the PIC was to be changed;
- receipt of the customer's oral authorization by an independent third party, operating in a location physically separate from the telemarketing representative; or
- the long-distance provider's mailing of an information package to the customer within 3 business days of the customer's request for a PIC change.

[8]Statement by Susan Ness, Commissioner of the FCC, before the U.S. Senate, Subcommittee on Communications, Committee on Commerce, Science, and Transportation (Aug. 12, 1997).

[9]In a 1985 policy statement (50 Fed. Reg. 25,982 (June 24, 1985)), the FCC decided that allowing customers to select long-distance carriers via ballot rather than automatically assigning consumers, through default, to only one competitor would benefit the public interest. Providers would then have incentive to provide consumers with helpful information and competitive services, which the consumers could use to make informed choices.

[10]47 C.F.R. section 64.1100 (1992).

In 1995, as a result of receiving thousands of slamming complaints, the FCC again revised its regulations. The revision,[11] in part, prohibited the potentially deceptive or confusing practice of combining a letter of agency (LOA)[12] with promotional materials sent to consumers.

However, we found nothing in FCC practices that would effectively curtail unscrupulous individuals from entering the telecommunications industry. And no FCC regulation discusses what preventive measures the FCC should take to ensure that long-distance-provider applicants have a satisfactory record of integrity and business ethics. Further, according to FCC's Deputy Director for Enforcement, Common Carrier Bureau, Enforcement Division, the FCC relies largely on state regulatory agencies and the industry's self-regulating measures for antislamming efforts.

According to representatives from state regulatory agencies, facility-based carriers, resellers of long-distance services, and others in the industry, they view an entity's possession of an FCC tariff as a key credential for a long-distance provider. Each long-distance service provider is now required[13] to file a tariff with the FCC, including information that should allow the FCC to contact the provider about, among other matters, an inordinate number of slamming complaints against it.

However, according to knowledgeable FCC officials, the FCC merely accepts a tariff filing and does not review a filed tariff's information, including that regarding the applicant. Thus, the filing procedure is no deterrent to a determined slammer. Neither does the procedure support the validity that states and the industry place on an entity that has filed an FCC tariff.

For example, we easily filed a tariff with the FCC through deceptive means during our investigation when testing FCC's oversight of the tariff-filing procedure. In short, although we submitted fictitious information for the tariff and did not pay FCC's required $600 application fee, we received FCC's

[11]47 C.F.R. section 64.1160.

[12]In 1997, the FCC amended the LOA form and content provision, in part, to add the requirement that every LOA must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the LOA. (47 C.F.R. section 64.1150 (g) (1997))

[13]Under section 203 of The Telecommunications Act of 1934, each common carrier must file a tariff with the Commission. However, under section 203 (b), the Commission has discretion to modify this requirement. In 1996, the FCC promulgated a regulation (47 C.F.R. section 61.20), under which nondominant long-distance providers (e.g., providers without the power to control prices) were exempted from the requirement to file tariffs. However, the regulation was stayed in 1997 as a result of MCI Telecommunications Corp. v. FCC, No. 96-1459. Therefore, all common carriers must file tariffs at the Commission.

stamp of approval. Thus, with a tariff on file, our fictitious company—PSI Communications—is able to do business and slam consumers as a switchless reseller with little chance of adverse consequences.

Another antislamming measure—the FCC's Common Carrier Scorecard—publicizes the more flagrant slammers, but it is inaccurate. The FCC prepares the scorecard, which lists the long-distance providers about which the FCC has received numerous slamming complaints, for the telecommunications industry and the public. The scorecard also compares those providers by citing the ratio of the number of complaints per million dollars of company revenue. However, it presents an inaccurate picture because it severely understates the number of complaints per million dollars of revenue for resellers. This occurs because resellers are not required to, and generally do not, report their revenue to the FCC unless that revenue exceeds $109 million. Therefore, in the absence of actual data and for the sake of comparison, the FCC assumes that those resellers had $109 million in revenue. This assumption results in unrealistically low complaint-to-revenue ratios for a large number of resellers.

States and Industry

According to representatives of some state regulatory agencies, states rely largely on the FCC and the industry's self-regulating measures for antislamming efforts. While most state regulatory agencies have some licensing procedures and requirements for an entity to become a long-distance service provider, those procedures/requirements vary from negligible to restrictive. For example, Utah does not regulate long-distance service providers. In contrast, in Georgia, switchless resellers must first file an application with the state public utility commission and provide a copy to the governor's Office of Consumer Affairs. The commission then reviews the submission, determines whether to issue an interim certificate, and rereviews the interim certificate after 12 months to determine whether to issue a permanent certificate. In addition, switchless resellers must adhere to Georgia commission rules.

The telecommunications industry also attempts to weed out companies involved in slamming. For example, various facility-based carriers have different antislamming measures based on the companies' marketing philosophies. Such measures include MCI's emphasis on the use of third party verifications and AT&T's[14] emphasis on use of written authorizations, or LOAs. In addition, a facility-based carrier may question a reseller's

[14]In March 1998, AT&T publicly announced new steps that it would be taking to curb slamming. Those steps included cessation of the use of outside sales agents to sell AT&T long-distance service at community events, such as fairs, and institution of a toll-free hotline to resolve consumer complaints about slamming.

submission of a large number of telephone numbers at one time. However, we found few activities that resellers were undertaking to curtail slamming. In addition, we found no industry practices that would effectively keep unscrupulous individuals from entering the telecommunications industry. Moreover, according to officials of a reselling company and a billing company, the industry largely relies on the FCC and state regulatory agencies for antislamming measures.

Indeed, the most effective antislamming measure appears to be one that consumers themselves can effect against all but the most resourceful of slammers—a "PIC freeze." The individual customer can contact the local exchange carrier and request a PIC freeze, in essence freezing the customer's choice of long-distance providers from change. The customer may lift the freeze by recontacting the local exchange carrier and answering certain identifying questions about the customer's account.

Punitive Actions Against Slammers

In comparison with some states' actions, the FCC has taken little punitive action against slammers. During 1997, the FCC obtained consent decrees from nine companies nationwide that paid $1,245,000 in fines because of slamming. However, in May 1997, the California Public Utilities Commission suspended one firm for 3 years because of slamming, fined it $2 million, and ordered it to refund another $2 million to its customers. Further, within the same general time period, other state regulatory commissions took more extensive actions than did the FCC against the same companies. For example,

- In December 1996, the California Public Utilities Commission reached a settlement with another company and its affiliate that were involved in slamming. The settlement suspended the firms from offering long-distance service in California for 40 months and required the firms to offer $600,000 in refunds to 32,000 customers that had complained about slamming. In comparison, during 1997, the FCC issued a Notice of Apparent Liability to this company for $200,000 for apparent slamming violations.
- In February 1998, the Florida Public Service Commission voted to require a third firm to show cause, in writing, why it should not be fined $500,000 for slamming violations. (This firm is also the subject of numerous slamming complaints in New Jersey and Tennessee.) In comparison, during 1997 the FCC issued a Notice of Apparent Liability to this firm amounting to only $80,000 for apparent slamming violations.

Further, the FCC takes an inordinate amount of time, as acknowledged by FCC officials, to identify companies that slam consumers and to issue orders for corrective actions (i.e., fines, suspensions) or to bar them from doing business altogether. For example, Mr. Fletcher, the owner/operator of the case-study companies, began his large-scale slamming activities in 1995. But it was not until June 1997 that the FCC initiated enforcement action[15] against the eight known Fletcher-controlled companies[16] with an Order to Show Cause and Notice of Opportunity for Hearing. In the order, the FCC indicated that it had substantial evidence that the companies had ignored FCC's PIC-change verification procedures and routinely submitted PIC-change requests that were based on forged or falsified LOAs. The FCC thus directed Mr. Fletcher and his companies to show cause in an evidentiary hearing why the FCC should not require them to cease providing long-distance services without prior FCC consent and why the companies' operating authority should not be revoked. Because Mr. Fletcher waived his right to a hearing when he did not file a "written appearance," stating that he would appear for such a hearing, the FCC could have entered an order detailing its final enforcement action against the Fletcher companies and Mr. Fletcher. However, as of March 1998, the FCC had taken no such action.

Conclusions

Neither the FCC, the states, nor the telecommunications industry have been effective in protecting the consumer from telephone slamming. Because of the lack of FCC diligence, companies can become long-distance service providers without providing accurate background information. Some states have taken significant action to protect consumers from slamming, but others have taken little action or have no antislamming regulations. Further, the industry approach to slamming appears to be largely market-driven rather than consumer-oriented. Given this environment, unscrupulous long-distance providers slam consumers, often with virtual impunity. As a consequence, consumers and the industry itself are becoming increasingly vulnerable as targets for large scale fraud. The most effective action that consumers can take to eliminate the chance of

[15]In December 1996, the FCC initiated a Notice of Apparent Liability for Forfeiture against one of Mr. Fletcher's companies, Long Distance Services, Inc. An Order of Forfeiture was entered against the company in May 1997.

[16]The eight switchless resellers were CCN, Inc.; Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc. (PCI). Only two of these, Discount Calling Card and PCI, had filed tariffs with the FCC, according to FCC's June 1997 order.

intentional slamming is to have their local exchange carrier freeze their choice of long-distance providers.

Scope and Methodology

Our investigation took place between January and March 1998. We interviewed representatives of the FCC and long-distance providers, including facility-based carriers and resellers. In addition, we interviewed representatives of billing and data-processing firms servicing long-distance providers. We reviewed available public records on slamming including prior congressional hearings and documents belonging to long-distance providers. These included AT&T documents provided to us pursuant to a subpoena issued by the Permanent Subcommittee on Investigations, Senate Committee on Governmental Affairs. Further, through the National Association of State Regulatory Agencies, we obtained and reviewed information from state entities that regulate long-distance service providers. To determine the extent of FCC's oversight of tariff filings, we filed fictitious documentation with the FCC and did not pay the required filing fee.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to interested congressional committees and the Chairman of the Federal Communications Commission. Copies of this report will also be made available to others upon request. If you have any questions about our investigation, please call me at (202) 512-7455 or Assistant Director Ronald Malfi of my staff at (202) 512-7420.

Sincerely yours,

Eljay B. Bowron
Assistant Comptroller General
for Special Investigations

Appendix I

Case Study of Daniel H. Fletcher's Business Ventures as a Long-Distance Provider

This case study is based on our limited investigation of four of Daniel H. Fletcher's eight known business ventures[17] operating as long-distance providers between 1993 and 1996. Through each business, it appears that Mr. Fletcher slammed or attempted to slam many thousands of consumers. As a further indication of the extent of his dealings, industry records, although incomplete, indicate that between 1993 and 1996 two of Mr. Fletcher's companies billed their customers more than $20 million in long-distance charges.

Mr. Fletcher apparently began reselling long-distance services in 1993. By mid-1996, the industry firms dealing with Mr. Fletcher's companies began to end those dealings because of his customers' slamming complaints and/or his nonpayment for long-distance network usage by his customers. Collectively, these firms claim that Mr. Fletcher's companies owe them $3.8 million. Another firm has obtained a $10-million judgment against one Fletcher company.[18]

Mr. Fletcher's companies have also come under regulatory scrutiny by several states and the FCC. For example, in 1997 the Florida Public Service Commission cancelled the right of one Fletcher-controlled company—Phone Calls, Inc. (PCI)—to do business in the state and fined it $860,000 for slamming. New York also took action against PCI in 1997. In May 1997, the FCC ordered another Fletcher company—Long Distance Services, Inc.—to forfeit $80,000 to the United States "for violating the Commission's rules and orders" when it changed (or caused the change of) the long-distance providers of two customers without authorization and through the use of apparently forged LOAs. The FCC did not refer the $80,000 forfeiture to the U. S. Department of Justice for collection, according to an FCC official, because the Justice Department had previously failed to take action with similar cases. In addition, in June 1997, the FCC, citing numerous complaints and evidence of forged or falsified LOAs, issued an Order to Show Cause and Notice of Opportunity for Hearing regarding Mr. Fletcher and his eight companies. In that order, the FCC, in effect, directed Mr. Fletcher and his companies to show cause why the FCC should not require them to stop providing long-distance services without prior FCC consent and why the companies' operating authority should not be revoked. However, since Mr. Fletcher did not

[17]The eight switchless resellers were CCN, Inc.; Christian Church Network, Inc., doing business as Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc.

[18]Phone Calls, Inc. v. Atlas Communications, Ltd., No. CIV. A. 96-5734, 1997 U.S. Dist. LEXIS 12321 (E.D. Pa. Aug. 8, 1997).

provide the FCC a written appearance, or explanation, the FCC could have entered the order, citing FCC's final enforcement action. However, as of March 1998, the FCC had not done so.

It appears that all eight known Fletcher-controlled companies were out of business by the end of 1996. However, our investigation identified several instances of Mr. Fletcher's continued involvement since then in the telecommunications industry. We have been unable to locate Mr. Fletcher for his response to the allegations because he knowingly used false information to conceal his identity and the location of his companies and residence(s).

Fletcher's Christian Church Network, Inc. and Long Distance Services, Inc. Relationships With Billing Concepts and Sprint (1993-1996)

Business Relationships

Based on an introduction by a Sprint representative, Mr. Fletcher's long-distance reselling business Christian Church Network, Inc. (doing business as Church Discount Group, Inc.) entered into a contract on August 18, 1993, with Billing Concepts[19] and Sprint.[20]

Under the terms of the contract, Christian Church Network submitted electronic records to Billing Concepts, representing its customers' long-distance calls made over Sprint's network. Billing Concepts (1) advanced 70 percent of the calls' cost (as charged by the Fletcher company) to Sprint[21] and (2) retained 30 percent in reserve for its administrative costs and potential nonpayment by the Fletcher company's customers. Sprint deducted its network charges and sent the remainder to Christian Church Network.

[19]Billing Concepts was doing business as USBI.

[20]Sprint—then known as US Sprint—had a business arrangement with Billing Concepts under which Sprint would introduce resellers to Billing Concepts.

[21]Billing Concepts charged the Fletcher company interest for the money advanced to Sprint.

Under this arrangement, Billing Concepts sent the electronic records of the customers' long-distance calls to the appropriate local exchange carriers for billing (at Christian Church Network's charged rate) and collection. Within 60 days, the local exchange carriers sent approximately 95 percent of the billings' value to Billing Concepts for the Fletcher company. The local exchange carriers withheld 5 percent for possible nonpayment by the Fletcher company's customers.

On July 22, 1994, Sprint, Billing Concepts, and Mr. Fletcher's Christian Church Network modified their agreement whereby Billing Concepts would advance 70 percent[22] of the billings directly to the Fletcher company rather than to Sprint. The Fletcher company was to pay Sprint for its network charges from the advances. Then from November 1994 to July 1995, the company did not receive advances[23] from Billing Concepts and instead paid Sprint from payments received from the local exchange carriers. However, starting in July 1995, the Fletcher company requested and again received 70-percent advances from Billing Concepts.

Sharp Increase in Customer Base and Subsequent Problems

From November 1995 through April 1996, Christian Church Network produced a tenfold increase in the billable customer base. Between January and April 1996, the company also apparently stopped paying Sprint for its customers' network usage, keeping the full 70-percent advance from Billing Concepts as its profit. Further, in July 1996, Mr. Fletcher—representing another of his eight companies, Long Distance Services, Inc.—signed a second contract with Billing Concepts.

Billing Concepts continued advances to Christian Church Network until September 1996. Then, after receiving a large number of slamming complaints from Christian Church Network's customers following the increase in the company's customer base, Billing Concepts terminated all business with both Fletcher companies.

From December 1993 through December 1996,[24] the two Fletcher companies submitted over $12,432,000 in bills for long-distance usage to be forwarded to their customers. When Billing Concepts terminated business with the two Fletcher companies in September 1996 because of

[22]The Fletcher company still paid interest to Billing Concepts on the advances.

[23]The company did this apparently to avoid the interest charges.

[24]Under the contracts, Billing Concepts continued the billings for the Fletcher companies' customers for 90 days beyond termination of the contract.

the alleged slamming, it had already advanced the companies more than it would receive from the local exchange carriers. (Those carriers returned less than had been billed because some customers did not pay after learning they had been slammed.) Billing Concepts claims that the two Fletcher companies owe it approximately $586,000 that it was unable to collect from the local exchange carriers.

In addition, Sprint terminated its business relationship with Christian Church Network and Long Distance Services in September 1996 for nonpayment of outstanding network charges. Sprint claims that the two companies still owe it about $547,000 for that nonpayment. (Sprint attempted to renegotiate its contract with Mr. Fletcher's Christian Church Network before the termination. Our investigation indicates that Mr. Fletcher instead took his increased customer base to Atlas Communications via another of his eight companies, Phone Calls, Inc. [PCI], and did not pay Sprint. See later discussion regarding PCI and Atlas.)

Fletcher's Long Distance Services, Inc. Relationship With AT&T (1994-1997)

On October 19, 1994, Mr. Fletcher, doing business as Long Distance Services, Inc., signed a contract with AT&T to place his customers on its network. The agreement called for Long Distance Services to purchase a minimum of $300,000 of long-distance service annually.

AT&T's incomplete records[25] indicated that starting in March 1996, the Fletcher company began to dramatically increase the number of new customers to be placed on AT&T's network. During an April 8, 1996, telephone call to AT&T and in an April 9, 1996, letter sent via facsimile, Mr. Fletcher requested that AT&T confirm that (1) AT&T had accepted the new customers that his company had transmitted to AT&T since March 1, 1996, and (2) AT&T had put them on line. According to Mr. Fletcher's letter, his Long Distance Services had requested that more than 540,000 new customers be switched to AT&T. The letter also noted that the company was sending an additional 95,000 customer telephone numbers that day.

In an April 9, 1996, return letter[26] to Mr. Fletcher, AT&T questioned his customer base and his customers' letters of agency (LOA) authorizing the

[25]Although AT&T was subpoenaed to provide us all documentation involving its business dealings with Long Distance Services, it produced limited documentation that provided only sketchy information concerning its approximately 3-year contractual agreement with the Fletcher company. AT&T officials told us that because of poor recordkeeping, they were unable to produce the proper records.

[26]In the letter, AT&T stated that Mr. Fletcher had submitted about 35,000 new customers in March 1996, a significant contrast with the over 540,000 claimed by Mr. Fletcher in his April 9, 1996, letter.

change of long-distance companies. AT&T requested that Mr. Fletcher forward a sampling of the LOAs, and Mr. Fletcher provided approximately 1,000.

In another letter to Mr. Fletcher, dated April 16, 1996, AT&T provided reasons why it believed the LOAs were in violation of FCC regulations (47 C.F.R. section 64.1150): (1) the LOAs had been combined with a commercial inducement, (2) Mr. Fletcher's LOA form did not clearly indicate that the form was authorizing a change to the customer's Primary Interexchange Carrier (PIC), and (3) it did not identify the carrier to which the subscriber would be switched. On April 25, 1996, AT&T wrote Mr. Fletcher informing him that it had rejected all "orders" (new customers) sent by Long Distance Services, Inc., presumably since March 1, 1996.

Although AT&T recognized a problem with Mr. Fletcher and his business practices during April 1996, it continued service to Long Distance Services, Inc. until November 1, 1997, when it discontinued service for nonpayment for network usage. According to an AT&T representative, Long Distance Services, Inc. still owes AT&T over $1,652,000.

Fletcher's Discount Calling Card, Inc. Relationship With Integretal (1995-1996)

On January 5, 1995, Mr. Fletcher, doing business as Discount Calling Card, Inc., signed a contract with Integretal, a billing company. Although Integretal officials provided us little information, stating that the information was missing, we did determine the following.

From May 5, 1995, through February 26, 1996, Integretal processed approximately $8,220,000 in long-distance call billings for Discount Calling Card customers. Under the terms of its agreement, Integretal advanced the Fletcher company 70 percent[27] of the billing value of the electronic records of calls submitted by the company. Integretal was contractually entitled to retain 30 percent of the calls' value for processing and potential nonpayment by Discount Calling Card's customers.

Because of billing complaints made by Discount Calling Card's customers,[28] Integretal claims that it lost about $1,144,000 that it was unable to recover from the company. Integretal stopped doing business with Discount Calling Card in November 1996 because of numerous customer complaints.

[27]Integretal charged the Fletcher company interest on the advances.

[28]Because of incomplete Integretal records, company officials were unable to determine if these were slamming complaints.

Fletcher's Phone Calls, Inc. Relationships With Atlas Communications, Inc. and Sprint (1996)

Business Relationships

On June 18, 1996, the Fletcher-controlled Phone Calls, Inc. (PCI) and Atlas Communications, Inc. signed a business contract for PCI's customers to be placed on Atlas' network (Sprint). In early July 1996, PCI provided its customer base of 544,000 telephone numbers to Atlas. (Information developed by our investigation suggests that Fletcher companies slammed these customers largely from the customer base they had given to Billing Concepts.) Subsequently, Atlas provided the PCI customer telephone numbers to Sprint for placement on Sprint's network.

However, within the next several weeks, Atlas was able to place only about 200,000 telephone numbers from PCI's customer base on Sprint's network. This occurred, according to Atlas representatives, because (1) the individual consumers had placed a PIC freeze with their local exchange carriers, preventing the change or (2) the telephone numbers were inoperative. Because of this low placement rate, Atlas became concerned that PCI was slamming customers and elected not to honor its contract. Subsequently, on August 19, 1996, PCI filed a lawsuit against Atlas in Pennsylvania,[29] attempting to obtain (as per the original contract) the raw record material representing the details of its customers' telephone usage, which would allow PCI to bill its customers. Sprint had supplied this raw record material to Atlas.

Legal Scrutiny

In August 1996, Atlas submitted evidence, in the breach-of-contract suit brought by PCI, indicating that many slamming complaints had been made against PCI. For example, after the first bills, representing PCI customers' calls for July and August 1996, had been sent out, an unusually high percentage (approximately 30 percent) of PCI customers lodged complaints with regulators and government law enforcement agencies—including the FCC, various public utility commissions, and various state attorneys

[29]Phone Calls, Inc. v. Atlas Communications, Ltd., No. CIV. A. 96-5734, 1997 U.S. Dist. LEXIS 12321 (E.D. Pa. Aug. 8, 1997).

general; Sprint; and numerous local exchange carriers. According to an Atlas representative, Atlas attempted to answer these complaints and reviewed the customers' LOAs authorizing the change of long-distance companies. After the review, Atlas believed that a number of the LOAs were forgeries.

According to the vice president of Atlas Communications, the judge issued a temporary restraining order, preventing PCI from obtaining the raw record material. The judge also agreed to allow Atlas to charge PCI's customers at the existing standard AT&T long-distance rates (as the most prevalent U.S. service) rather than PCI's excessively high rates. Subsequently, Atlas entered into a contract with US Billing to perform billing-clearinghouse services for Atlas regarding PCI's customers. In this instance, Atlas' prompt action prevented PCI from receiving any payments for its customers' long-distance calls.

By February 1998, Atlas was serving less than 20 percent of the original 200,000 PCI customers that had been successfully placed on Sprint's network. This sharp drop in the customer base occurred, according to an Atlas representative, largely because PCI had initially slammed the customers. On the basis of the 1996 suit in Pennsylvania, Atlas obtained a $10-million judgment against the Fletcher-controlled PCI because, according to the court, PCI

- fraudulently obtained customers to switch their long-distance telephone service to Atlas' network;
- identified customers to Atlas, for Atlas' placement on its network, in states within which PCI was not certificated as a long-distance service provider;
- failed to supply customer service to those customers it had caused Atlas to place on its network; and
- failed to supply customers, Atlas, or regulatory agencies with those customers' LOAs upon request.

Further, in August 1997, the Florida Public Service Commission fined the Fletcher-controlled PCI $860,000 for slamming, failing to respond to commission inquiries, and misusing its certificate to provide telecommunications service in Florida. This fine was in addition to the commission's March 1997 cancellation of PCI's certificate. According to a statement by the chairman of the commission, PCI accounted for over 400 of the nearly 2,400 slamming complaints received by the commission in 1996. This was the largest number of complaints logged by the commission

against any company in a similar period. New York regulators also revoked FCI's license in mid-1997.

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Appendix II

Major Contributors to the Report

Office of Special Investigations, Washington, D.C.	Ronald Malfi, Assistant Director John Ryan, Senior Special Agent in Charge Fred Chasnov, Senior Evaluator M. Jane Hunt, Senior Communications Analyst
Office of the General Counsel, Washington, D.C.	Barbara Coles, Senior Attorney

MEMORANDUM

April 16, 1998

TO: PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
MEMBERSHIP LIAISONS

FROM: JOHN NEUMANN, Investigator
KIRK WALDER, Investigator
Permanent Subcommittee on Investigations

VIA: TIMOTHY J. SHEA, Chief Counsel/Staff Director
Permanent Subcommittee on Investigations

RE: TELEPHONE SLAMMING II

I. Introduction

Over the last several years, the number of incidents of telephone "slamming" - the unauthorized switching of a consumer's long distance telephone service provider - have gone up significantly. The FCC received over 20,000 complaints from consumers about slamming in 1997, a 25 percent increase over the number of slamming complaints received in 1996. These numbers probably represent only the tip of the iceberg, since most consumers do not report slamming complaints to the FCC and since there is no central repository for slamming statistics. In Maine, the local telephone carrier reported a 100 percent increase in slamming complaints from 1996 to 1997. It is clear from the increase in the number of slamming incidents each year that the problem is getting worse, and that the Federal Communications Commission (FCC) has not done enough to prevent slamming or to enforce regulations against those carriers that repeatedly engage in slamming.

PSI will hold a second hearing on slamming on April 23, 1998, to (1) identify the types of entities, both individuals and companies, who are responsible for slamming violations, (2) determine how these entities slam consumers, (3) assess the adequacy of FCC efforts to control the slamming problem, and (4) identify legislative and regulatory solutions to the problem of slamming.

II. Previous Slamming Hearing in Portland, Maine

The first hearing on telephone slamming, held in Portland, Maine on February 18, 1998, focused on (1) the extent of the slamming problem in Maine and across the country, and (2) the effect of slamming on individual consumers and small businesses. The hearing provided an opportunity for consumers to testify about the problems they experienced with telephone slamming. At the hearing, Maine slamming victims explained how some long distance companies used

fraudulent practices to change their telephone service. Witnesses used words such as "stealing," "criminal," and "break-in" to describe practices employed by unscrupulous telephone companies to pick up customers and boost profits.

One witness, Pamela Corrigan from West Farmington, Maine, testified that she was sent an unsolicited "welcome package" in the mail, which looked like the stacks of junk mail that we receive every day. However, this "junk mail" was not what it appeared to be. This "welcome package" automatically signed her up for a new long distance service unless she returned a card rejecting the change. She was amazed and appalled that it was possible for a company to change her long distance service simply because she did not respond that she did not want their service.

Another witness, Susan Deblois from Winthrop, Maine, testified that when she was slammed, her children were unable to use the 800 number she had for them to call home in case of an emergency.

The hearing also illustrated how slamming not only affects families but also small businesses and communities. For example, Steve Klein, the owner of Mermaid Transportation Company in Portland, Maine, testified that his business phone lines, which are critical to his livelihood, were tied up for four days when he was slammed by a long-distance telephone reseller which falsely represented itself as AT&T. Similarly, Ms. Corrigan, who is the town manager of Farmington, Maine, reported that the town's phone lines were also slammed. It became clear from hearing testimonies that no one is immune from this illegal activity.

At the February field hearing, FCC Commissioner Susan Ness also testified about the FCC's efforts to control slamming. The Commissioner acknowledged that the FCC really does not know how many of the 50 million carrier selection changes each year result in slamming, since many slammed consumers resolve the problem without bringing it to the FCC. However, the Commissioner did conservatively estimate that if just one percent of the carrier changes made each year are the result of unauthorized changes in service, over 500,000 households are slammed each year.

The hearing also made it clear that the FCC must step up its enforcement efforts against slammers. Senator Collins pointed out to the FCC that the states are much more aggressive than the FCC in taking enforcement actions against slammers. For example, Florida fined one slammer, Minimum Rate Pricing (the company that slammed PSI witness Pamela Corrigan), $500,000, while the FCC fined the same company only $80,000. The FCC Commissioner agreed that such a small fine might be considered by the company as just the cost of doing business, rather than a real deterrent to slamming. In addition, the Commissioner agreed that the FCC could increase its enforcement against slammers and that establishing criminal penalties for slamming would help to reduce the problem.

III. GAO Request on Slamming

On January 6, 1998, PSI requested that GAO's Office of Special Investigations (OSI) assist the subcommittee to determine which entities are engaging in slamming and the process they use to do so. Specifically, GAO agreed to (1) identify the types of entities that engage in slamming violations, (2) determine the process by which such entities are able to defraud consumers, and (3) identify what action the FCC and state regulatory agencies have taken against companies that have engaged in slamming. In addition, GAO will present a case study of a long distance service provider who employed slamming as a standard business practice. GAO investigators advised PSI staff that they will be prepared to testify about the findings of their slamming investigation at the April 23rd hearing.

IV. What Entities or Companies Are Responsible for Slamming Incidents?

All three types of long distance providers - facilities-based carriers, switching resellers, and switchless resellers are responsible for the slamming problem in this country.[1] Many long distance companies, including the major facilities-based carriers like AT&T, MCI, and Sprint, have slammed consumers. The FCC issues an annual Common Carrier Scorecard, which provides information on consumer complaints, including slamming complaints. The most recent scorecard was issued in December 1997, and it shows the complaint ratios - slamming complaints per million dollars of revenue - for the long distance companies served with more than 100 slamming complaints in 1996. The four largest long distance companies, AT&T, MCI, Sprint, and WorldCom, had the lowest complaint ratios, ranging from .05 to .12. Virtually all of the companies with the highest complaint ratios were classified as resellers by the FCC. The FCC believes that the overwhelming majority of "intentional" slamming is done by resellers, rather than by the large facilities-based carriers. Unofficial analysis of the 20,000 slamming complaints received by the FCC in 1997 shows that seven of the ten carriers with the largest number of complaints are resellers. Also, the carriers with the highest complaint ratios in 1997 are all resellers. Although AT&T, MCI, and Sprint accounted for about 25 percent of the total number of complaints, when their revenue is factored in, their complaint ratios are very low. After further FCC investigation, many of the 1997 complaints against the major facilities-based carriers are likely to be actually caused by resellers that operate on the major carriers' networks.

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[1] Facilities-based carriers, such as AT&T and Sprint, have extensive physical equipment including hard lines and switching stations necessary to take in and forward calls. Switching resellers may have one or more switching stations, but purchase access to the lines of the facilities-based carriers to "resell" long distance service to their subscribers. Switchless resellers have no equipment and purchase access to all of the necessary physical equipment to resell long distance service to their subscribers.

Currently, both facilities-based carriers and resellers have an economic incentive to slam subscribers. Facilities-based carriers have high fixed costs for network equipment and low costs for providing service to additional subscribers. Adding more subscribers increases the carrier's profits. However, it should be noted that facilities-based carriers have a significant investment in their reputations which decreases the likelihood that they would deliberately slam consumers. Most slamming complaints against facilities-based carriers are caused by unscrupulous marketing agents working for them or by using marketing practices that lead to customer confusion. Resellers make a profit by selling long distance services at rates that are higher than the fees resellers pay to the facilities-based carriers for handling their subscribers' calls. In order to get discounts on access fees charged by the facilities-based carriers, resellers often have to promise a certain level of usage from their subscribers. Therefore, it is critical to a reseller's profitability to maintain a certain subscriber level. Furthermore, while facilities-based carriers rely on their brand name and reputation, some unscrupulous resellers purposely use deceptive company names to make it more difficult for consumers to realize that a new company is offering its long distance services. For example, the name of one reseller, Long Distance Services (one of the Fletcher companies), can be confusing to consumers looking at their bill, since it can appear to be the header for the list of the consumer's long distance calls made, rather than the name of a company. Another reseller uses the name, Home Owner Long Distance or "HOLD", and reportedly slammed consumers by calling them to ask if they can put the consumer on "HOLD." When the consumer replies "yes," the reseller uses that as their authorization for the carrier change.

In its evaluation of why the facilities-based carriers received slamming complaints against them, the FCC found that certain practices led to more slamming complaints. For example, MCI received numerous slamming complaints when it used outside telemarketers to recruit new customers. These telemarketers were paid by the number of customer orders they received, so they had an incentive to falsely claim a customer agreed to switch long distance services. Once MCI started using only in-house telemarketers, the number of slamming complaints against it immediately decreased. Another facilities-based carrier, AT&T, received numerous slamming complaints when it used prize booths at fairs and malls to recruit new subscribers. Recently, AT&T eliminated this marketing method because it realized that consumers were being slammed. The FCC has generally been satisfied with the facilities-based carriers immediate responses to slamming complaints and changes they make to ensure that the incidents decrease.

According to FCC officials, resellers had a disproportionate number of slamming complaints against them when compared to their revenue levels. Resellers with slamming complaints against them often had used confusing or deceptive telemarketing practices or combination sweepstakes entries/letters of authorization that resulted in slamming consumers. The most egregious slamming offenders, according to the FCC, have been resellers. For example, the "Fletcher Companies" engaged in many different deceptive practices to slam subscribers, and then refused to respond to complaints filed against them with the FCC.

State public service commission and attorneys general also identified resellers as contributing a disproportionate number of slamming complaints from subscribers. In a GAO survey of states

on which types of entities engaged in slamming, about 73 percent of the states identified resellers as the cause of the majority of slamming incidents. In addition, states have taken more actions against resellers for slamming, than against facilities-based carriers. (See section VII, infra.)

Long distance service providers have also blamed certain unscrupulous resellers for the bulk of the intentional slamming incidents. For example, AT&T recently issued a zero tolerance policy against slamming that includes monitoring its resellers' marketing practices to ensure that they are not misrepresenting themselves as AT&T and charging resellers for the cost of handling each valid slamming complaint the resellers causes. AT&T is taking legal action against one reseller of its long distance services, Business Discount Plan,[2] due to subscriber complaints that Business Discount Plan slammed them by misrepresenting themselves as AT&T.

Even a resellers association has admitted that unscrupulous resellers have contributed to a significant number of slamming complaints. Officials representing the Telephone Resellers Association (TRA), advised PSI investigators that certain fraudulent resellers have been responsible for giving resellers a bad name by willfully slamming subscribers as a matter of company policy. These resellers often use deceptive telemarketing practices or misleading promotional materials that do not clearly indicate that a customer is authorizing a switch of their phone service. In the cases where legitimate resellers have slamming complaints against them, TRA blames rogue agents that slam consumers to increase their commissions. TRA requires its members to pledge to a Code of Ethics that specifically prohibits slamming. The resellers that TRA is aware of that willfully engaged in slamming are either out of the business or have suffered severe financial setbacks.

V. How Are Companies Able to Engage in Slamming?

Slamming occurs when a subscriber's Primary Interexchange Carrier (PIC) is changed without his or her knowledge and consent- whether by facilities-based carriers, resellers, or telemarketers acting on their behalf. It can occur through deceptive marketing practices such as getting subscribers to sign a misleading authorization form, by falsifying tape recordings to make it appear that the consumer had verbally agreed to the PIC change, or by posing as the subscriber's currently authorized facilities-based carrier. Unscrupulous carriers also will forge LOAs or even just pull subscribers' numbers from a telephone book and submit them to the local exchange carrier for a PIC change.

PIC Changes Done Electronically: Slamming is possible because the legitimate ways a subscriber's PIC is changed can be easily manipulated by a fraudulent telecommunications carrier. Both business and individual subscribers must elect a PIC, through their local exchange carrier (LEC), to provide their long distance service. Subscribers can voluntarily change their PIC by

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[2]Business Discount Plan is the company that slammed Mermaid Transportation Company, the small business owned by PSI witness Steve Klein.

contacting their LEC to request a change or a long distance company can initiate a PIC change after it receives authorization from the subscriber. The LEC usually receives an electronic tape from the long distance companies and automatically processes the subscribers' PIC changes on behalf of the long distance carriers. The LEC assumes that the long distance provider has complied with all FCC regulations in obtaining authorization for a PIC change. Many resellers have arrangements with the facilities-based carriers that they purchase usage from, to submit the PIC changes to the LEC on the resellers behalf. In these arrangements, the facilities-based carriers require their resellers to verify that their subscribers' PIC changes are made in accordance with FCC regulations, but the facilities-based carriers are not required to police those resellers to make sure that they are in compliance.

Carrier Identification Codes (CIC) Allow Slamming Despite PIC Freeze: Every long distance carrier has a three digit carrier identification code (CIC) that allows the LECs to identify them for billing and PIC changes. However, many resellers do not have a unique CIC, instead using the CIC of the facilities-based carrier whose network they use. When the LEC places a PIC freeze on a subscriber's long distance choice, it freezes it by the CIC. This allows a reseller for a facilities-based carrier to slam a subscriber who is currently using that facilities-based carrier for long distance services, even if the subscriber had a PIC freeze in place. For example, if a subscriber has AT&T as their PIC, and they have a PIC freeze on their long distance service, a reseller of AT&T long distance services can slam the consumer if the reseller uses AT&T's CIC. Part of the problem with the CIC system is the shortage of three digit CICs since the number of long distance companies has increased significantly in the last several years. The FCC is in the process of changing to a four digit CIC system, which will significantly increase the number of CICs available. The FCC is working with the LECs to determine how to improve the process of tracking all long distance carriers, including resellers.

FCC Verification Procedures: The FCC requires long distance companies to use one of four currently approved alternatives to verify a subscribers authorization for a PIC change:

1) Obtain a written authorization, or letter of agency ("LOA"), from the subscriber;

2) Receive confirmation from the subscriber via a toll-free number provided by the company;

3) Use an independent third party to obtain verification from the subscriber; or

4) Send a "welcome package" to the subscriber, providing the subscriber the opportunity to withdraw the request to change providers.[3]

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[3]The "welcome package" method of verification is likely to be eliminated by the FCC in its upcoming proposed rulemaking, or by Congress if the current slamming legislation is approved.

The FCC requires only the submitting carrier to obtain verification from the subscriber for PIC changes, and not the executing carrier. There is no requirement that the submitting carrier present evidence of the subscriber's authorization to anyone before the change in long distance service is made.

Current Billing Practices Provide Up-Front Payments to Carriers: The current billing practices in the telecommunications industry allow long distance carriers to obtain a substantial percentage of the value of their customer's telephone usage in advance of customers paying for their service. Carriers need to maintain cash flow and customer usage data is considered a valuable commodity for which carriers can obtain advance payments from LECs or billing companies.

Typically, long distance carriers, including resellers, enter into agreements with LECs, for a fee, to bill customers for long distance service on their behalf. As part of the agreement, the LEC will pay the long distance carrier upon submission of their charges for billing, holding back between 20 to 30 percent for its billing fee, discrepancies, uncollectible accounts, etc. Long distance carriers, can also enter into billing arrangements with a billing company (such as US Billing or Integretel), that, for a fee, acts as a middleman between the carrier and the various LECs that have responsibility for the states that the carrier has customers in. This is to avoid the carrier having to maintain separate agreements with each of the LECs. Often, as part of the agreement, the billing company will pay the long distance carrier upon receipt of the data of subscriber phone usage, also holding back a percentage for the billing fee, uncollectible accounts, and billing discrepancies. The billing company will then send out bills to the subscribers on behalf of the carrier. When customers remit their payments to the billing company, the carrier owes to or receives from the billing company any difference between the advance payment and the total amount collected from the subscribers. The advance payments are particularly important to resellers, since they need to pay the facilities-based carriers for usage of the telephone lines and equipment.

FCC officials advised PSI investigators that telecommunications industry billing practices may have facilitated the delivery of long distance service when there were only a few large long distance companies in the market, but that these practices may need to be reviewed now that the number of providers has grown. However, one FCC official advised PSI investigators that he does not believe that enacting billing regulations is politically feasible considering the FCC's current efforts, at Congress' direction, to deregulate the telecommunications market. In addition, the FCC shares jurisdiction with the Federal Trade Commission (FTC) over billing, since many of the parties that bill through telephone bills or are involved in billing process (such as billing companies used by many smaller long distance companies) are not "carriers." The FCC only has jurisdiction over common carriers - local and long distance telephone providers. The FTC has primary jurisdiction over billing practices in general.

Telecommunications Providers Can Easily Enter the Market: The FCC's focus on increasing competition and making it easy for new companies to enter into the telecommunications marketplace has also allowed unscrupulous actors to become long distance carriers. At the direction of Congress, the FCC has adopted a "laissez faire" approach in order to increase competition and reduce

administrative burdens for telecommunications carriers. To obtain an FCC license to be a telecommunications provider, a company must only pay a fee and file a tariff - a public statement of services, rates, and charges - with the FCC. The FCC issues a license based on the carrier's assertion that it has provided the necessary information and fees. The FCC does not check the information in the application to ensure that it is accurate or complete, and does not perform any background checks on the principals of the company applying for the license. FCC Commissioner Ness, in a response to Senator Collins' question at the Maine slamming hearing about the FCC's licensing process, advised that the FCC has no individual licensing process for long distance companies, and that authority is granted pursuant to a "blanket authorization." After a long distance carrier receives a license, the FCC requires it to file annual reports on communications related revenue, as well as the name of a designated agent for service of FCC notices and orders. However, only if the FCC receives complaints against a carrier, will the FCC check to see if they are in compliance with filing requirements. This approach assumes that all carriers are trustworthy unless they prove otherwise.

Some states also have their own certification requirements for telecommunications carriers, but these vary greatly from state to state. Some states will provide a license to any carrier that pays a fee, while others will require documentation about the carrier's financial, technical and managerial abilities to provide telecommunications services. For example, before issuing a license, Delaware requires that carriers show they have the financial, technical, or managerial means to provide service. In addition, if a reseller does not have at least $250,000 in assets, then it is required to obtain a $10,000 bond with a Delaware surety. Many states will issue licenses as long as the carrier has an FCC license, believing that the FCC has already determined that the company is capable of being a long distance service provider. Idaho, for example, similar to FCC requirements, only requires carriers to file a tariff and does not approve individual applications before issuing licenses. Maine will license a long distance company to offer service provided it files a tariff and a certificate of convenience and public necessity with the Maine Public Utilities Commission.

GAO investigators were able to test the FCC licensing process by filing a tariff for "PSI Communications," a fictitious company. Using the FCC's instructions and sample tariff, the investigators submitted false information in the application, including the phone number from the sample tariff, and used a post office box as the company's address. In addition, the investigators submitted a blank computer disk that was supposed to contain the tariff of rates to be charged by PSI Communications and failed to submit the required $600 filing fee. Nevertheless, within a few days, PSI Communications was listed by the FCC on the Internet as a licensed long distance carrier. With this license, PSI Communications is now able to contract with a facilities-based carrier and resell long distance service to subscribers. Notwithstanding the belief by some that the FCC should not be in the business of conducting investigations and background checks on those companies applying to be long distance service providers, in this case, the FCC did not even perform the most basic duty of enforcing its current regulations. The FCC did not check to determine if the paperwork was properly completed, and it did not collect the required fee. Yet, PSI Communications is now listed by the FCC as a licensed long distance service provider.

VI. The Fletcher Case

As part of their investigation, GAO investigators developed a case study of an individual, Daniel Fletcher, who operated several long distance companies which repeatedly slammed subscribers as a standard business practice. The case study is limited to Fletcher's activities as a long distance reseller from 1993 to 1996. During that time, the Fletcher companies[4] apparently slammed thousands of subscribers, some likely more than once, and billed his customers more than $20 million in long distance charges.

Fletcher's Early Involvement in the Telephone Industry: Fletcher may have begun working in the telephone industry as early as 1987-92, when he was about 19 years of age, by offering pre-paid calling card services. His company, Church Discount Group, used AT&T retail services to offer calling cards to subscribers. AT&T records indicate that Fletcher may still owe them about $5,000 for those services. There is no evidence of customer complaints against Fletcher from this business arrangement.

Fletcher's Activities as a Reseller of Long Distance Telephone Services: Fletcher began reselling long distance services in August 1993. It was at that time that Fletcher, operating as Christian Church Network, entered into a contract with Sprint and US Billing, Inc. (also known as Billing Concepts) to resell Sprint long distance services to subscribers. US Billing acted as the billing and collection agent for Christian Church Network through the LECs. Under this arrangement, Sprint provided US Billing with the call usage of Fletcher's subscribers, which US Billing sent to the LECs. The LECs then billed their subscribers and sent payments back to US Billing. Initially, US Billing paid Sprint for telephone usage by Christian Church Network's customers, but in July 1994, Christian Church Network began paying Sprint directly for its phone usage. Also as part of these arrangements, Fletcher's company received advances on the cost of the calls charged to his customers from US Billing. According to US Billing records, Fletcher submitted over $12 million in bills for long distance usage to his customers. Fletcher may have not slammed many of his customers during the early portion of his Sprint dealings, but as his customer base increased during early 1996, he probably began slamming.

In October 1994, Fletcher, operating as Long Distance Services, Inc., entered into an agreement to purchase long distance usage from AT&T for resale to his customers. Fletcher's agreement with AT&T allowed him to handle his own billing and collections, which he probably

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[4]The Fletcher companies are eight long distance resellers identified by the FCC as being owned and operated by Daniel Fletcher, including CCN, Inc; Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc.

contracted out to another company.[5] The agreement required Long Distance Services to purchase a minimum of $300,000 of long distance services annually from AT&T. AT&T records show that Fletcher was billed about $2.7 million for AT&T network usage and paid them about $1 million. Adding in penalties imposed by AT&T for Fletcher's failure to meet his 3 year commitment to them, Fletcher currently owes AT&T about $2 million. Fletcher placed over 130,000 orders with AT&T, although some may have been rejected or later left his company due to slamming. Correspondence from Fletcher to AT&T in April 1996 indicate that his company was seeking to place over 540,000 subscribers with AT&T.

By mid-1996, Fletcher's relationships with Sprint, AT&T and US Billing begin to deteriorate due to slamming complaints and nonpayment for telephone network usage. Between January and April 1996, Fletcher apparently stopped paying Sprint for network usage, causing Sprint to terminate its business relationship with Fletcher in September 1996. US Billing also terminated its relationship with Fletcher in September 1996, after receiving a large number of slamming complaints from Fletcher's subscribers. In April 1996, AT&T representatives started to question Fletcher about the dramatic increase in his subscriber base and whether he was following FCC regulations on proper subscriber verification for PIC changes. In an April 9, 1996 letter to Fletcher, an AT&T representative wrote, after receiving a large volume of PIC change orders from Fletcher, that "...we are concerned regarding whether or not proper authorization as required by the FCC's rules for changing an end-user's primary interexchange carrier were followed with respect to these orders." In another letter to Fletcher on April 16, 1996, an AT&T representative stated that Fletcher's LOAs submitted to AT&T for proof of verification for PIC changes "appear to violate the FCC rule that the LOA not be combined with any sort of commercial inducement...does not clearly inform the subscriber that it is authorizing a change in its primary interexchange carrier and does not clearly identify the carrier to which the switch is being made." However, AT&T did not terminate its relationship with Fletcher until October 1996 (several months later), and only after he became seriously delinquent in his payments to AT&T for telephone network usage. By the time Fletcher's business relationships were terminated, he owed about $586,000 to US Billing, $547,000 to Sprint, and $2 million to AT&T. To date, Fletcher has never paid these companies for the outstanding amounts.

In mid-1996, Fletcher, operating as Phone Calls, Inc., also entered into a contract with Atlas Communications, Inc., a reseller of Sprint long distance services. Under this agreement, Phone Calls, Inc. purchased network usage from Atlas for resale to its subscribers. In July 1996, Fletcher provided an electronic tape of 544,000 subscribers to Atlas. Atlas forwarded this tape to Sprint for placement on Sprint's telephone network. However, only about 200,000 of the subscribers were able to be switched to the new network. This was due to either PIC freezes that were on subscribers

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[5]AT&T was not given that information by Fletcher, since they were not involved in billing for his company and did not have any reason to ask him. GAO investigators have some information that indicates that US Billing, Roy Giles, and possibly Integretel provided the billing services for this Fletcher company.

telephone numbers or the telephone numbers did not exist. As a result, Atlas terminated its contract with Fletcher and later learned that an unusually high percentage (about 30 percent) of Phone Calls, Inc. subscribers complained that they were slammed. Due to its prompt action, Atlas prevented Phone Calls, Inc from receiving any payments for its' customers long distance calls. Atlas subsequently filed suit against Phone Calls, Inc. to be allowed to keep serving Fletcher's customers that were placed on Sprint's network. According to Atlas officials, by February 1998, Atlas was providing long distance service for less than 20 percent of the original 200,000 Fletcher customers placed on Sprint's network.

How Fletcher "Worked" the System. The following is a brief, step-by-step, description of how Fletcher used the system to his advantage to steal millions of dollars from customers, long distance service providers, and billing companies. Both the current regulatory scheme and market structure allow con artists like Fletcher to operate with impunity in the long distance telephone industry. The following are the steps Fletcher took to steal millions while operating as a switchless reseller of long distance services from AT&T.

1. Fletcher obtained names and telephone numbers of consumers, often using deceptive means such as sweepstakes entries.

2. Fletcher submitted those names and numbers to AT&T.

3. AT&T submitted those names and numbers to local exchange carriers (LEC) for change in long distance service.

4. The LECs switched the long distance provider for consumers, who were then officially "slammed".

5. Customers' phone calls were then made through the "new" long distance provider, Fletcher's company. Customer had no knowledge yet that provider had been switched.

6. New underlying carrier (AT&T) tracked Fletcher customers' long distance calls and produced an electronic tape of customer usage data (i.e., billing information).

7. AT&T submitted customer usage data (billing information) to Fletcher.

8. Fletcher submitted customer usage data (billing information) to the billing company (USBilling).

9. The billing company converted customer usage data to long distance customer telephone bills, at Fletcher's rates.

10. The billing company, before collecting any money from the customers, paid Fletcher 70 percent of the customers billing (forward funding).

11. At the same time, the billing company sent customer billing data to LECs.

12. The LECs billed customers for long distance service.

13. Customers first noticed that their long distance provider was changed when they received their bills, several weeks after Fletcher was paid 70 percent of the billing for that month.

Fletcher and crooks like him can steal in a system like this in two ways. First, they can steal by slamming consumers but still providing long distance services. In effect they are stealing customers and making profits from those customers. The rates of the slamming company may or may not be higher than the customer's authorized carrier, but they still are operating in violation of FCC rules. Second, as Fletcher did in a few cases, these unscrupulous carriers steal not only by slamming customers but by taking the 70 percent in forward funding provided by the billing companies and disappearing. They run a traditional "boiler room" operation by creating several different companies, and simply shutting them down when the FCC, the states or the legitimate companies try to take action against them for slamming consumers or failing to pay for usage fees.

Enforcement Actions Against Fletcher: The FCC first began receiving slamming complaints against Fletcher's companies in 1993. As is standard FCC practice, the complaints were forwarded to the appropriate company with an official notice requesting a response to the FCC. According to the FCC, the Fletcher companies failed to respond to the vast majority of notices issued to them from 1993 to 1996. In the few instances in which the Fletcher companies filed responses, the responses failed to satisfy the complaints. Notices issued and sent to Fletcher from June 1996 and later were returned to the FCC by the U.S. Postal Service marked "unclaimed," "moved," or "refused." Further investigation by the FCC determined that only two of Fletcher's companies, Discount Calling Card and Phone Calls, Inc., had tariffs on file, as required by the FCC as a precondition to being licensed. The other companies operated without any tariff or license from the FCC. In addition, none of the Fletcher companies filed annual reports or the names of designated agents, as required by the FCC. The addresses that the FCC had on file for the Fletcher companies were all mail box drops that Fletcher no longer used.

Despite the numerous slamming complaints against Fletcher's companies from about 1993 to 1996, the FCC did not take any action against him until mid-1997, when it issued a forfeiture notice against Long Distance Services, Inc. for $80,000. In addition, the FCC issued an "Order to Show Cause and Notice of Opportunity for Hearing" to propose that the operating authority of the Fletcher companies be revoked for slamming and other violations. **However, as of April 1998, this order has not yet been finalized, in part because the FCC was unable to locate Fletcher to answer to the charges in a hearing.** Consequently, Fletcher, using a different company name, can legally and

with virtually no chance of being detected, apply for and secure an FCC license to provide long distance service.

A number of states have taken enforcement action against the Fletcher companies. For example, in 1996 and 1997, Alabama, New York, Illinois, and South Carolina revoked Phone Calls, Inc.'s state telecommunications licenses, due to slamming and other complaints. In addition, in August 1997, the Florida Public Service Commission fined Phone Calls, Inc. $860,000 for slamming violations. This fine is significantly higher than the $80,000 penalty assessed by the FCC against one of Fletcher's companies.

VII. Enforcement Actions Against Slamming

FCC: The FCC is responsible for investigating complaints of telephone slamming and has the authority to punish companies that violate existing anti-slamming laws. Since 1994, the FCC has adopted regulations to protect consumers against slamming and has taken action against 17 companies for slamming violations, including assessing $1.5 million in forfeitures and consent decrees and $280,000 in pending fines. In addition, the FCC is proposing to revoke the operating authority of the Fletcher companies, although that order has not been finalized as of this date. The FCC is also in the process of investigating another 3 to 4 companies for possible fines or revocation of their operating authority.

The FCC will initiate a formal investigation of a carrier for slamming complaints if the FCC receives a large volume of complaints, or if the complaint involves an allegation of forgery or other fraudulent activity by the carrier. First, the FCC will usually contact the carrier informally to request that they come in to the FCC and explain the reason for the slamming complaints against them. If the carrier does not satisfactorily explain the slamming complaints or does not meet with the FCC at all, the FCC can issue a "Notice of Apparent Liability for Forfeiture," which proposes a fine against the carrier for the slamming violations. If the FCC does not have enough evidence to issue a forfeiture notice, then it can issue a public letter of admonition against the carrier, which puts the carrier on notice that its activities are under scrutiny by the FCC.

When a carrier gets a forfeiture notice, it usually comes in to explain its actions. The carrier can then enter into a consent decree, whereby it voluntarily makes a payment to the U.S. Treasury and takes steps to eliminate the practices that led to the slamming complaints against it. (The carrier can enter into a consent decree even before getting a forfeiture notice, when it comes in to the FCC informally to discuss slamming complaints against it.) If the carrier does not enter into a consent decree, the FCC can finalize the forfeiture and issue a forfeiture order, which fines the carrier for the slamming violations. If warranted, the FCC can initiate revocation proceedings by issuing a "Show Cause Order." Under such an order, the FCC asks the carrier to formally, in an administrative proceeding, show cause as to why the FCC should not revoke its authority to offer long distance services. The FCC has only issued one such order, against one of the Fletcher companies, Long Distance Services, for slamming violations.

Current FCC guidelines recommend a forfeiture of $40,000 for each "unauthorized conversion of long distance telephone service." The Commission and its staff retain discretion to issue a higher or lower fine than provided in the guidelines, or to issue no fine at all. The FCC has statutory authority to impose a maximum fine of $110,000 per slamming incident, or $1,100,000 for continuing violations. Based on the fines imposed by the FCC to date, most of the fines against carriers for slamming have been for $80,000 or less. According to FCC officials, this is due to the limited authority delegated to the Common Carrier Bureau to assess fines above that amount. Fines above $80,000, which have been proposed against only two companies, require the Commission's approval. It is easier for the Commission to handle slamming enforcement actions at the bureau level, which accounts for the fact that most fines are $80,000 or less. In addition, the FCC does not have the resources to completely investigate every slamming offense, which is required before they can assess a fine against a carrier. As a result, they will choose one or two of the best cases against the carrier to investigate fully to use to support the fines.

FCC Commissioner Ness, in a response to a question asked by Senator Collins at the Maine slamming hearing, advised that the FCC has not requested additional funds or staff to specifically deal with slamming complaints. However, the FCC has taken steps to reallocate existing resources to more fully investigate certain slamming complaints for possible enforcement action.

States: While the FCC has brought several actions against telephone service providers for slamming violations, state officials have been more aggressive in pursuing violators. In addition to the actions taken against the Fletcher companies (see section VI. supra), states have taken numerous actions against companies that engage in slamming. For example, the California Public Utility Commission fined a company $2 million in 1997, and ordered it to refund another $2 million to its subscribers, after 56,000 slamming complaints were filed against it. In February 1998, the Florida Public Service Commission proposed a $500,000 fine against Minimum Rate Pricing[6] for slamming subscribers (while the FCC proposed a fine against the same company only $80,000). In addition, both New Jersey and Tennessee are taking actions against this same company for slamming. Public officials from at least 12 states have pursued litigation or other enforcement action against slammers. Considering the growing number of slamming complaints, the FCC has not done enough to take action against companies that engage in slamming.

VIII. Legislative and Regulatory Proposals to Eliminate Slamming

A. Legislative Responses to Slamming: Despite current laws and regulations that prohibit slamming, this practice continues to be used by long distance carriers against unwitting consumers. In fact, slamming complaints have increased dramatically in the past few years, despite FCC efforts to control the problem. Several bills were introduced in Congress during the last session which would impose greater fines and penalties on companies that violate anti-slamming regulations, and

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[6]Minimum Rate Pricing slammed PSI witness Pamela Corrigan.

allow consumers, or state Attorneys General on behalf of consumers, to sue such companies in state or federal court, among other things.

B. FCC Regulations: The FCC is in the process of issuing revised its regulations to further protect consumers against slamming, including improvement of existing verification procedures and preventing unauthorized carriers from keeping any revenue obtained through slamming. In July 1997, the FCC issued a notice about the proposals and received public comments. The commissioners have not yet decided on what changes will be made. The commissioners are expected to issue the new order by mid-1998. The FCC staff has recommended a number of changes to the commissioners, including the following:

1. Require the slamming carrier to pay the authorized carrier for any telephone services paid by the slammed subscriber. Currently, the authorized carriers can seek payment from the slamming carrier, but they have not availed themselves of this option. (Carriers would probably only bother to seek payment from a slammer if they had lost significant business due to one company's slamming practices. Under the current rules, the FCC recommends that carriers come to them to arbitrate with the slamming carrier before bringing legal action.)

   a. As part of the rule change, the FCC also is considering allowing the subscriber to not pay for long distance calls made with the slamming long distance carrier. This would take away the economic incentive to slam. However, this could also invite fraudulent slamming complaints from subscribers trying to avoid long distance charges. The FCC commissioners are not likely to adopt such a change, considering the significant opposition from long distance carriers.

   b. Also related to this rule change is the proposal to require the slamming carrier to be responsible for reinstating any premiums that the subscriber would have earned with the authorized carrier, such as frequent flyer miles. The FCC is looking for ways to make the subscriber whole and is likely to adopt new rules that would include some type of reimbursement for such premiums.

2. Drop the "welcome package" method of verifying a subscriber's long distance carrier change. Currently, after a telemarketing call is made by the long distance carrier, the carrier can send out a welcome package to the subscriber to confirm the order. If the subscriber does not affirmatively respond to the confirmation, then that is an acceptable authorization to switch carriers. Some carriers have fraudulently sent out welcome packages without having made the initial telemarketing call, knowing that most subscribers will assume that it is junk mail and not even open the package. The long distance carrier, Minimum Rate Pricing, Inc., has used this method to slam subscribers, including PSI witness Pamela Corrigan.

3. Require verification of carrier change requests even when the customer calls the long distance company directly to switch carriers. Currently, long distance companies are required to use one of the four accepted verification procedures only when the carrier calls the subscriber to ask if they would like to change long distance carriers (in a telemarketing call).

4. Also require verification procedures be used when a subscriber requests a PIC freeze from its local exchange carrier. This would be to prevent anti-competitive practices as local companies enter the long distance market.

IX. Witnesses for the Second Slamming Hearing

Hearing witnesses and their testimony will include:

The Director of GAO's Office of Special Investigations, Eljay Bowren: The GAO witness will testify about the results of their slamming investigation. GAO will provide evidence that shows telephone resellers are responsible for a disproportionate number of slamming complaints. While all telecommunications carriers have had slamming complaints against them, resellers are more often involved in many of the more fraudulent slamming practices.

GAO will also show that because of the FCC's focus on telecommunications deregulation, there are no mechanisms in place to screen out fraudulent telecommunications providers from being allowed to enter the market. Even the minimum requirements that the FCC has in place to issue licenses are not enforced by the FCC until after complaints are lodged against a particular carrier.

GAO will also testify about how easy it is to get an FCC license and get into the telecommunications business through their first-hand experience. GAO investigators filed a tariff with the FCC for a fictitious telecommunications company named "PSI Communications." Even though the GAO investigators did not provide all of the information required, within a day or so, PSI Communications received an FCC license and was officially authorized to be a telecommunications provider. Armed with the FCC license, GAO investigators contacted various facilities-based carriers, such as Sprint, MCI and AT&T, to see what requirements they would have to meet to become resellers for those carriers. Although the GAO investigators did not pursue this any further, they learned that as long as they signed an agreement to deliver a certain level of business, they could operate as resellers without meeting any additional requirements.

GAO will also provide information on the enforcement actions against slamming companies taken by the states as compared to those actions taken by the FCC. The GAO will testify that the states have been much more aggressive in their pursuit of slammers than the FCC has been.

GAO will then present the case of Daniel Fletcher, an individual who operated as a telecommunications reseller under at least 8 different company names, repeatedly slamming thousands of consumers. By working with larger telephone resellers and billing agents, Mr. Fletcher was able to receive at least several million dollars in advance of billing his so-called customers, most of whom turned out to have been slammed by the Fletcher companies. When those resellers or billing agents became aware of the slamming complaints against one particular Fletcher company, Mr. Fletcher disappeared and continued to do business under another of his companies.

Only after the FCC received numerous slamming complaints against the Fletcher companies, did it realized that Mr. Fletcher did not provide information required by FCC regulations. Mr. Fletcher had filed tariffs, required as a condition of obtaining an FCC license, for only two of his companies. The FCC's efforts to locate him were futile, since his business addresses were all mail box drops and the contact phone numbers provided in the FCC applications all led to answering services. As a result, the FCC has not been able to collect the $80,000 fine it assessed against one of the Fletcher companies. In June 1997, the FCC issued a proposed order to revoke the operating authority of the Fletcher companies, but has yet to finalize that order. Technically, under the law, Mr. Fletcher is still allowed to offer telecommunications services.

GAO will not have a "blue book" report ready by the time of our hearing on April 23rd, but instead will present the results of their slamming investigation through written testimony. A GAO report will be published at a later date.

FCC Chairman Kennard: The FCC witness could testify about the FCC's policies and procedures for initiating enforcement actions against companies for slamming, what resources they have to investigate slamming allegations, and why they have not initiated more enforcement actions against slammers. It is clear from the numerous state actions taken against slammers, that the FCC is not doing as much to punish slammers. The total amount of fines and voluntary payments collected by the FCC from carriers for slamming is less than $2 million. One state assessed that much in its enforcement action against just one company. The FCC's guidance on fines allows it to assess $40,000 per slamming violation; however, the FCC is only fully investigating one or two slamming incidents per forfeiture notice - resulting in average fines of $40,000 to $80,000 per carrier. These small fines can be seen as the cost of doing business to certain companies that earn millions of dollars in revenues from slamming consumers.

The FCC witness could further testify about their actions in the Fletcher case, such as why the order against the Fletcher companies has not been finalized and why the FCC has not made a greater effort to locate Mr. Fletcher. While the FCC received a large number complaints about Fletcher's companies in 1996, it first fined Fletcher in May 1997. When Fletcher did not respond to FCC orders to respond to slamming complaints, it proposed revoking the operating

authority of Fletcher's companies. The order was proposed in mid-1997, but as of March 1998 has still not been finalized, in part because the FCC could not locate Fletcher.

Also the FCC witness can discuss what FCC procedures or requirements, if any, are in place to prevent unscrupulous carriers, such as Fletcher, from entering the telecommunications marketplace and engaging in slamming. Even the FCC's minimal filing requirements for long distance carriers are not enforced. Fraudulent carriers can easily enter the market, using fictitious contact information in their application and tariff, slam consumers, then evade enforcement. The FCC may be too trusting of carriers in its efforts to deregulate the telecommunications market.

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GLOSSARY

Bell Operating Company: One of eight local telephone service carriers created by the court ordered break up of AT&T in 1982.

Billing Agent: A company that acts as an agent between the long distance carrier and the local exchange carrier to provide billing for long distance services.

Carrier Identification Code (CIC - pronounced "kick"): FCC codes used to identify telecommunications carriers.

Holdback: The percentage of a carrier's long distance billing that the local carrier or billing agent will "hold back" until it bills the subscriber, gets paid, and resolves any billing disputes or errors.

Facilities-based Carriers: Those companies that own telecommunications equipment to provide telephone service.

Factor: The amount of a carrier's long distance billing that will be paid up front to the long distance provider by the local carrier or billing agent. (See Holdback.)

Interexchange Carrier (IXC): A carrier that provides long distance telephone service between local exchanges (i.e, AT&T, MCI, Sprint).

InterLATA: Telecommunications between a point located in a local access and transport area (LATA) and a point located outside such an area. A LATA is generally defined by the FCC as a contiguous geographic area established by a Bell operating company such that no exchange area includes points within more than one metropolitan statistical area or state. The entire state of Maine is located within a single LATA, although not all states are.

IntraLATA: Telecommunications between two points located within the same local access and transport area.

Local Exchange Carrier (LEC): A carrier that provides local telephone service to subscribers (i.e., one of the Bell operating companies).

Letter of Agency (LOA): The written authorization used in accordance with FCC regulations to verify a subscriber's desire to switch carriers.

Primary Interexchange Carrier (PIC): The subscriber's preferred long distance or interexchange carrier.

PIC Freeze: A subscriber request made to the local exchange carrier to prevent any carrier changes without specific notice from the subscriber.

Reseller: Telephone service providers that buy access to the telephone equipment of facilities-based carriers and then "resell" to subscribers under the reseller's own logo. There are two types: "switched" and "switchless" resellers.

Switching resellers: Those resellers that have their own telephone switching equipment, but lease the use of telephone lines and other equipment from facilities-based carriers.

Switchless resellers: Those resellers that have no telephone equipment of their own and have to rely entirely on facilities-based carriers to provide the telephone service. These type of resellers can become telephone service providers with little or no initial investment.

Third-Party Verification (TPV): The system of independently verifying subscriber approval to switch carriers by a neutral party to the transaction.

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PROCEEDINGS AND DEBATES OF THE 105th CONGRESS, SECOND SESSION

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Senate

Senate Permanent Subcommittee on Investigations

EXHIBIT # 42

By Ms. COLLINS (for herself and Mr. DURBIN):

S. 1740. A bill to amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and other purposes; to the Committee on Commerce, Science, and Transportation.

THE TELEPHONE SLAMMING PREVENTION ACT OF 1998

Ms. COLLINS. Mr. President, today I am introducing a bill to curtail a fraudulent practice known as slamming—the unauthorized change of a customer's telephone service provider. Telephone slamming is a widespread and growing problem. In Maine, for example, slamming complaints to the local telephone company increased by 100% from 1996 to 1997. Nationwide, slamming is also the number one telephone-related complaint to the FCC. While the FCC received a total of more than 30,000 slamming complaints in 1997, a significant increase over the previous year, estimates from phone companies indicated that as many as one million people were slammed last year.

Last fall, the Permanent Subcommittee on Investigations, which I chair, undertook an extensive investigation of the slamming problem. On February 18th, I chaired a field hearing on slamming in Portland, Maine. My distinguished colleague, Senator RICHARD DURBIN, joined me at the hearing, and we heard first-hand from several consumers about the problems they experienced with telephone slamming.

At the Subcommittee hearing, Maine slamming victims explained how some long-distance companies used fraudulent or deceptive practices to change their telephone service. Witnesses used words such as "stealing," and "criminal," and "break-in" to describe practices employed by unscrupulous telephone companies to switch unsuspecting customers and boost profits.

One witness, Pamela Corrigan from West Farmington, Maine, testified that she was sent an unsolicited "welcome package" in the mail, which looked like the stacks of junk mail that we receive every day. However, this "junk mail" was not what it appeared to be. This "welcome package" automatically signed her up for a new long distance service unless she returned a card rejecting the change. She was amazed and appalled that it was possible for a company to change her long distance service simply because she did not respond that she did not want their service.

Another witness, Susan Deblois from Winthrop, Maine, testified that when she was slammed, her children were unable to use the 800 number she had for them to call home in case of an emergency.

Slamming not only affects families but also small businesses and communities. For example, Steve Klein, the owner of Mermaid Transportation Company in Portland, Maine, testified that his business phone lines, which are critical to his livelihood, were tied up for four days which he was slammed by a long-distance telephone reseller which falsely represented itself as AT&T.

Similarly, Ms. Corrigan, who is the town manager of Farmington, Maine, reported that the town's phone lines were also slammed. Simply put, Mr. President, no one is immune from this illegal activity.

Victims of slamming are frustrated. They are angry. They should not have to spend their time and energy resolving problems that are not of their own making. People rely on their home and business telephone service, and they should be able to choose their own long-distance company without fear that their decision will be changed without their consent.

Deliberate slamming is like stealing and should not be tolerated. The FCC must step up enforcement efforts to make sure that existing laws and regulations are followed by telephone companies, and Congress must act to strengthen penalties to halt this pernicious practice.

The comprehensive legislation that I am introducing today, along with my colleague Senator DURBIN, will attack the problem of slamming from all sides.

First, the bill gets tough with those who engage in deliberate slamming. It would increase civil penalties and establish new criminal penalties for intentional slamming. Specifically, civil penalties would be increased to a minimum of $50,000 for the first slamming offense and $100,000 for a subsequent offense.

Criminal penalties would be established for intentional slamming, the same as those for any other federal crime: a maximum of $100,000 and one year imprisonment for a misdemeanor and $250,000 and five years imprisonment for a felony. In addition, anyone convicted of intentional slamming will be disqualified from being a telecommunications service provider. The bill would also allow the states to bring action in federal court against slammers on behalf of its residents, a provision suggested by Senator DURBIN.

Second, our legislation increases consumer protection. It would give control back to consumers by taking the financial incentive away from companies that engage in slamming. Rather than paying the slamming company, consumers could pay their original carrier at their previous rate. It would further protect consumers by eliminating the so-called "welcome package" method of verification, a favorite tool of slammers, which is misused and deceptive.

Third, the bill strongly encourages the FCC to step up its enforcement efforts against slamming. It would require local telephone companies to report a summary of slamming complaints to the FCC for further investigation, and it would require the FCC to report to Congress on its enforcement actions against slammers.

Finally, the legislation would require the FCC to report to Congress on whether or not its current procedures contain sufficient safeguards to prevent unscrupulous telecommunications providers from receiving an FCC license in the first place.

Mr. President, consumers have lost control over their telecommunications service to unscrupulous providers. The Collins-Durbin legislation would go a long way toward halting slamming. I urge my colleagues to join me in the fight against slamming by co-sponsoring the "Telephone Slamming Prevention Act of 1998."

For the information of all my colleagues, I ask unanimous consent to include in the RECORD a detailed summary of the provisions contained in this comprehensive anti-slamming bill.

There being no objection, the summary was ordered to be printed in the RECORD, as follows:

SUMMARY OF TELEPHONE SLAMMING PREVENTION ACT OF 1998

(1) *Clarification of Verification Procedures:* The bill amends current law, which allows the FCC to determine the verification procedures that telecommunications carriers can use when executing a change in subscriber service, to place some restrictions on the approved verification methods. Specifically, this provision will eliminate the "welcome package" method of verification. It will still allow the FCC to determine the appropriate forms of verification and the time and manner in which such verification must be retained by carriers.

(2) *Liability for Charges:* The bill also allows subscribers who have been slammed, and who have not yet paid their telephone bill to the unauthorized carrier, to pay their original carrier for their phone usage, at the rate they would have been charged by their original carrier. The provision will not change existing law and FCC regulations that make the slamming carrier liable to the original carrier for any charges it collects from a slammed subscriber. This provision is designed to take away the financial incentive for slamming.

(3) *Additional Penalties:* The bill also increases the civil penalties for slamming and creates criminal penalties.

The civil penalties provision will require the FCC to assess a minimum of $50,000 for the first slamming offense, and $100,000 for any subsequent offense, unless the Commission determines that there are mitigating circumstances. Currently, the penalty typically assessed by the FCC is only $40,000 for each offense.

In addition, this provision will allow the Commission, at its discretion, to assess civil penalties against carriers that make unauthorized carrier changes on behalf of their agents or resellers. It will require the Commission to promulgate regulations on the oversight responsibilities of the underlying facilities-based carriers for their agents or resellers. This will make it clear to carriers, who sell access to their telephone lines, that they have some responsibility for the actions of their agents or resellers.

Currently, slamming is not a crime. The criminal penalties provision will make intentional slamming a misdemeanor for the first offense (not more than one year imprisonment), and a felony for subsequent intentional slamming offenses (not more than five years imprisonment). Criminal fines for intentional slamming are the same as those for any other federal crime: a maximum of $100,000 for a misdemeanor and $250,000 for a felony. In addition, anyone convicted of the crime of intentional slamming will not be allowed to be a telecommunications service provider, and any company substantially controlled by a person convicted of intentional slamming will also be disqualified from providing such services. After five years, however, the FCC shall have the option to reinstate such individuals or companies disqualified under this provision, if it is in the public interest to do so.

(4) *State Actions:* The bill gives the states the right to take action against slammers on behalf of its residents, and makes it clear that nothing in this section preempts the states from taking action against intra-state slammers. This provision is necessary because some state supreme courts have ruled that FCC regulatory authority preempts the states from acting in this area.

(5) *Reports on Slamming Complaints:* The bill requires all telecommunications carriers, including local exchange carriers, to report on the number of subscriber slamming complaints against each carrier. The provision allows the FCC to determine how often these reports would have to be submitted. This provision would *not* require carriers to refer complaints on an individual basis, only a summary report that could be used by the FCC to determine which companies are engaging in patterns and practices of slamming.

(6) *FCC Report on Slamming and Enforcement Actions:* The bill establishes a requirement that FCC submit a report to Congress on its slamming enforcement actions. The FCC already provides this information in its Common Carrier Scorecard, so this provision does not establish a new report. It is designed to make it clear to the FCC that Congress considers slamming enforcement important.

(7) *FCC Report on Adequacy of FCC License Process:* This bill requires the FCC report to Congress on whether current licensing requirements and procedures are sufficient to prevent fraudulent telecommunications providers from receiving an FCC license. Currently, the FCC does not review telecommunications provider applications prior to issuing FCC licenses, allowing fraudulent companies into the telecommunications marketplace.

II

105TH CONGRESS
2D SESSION

S. 1740

To amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1998

Ms. COLLINS (for herself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Telephone Slamming Prevention Act of 1998".

SEC. 2. IMPROVEMENTS OF PROTECTIONS AGAINST UNAUTHORIZED CHANGES OF PROVIDERS OF TELEPHONE SERVICE.

(a) CLARIFICATION OF VERIFICATION PROCEDURES.—Subsection (a) of section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

"(a) PROHIBITION.—

"(1) IN GENERAL.—No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with this section and such verification procedures as the Commission shall prescribe.

"(2) VERIFICATION.—The procedures prescribed by the Commission to verify a subscriber's selection of a telephone exchange service or telephone toll service provider shall—

"(A) preclude the use of negative option letters of agency as a verification method; and

"(B) require the retention of the verification of a subscriber's selection in such manner and form and for such time as the Commission considers appropriate.".

(b) LIABILITY FOR CHARGES.—Subsection (b) of such section is amended—

(1) by striking "(b) LIABILITY FOR CHARGES.—Any telecommunications carrier" and inserting the following:

"(b) LIABILITY FOR CHARGES.—

"(1) IN GENERAL.—Any telecommunications carrier";

(2) by designating the second sentence as paragraph (3) and inserting at the beginning of such paragraph, as so designated, the following:

"(3) CONSTRUCTION OF REMEDIES.—"; and

(3) by inserting after paragraph (1), as designated by paragraph (1) of this subsection, the following:

"(2) SUBSCRIBER PAYMENT OPTION.—

"(A) IN GENERAL.—A subscriber whose telephone exchange service or telephone toll service is changed in violation of the procedures prescribed under subsection (a) may elect to pay the carrier previously selected by the subscriber for any such service received after the change in full satisfaction of amounts due from the subscriber to the carrier providing such service after the change.

"(B) PAYMENT RATE.—Payment for service under subparagraph (A) shall be at the rate

for such service charged by the carrier previously selected by the subscriber concerned.".

(c) ADDITIONAL PENALTIES.—Such section is further amended by adding at the end the following:

"(c) CIVIL PENALTIES.—

"(1) IN GENERAL.—Unless the Commission determines that there are mitigating circumstances, any telecommunications carrier who submits or executes a change in a provider of telephone exchange service or telephone toll service in violation of the procedures prescribed under subsection (a) shall be fined a minimum of $50,000 for the first offense and shall be fined a minimum of $100,000 for any subsequent offense.

"(2) PENALTIES FOR ACTIVITIES OF AGENTS AND RESELLERS.—The Commission may assess penalties for violations of the procedures prescribed under subsection (a) in the case of a carrier that submits or executes unauthorized changes on behalf of its agents or resellers if the carrier meets such conditions as the Commission shall prescribe in regulations.

"(d) CRIMINAL PENALTIES.—Any person who submits or executes a change in a provider of telephone ex-

change service or telephone toll service in willful violation of the procedures prescribed under subsection (a)—

"(1) shall be fined in accordance with title 18, United States Code, imprisoned not more than 1 year, or both; but

"(2) if previously convicted under this subsection at the time of a subsequent offense, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both, for such subsequent offense.

"(e) DISQUALIFICATION FROM CERTAIN ACTIVITIES.—

"(1) DISQUALIFICATION OF PERSONS.—Subject to paragraph (3), any person convicted under subsection (d), in addition to any fines or imprisonment under that subsection, may not carry out any activities covered by section 214.

"(2) DISQUALIFICATION OF COMPANIES.—Subject to paragraph (3), any company substantially controlled by a person convicted under subsection (d) may not carry out any activities covered by section 214.

"(3) REINSTATEMENT.—

"(A) IN GENERAL.—The Commission may terminate the application of paragraph (1) or

(2) of this subsection to a person or company, as the case may be, if the Commission determines that the termination would be in the public interest.

"(B) EFFECTIVE DATE.—The termination of the applicability of paragraph (1) or (2) to a person or company, as the case may be, under subparagraph (A) may not take effect earlier than 5 years after the date on which the applicable paragraph applied to the person or company.

"(f) ACTIONS BY STATES.—Whenever the attorney general of a State, or an official or agency designated by a State, has reason to believe that any person has engaged or is engaging in a pattern or practice of unauthorized changes in providers of telephone exchange service or telephone toll service of residents in such State in violation of the procedures prescribed under subsection (a), the State may bring a civil action on behalf of its residents to enjoin such practices, to recover damages equal to the actual monetary loss suffered by such residents, or both. If the court finds the defendant executed such changes in willful and knowing violation of such procedures, the court may, in its discretion, increase the amount of the

award to an amount equal to not more than 3 times the amount awardable under the preceding sentence.

"(g) NO PREEMPTION OF STATE LAW.—Nothing in this section shall preempt the availability of relief under State law for unauthorized changes of providers of intrastate telephone exchange service or telephone toll service.

"(h) REPORTS ON COMPLAINTS.—

"(1) REPORTS REQUIRED.—Each telecommunications carrier shall submit to the Commission, as frequently as the Commission shall require, a report on the number of complaints of unauthorized changes in providers of telephone exchange service or telephone toll service that are submitted to the carrier by its subscribers. Each report shall specify each provider of service complained of and the number of complaints relating to such provider.

"(2) UTILIZATION.—The Commission shall use the information submitted in reports under this subsection to identify telecommunications carriers that engage in patterns and practices of unauthorized changes in providers of telephone exchange service or telephone toll service.".

(d) TREATMENT OF REGULATIONS.—The Federal Communications Commission may treat the regulations prescribed under section 258 of the Communications Act

of 1934 before the date of enactment of this Act as regulations prescribed under such section 258, as amended by this section, but only to the extent that the regulations prescribed before such date of enactment are not inconsistent with the requirements of such section, as so amended.

(e) REPORT ON SLAMMING VIOLATIONS.—

(1) IN GENERAL.—Not later than October 31, 1998, the Federal Communications Commission shall submit to Congress a report on its enforcement actions against carriers for violations of the procedures prescribed under section 258(a) of the Communications Act of 1934, as in effect on the day before the date of enactment of this Act.

(2) ELEMENTS.—The report shall—

(A) set forth the number of complaints against each telecommunications carrier that was subject to more than 100 complaints in 1997 for violation of the procedures referred to in paragraph (1); and

(B) describe the penalties assessed against each such carrier for violations of such procedures.

SEC. 3. REVIEW OF ADEQUACY OF LICENSING REQUIREMENTS AND PROCEDURES.

Not later than 6 months after the date of enactment of this Act, the Federal Communications Commission shall submit to Congress a report that—

(1) assesses the adequacy and effectiveness of the licensing requirements and procedures of the Commission under section 214 of the Communications Act of 1934 (47 U.S.C. 214) in determining whether or not a carrier is suitable for licensing under that section; and

(2) identifies additional actions that the Commission could take under that section in order to ensure that new licenses are not issued under that section to persons or carriers that have previously lost their licenses for violations of section 258 of that Act (47 U.S.C. 258) or have otherwise engaged in egregious violations of such section 258.

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MCI Telecommunications Corporation
1200 South Hayes Street
Arlington, VA 22202
703 415 6633
FAX 703 415 6108

Wayne E. Huyard
President Mass Markets

Senate Permanent Subcommittee on Investigations
EXHIBIT # 43

April 13, 1998

The Honorable Susan M. Collins
Chairman, Permanent Subcommittee
on Investigations
United States Senate
432 Hart Senate Office Building
Washington, DC 20510

Dear Senator Collins:

On behalf of MCI Telecommunications Corporation, I am pleased to submit the attached responses to your subcommittee's questions in advance of its hearing to be held April 23, 1998, regarding the types of entities or companies that engage in fraudulent slamming.

If you or your staff have any further questions, please let me know.

Sincerely,

Wayne Huyard
President
MCI Mass Markets

cc: J. Neumann
K. Walder

ACCORDING TO THE FCC, 1,230 CONSUMERS COMPLAINED IN 1997 THAT MCI SWITCHED THEIR LONG DISTANCE SERVICE WITHOUT THEIR AUTHORIZATION. PLEASE PROVIDE AN EXPLANATION OF WHY MCI RECEIVED SUCH COMPLAINTS AND THE STEPS IT HAS TAKEN TO ENSURE THAT THE NUMBER OF SLAMMING COMPLAINTS AGAINST IT ARE REDUCED.

MCI is an industry leader in sales quality and customer satisfaction. FCC statistics consistently demonstrate that our complaint experience as a percentage of company revenues, or as a percentage of sales, is among the lowest in the industry. Nevertheless, MCI is disappointed by the number of unauthorized conversion complaints we have received. We acknowledge a continuing need to make every effort to reduce the causes of these complaints. MCI believes that slamming is bad business. It's bad for our customers and bad for MCI. We don't tolerate it and are committed to constant efforts to reduce and hopefully eliminate these problems.

However, MCI also believes this complaint statistic is misleading and inaccurate as a measure of MCI-specific slamming problems.

First, MCI believes that a large percentage of the cited complaints cannot be fairly characterized as intentional unauthorized conversions. Some of the complaints stem from household disputes, where one member of a household authorizes a change, only to be countermanded later by another member of the household. Other complaints involve buyer's remorse, dissatisfaction with MCI service, or disputes over allegedly promised rates. These categories involve authorized switches that regrettably led to subsequent customer disputes. In addition, another large group of complaints involve system errors, or human order entry problems that result in inadvertent switching.

Second, the statistic does not report 1997 complaints. The 1997 FCC Scorecard, although it was published in December of 1997, is based on complaints served by the FCC during the period from January 1996 to December 1996. Also, because the FCC has experienced a backlog in its complaint volumes, many of the complaints served by the FCC on MCI during 1996 were actually filed by consumers during 1995. MCI believes recent quality measures implemented during 1996--including a broad commitment to independent third party verification for residential and small business sales--have resulted in major improvements. Thus, the cited statistics relate to complaints several years old that do not accurately reflect MCI's recent quality improvements.

Third, the gross number of complaints needs to be placed in context of the number of sales MCI generates. Over 15 million new customers switched to MCI in 1997. Of that number, only a tiny fraction of one percent resulted in a complaint of any type. While we are not perfect, and do not condone any unauthorized conversion activity, some level of complaints is virtually inevitable. The gross number of FCC complaints against MCI is high in part because the number of transactions we generate is the largest in the industry.

MCI is a leader in sales quality, and has implemented a number of programs and procedures aimed at reducing unauthorized conversion complaints. MCI's most

important and effective measure is its commitment to conduct independent third party verification ("TPV") for virtually all residential and small business sales. We conduct TPV for long distance, local toll and local service, and employ TPV across all our marketing channels, including telemarketing, direct response and direct sales.

MCI first employed TPV to verify outbound telemarketing sales in 1992, and expanded its use to all sales and marketing channels as of August 1996. Full TPV implementation has resulted in a dramatic reduction in slamming complaints for sales channels not previously subject to TPV. MCI is convinced that TPV is the single most effective method available to curb unauthorized conversions.

In addition to MCI's commitment to TPV, we also employ a host of other measures to address and prevent unauthorized conversions. We have a comprehensive training program for all sales personnel, which emphasizes responsible sales practices, forbids deceptive or unauthorized sales, and strives for maximum customer satisfaction. We employ quality monitoring of telemarketing representatives to ensure constant vigilance to the highest standards, and to assist in coaching and discipline.

In addition, MCI offers our customers a full satisfaction guarantee. If at any time a customer is dissatisfied for any reason, MCI will pay for any costs associated with switching the customer back to their original carrier.

MCI is constantly working towards improvements in this area. For example, MCI recently implemented a test program where we are tape recording all customer TPV transactions, to enhance documentation of sales verifications. We remain committed to making every reasonable effort to address this problem.

WHAT PROCEDURES DOES MCI HAVE IN PLACE TO ENSURE THAT ITS AGENTS OR RESELLERS ADHERE TO FCC REGULATIONS FOR VERIFICATION OF CARRIER CHANGES? DOES MCI REPORT SUSPECTED SLAMMING VIOLATIONS BY ITS RESELLERS TO THE FCC?

Sales agents who market MCI's residential services are very distinct from resellers who buy minutes on MCI's network wholesale and resell them to consumers. MCI will address these two areas separately.

For a number of years, MCI marketed its residential service using face to face direct sales agents. MCI substantially reduced the number of its residential direct sales agents about a year ago for a variety of business reasons. The few agents who continue to market MCI residential service must submit sales for verification through TPV. Prior to the implementation of this TPV requirement, agent sales were, candidly, a disproportionate source of MCI's slamming complaint problems. Following the implementation of TPV for these sales in mid-1996, however, complaint volumes from agent sales were dramatically reduced.

Consistent with established legal and regulatory principles, a reseller can acquire any tariffed service from MCI in accordance with MCI tariffs, or it may acquire services pursuant to negotiated contracts. MCI is not responsible for unauthorized conversion

activity by its resellers, and cannot be expected to police their conduct. We are not typically aware of a reseller's sales practices, its verification methods, or its unauthorized conversion complaints. MCI does not typically report slamming allegations against resellers to the FCC.

PLEASE COMMENT ON THE CURRENT LEGISLATIVE AND ADMINISTRATIVE PROPOSALS DESIGNED TO CONTROL SLAMMING.

MCI believes that any legislative or regulatory action in this area must put consumers first, while not losing sight of the realities of a rational business environment. It cannot ignore the benefits that competition and flexible choice bring to the public. We must design solutions that weed out the bad actors, while not overburdening the industry with regulation that would impose delay, bureaucracy, inefficiency, consumer-unfriendly hurdles or additional costs onto the process of changing phone services.

MCI believes this area cries out for a national set of solutions that apply to long distance, local toll, and local service carrier changes. A piecemeal approach would chill competition and create burdens that would outweigh any benefits. The states need to resist the temptation to establish inconsistent, state specific requirements that will prevent companies from adopting national sales and marketing approaches. A Balkanized approach will impose burdens on carriers that ultimately will be passed on to consumers in the form of higher prices and less choice. Congress should confirm federal preemption over state activity in this area, and encourage a strong set of FCC regulations that can be enforced both by the FCC and at the state level.

As noted earlier, MCI proposes that TPV should be adopted as a nationwide requirement for all carrier switches. MCI's own experience with TPV convinces us that mandatory TPV would be the single most consumer-friendly and effective approach to curbing the slamming epidemic.

MCI strongly opposes any legislative proposal to require written agreements from customers for all carrier switches. Any such approach would be a disaster from a customer perspective and a competitive perspective, and would fail to address the main source of slamming.

Contrary to common perception, slamming problems are not primarily related to telemarketing. Instead, the vast majority of reported enforcement actions across the country have involved sales methods using written Letters of Authorization ("LOA"). The real problem areas have been forged LOAs and deceptive LOA marketing techniques such as sweepstakes and deceptive checks.

Getting it in writing is not the solution. In fact, it's the primary problem.

Requiring LOAs would frustrate consumer expectations of being able to authorize phone service selections over the telephone. It would delay consumer enjoyment of

promised benefits. It would add significant costs associated with mailing and retrieving LOAs. Many customers would simply decide that it's too much trouble to switch. The ultimate result would be terrible damage to competition and flexible, consumer friendly choice.

MCI is also concerned about other measures that go too far in the effort to deal with the problem. Legislative proposals, for example, to require every phone customer to establish their own pin numbers would merely burden both consumers and carriers with additional costs and bureaucracy, substantially increase service order delays, and likely have negligible impact on slamming prevention.

MCI believes that any new legislation should make it clear that underlying carriers should not be held responsible for the actions of their resellers. When MCI or another carrier sells minutes to a reseller, we act as a wholesaler selling to a retailer. We have little knowledge or ability to monitor the actions of our customers. Resellers must abide by the rules prescribed by the FCC and any new legislation should make it clear that underlying carriers are not responsible for the actions of the resellers.

Rogue resellers seeking a quick buck cause a large number of the true slamming horror stories. MCI believes that our overall approach to slamming prevention—focusing on TPV and stronger enforcement—will have the greatest impact in this area. But we would also support several specific measures aimed at dealing with reseller issues.

One of the biggest problems in dealing with reseller slamming is the difficulty consumers have merely contacting the reseller to complain. We suggest that all resellers be required to have their own Carrier Identification Codes ("CIC"). This would permit more accurate tracking of order processing and PIC change issues.

We would also support requirements that ensure that the reseller carrier is identified on all customer bills, accompanied by a toll free customer service number that routes to a live representative. Its no good to have the carrier identified, but only a PO Box number given. We need to insist that resellers be responsive to their customers, and take responsibility for their actions.

Some legislative proposals suggest that consumers who allege they have been slammed should be relieved of all charges incurred while on the new carrier's network. MCI strongly opposes this approach. It would promote significant fraud opportunities by unscrupulous consumers who would switch phone services, rack up large phone bills, and then claim they had been slammed in order to avoid paying legitimate charges.

It would also force carriers to invest significant time, money and resources in disputing individual consumer slamming complaints. Today, MCI and other carriers offer no-questions-asked Satisfaction Guarantees, and pay the cost of switching dissatisfied customers back to their previous carrier without investigating or potentially disputing the reasons for the change. If all charges incurred by a consumer raising a slamming complaint were eliminated, carriers would be forced to reevaluate these

consumer-oriented positions, and would likely have compelling incentives to fight individual complaints through a costly, time consuming investigation and dispute process. Free and flexible consumer choice would be impacted, and the sizable additional costs associated with this effort would inevitably be borne by consumers in the form of higher rates.

Instead, MCI urges that the remedial framework should make the consumer whole, by ensuring that the consumer is refunded or credited the difference between what they were charged by the alleged slamming carrier, and what the consumer would have paid to their original carrier.

MCI supports swift and vigorous enforcement efforts by the FCC. However, harsh new enforcement penalties such as criminal penalties, must be reserved for cases where there is clearly fraudulent intent. Likewise, all penalties must be reasonable. With over 40 million carrier changes occurring every year, and many more expected in the future, human error is inevitable. Monetary fines are appropriate in cases where carriers intentionally do not comply with established verification methods. However, large fines are not appropriate, and will serve no constructive purpose, in cases involving human error.

Finally, as we move into an era where the local telephone companies are becoming direct competitors of long distance companies, the rules and practices need to change. Its no longer reasonable to expect that local carriers will execute service orders, or report consumer experiences, on a neutral and unbiased basis.

The long term solution will need to be the establishment of independent third party PIC Administration, to handle a host of critical functions—perhaps to include order processing, service change verification, PIC Freeze processing, and protection of customer information. The system right now permits the fox to guard the henhouse, and the results are ultimately damaging to consumers. MCI would support legislation aimed at directing the FCC to establish a comprehensive, neutral PIC administration structure.

Sprint

John R. Hoffman
Senior Vice President
External Affairs
8140 Ward Parkway
Kansas City, MO 64114
Telephone (913) 624-6870
Fax (913) 624-5575

April 15, 1998

The Honorable Susan M. Collins
United States Senator
Chair, Permanent Subcommittee on Investigations
Government Affairs Committee
432 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Collins:

Thank you for your letter of April 2, 1998, and the opportunity to provide the Subcommittee with Sprint's views on the problem of unauthorized changes in subscribers' selections of long distance carriers (an abhorrent practice commonly known as "slamming"). Slamming is a plague on the competitive long distance marketplace, and it will undoubtedly spread to local telephone markets if and when competition develops there. How to solve the problem, though, is less clear.

The Federal Communications Commission (FCC), as well as other federal and state regulators have been looking into ways to prevent slamming. Indeed, the FCC has already adopted aggressive rules requiring independent verification of telemarketing orders in order to minimize the opportunities for slamming. The FCC has also sought public comment on how it should implement the mandate of Congress in Section 258 of the Telecommunications Act of 1996.

A copy of Sprint's September 15, 1997 Comments, and September 29, 1997 Reply Comments in that FCC proceeding (Common Carrier Docket No. 94-129) have already been provided to you (with my letter of February 3, 1998) and I respectfully request that they be included in the record of the Subcommittee's April 23, 1998 hearing.

Your April 2, 1998 letter asked me to address certain specific questions for the benefit of the Subcommittee as you prepare for the April 23 hearing. The questions and my responses are as follows:

> **According to the FCC, 1,136 consumers complained in 1997 that Sprint switched their long distance service without their authorization. Please provide an explanation of how Sprint handled such complaints and the steps it has taken to ensure that the number of slamming complaints against it are reduced.**

I'd like to first point out that switching of a customer's long distance carrier is a function performed by the incumbent local telephone company, not by Sprint. A customer's designation of a preferred or primary long distance carrier is accomplished in the local telephone company's central office, and changing that designation is a process much like programming a computer. Long distance carriers, such as Sprint, submit orders to local telephone companies, when a customer selects their long distance service, and the local telephone company actually switches the customer's line from their former long distance service to their current choice.

I point out this process to highlight the fact that it provides opportunities for error. Indeed, it's Sprint's experience that many errors occur in the data provided by customers to long distance companies, in the data provided by long distance companies to local telephone companies, and in the data entered by local telephone companies when accomplishing the switch. Considering the millions of long distance customers that change their service every year and the amount of data that humans and the computers must process as a result, it is not unreasonable that such errors can and do occur. We believe that these errors are, for the most part, inadvertent and, to a much lesser extent, unavoidable.

An example of which I am personally aware involves a customer who called Sprint (in response to our TV advertising) and placed an order for long distance service. As part of completing the ordering process, Sprint records the customer's Social Security Number. When that record was transmitted to the local telephone company, though, the last four digits of the customer's local telephone number were replaced with the last four digits of the SSN. The local telephone company entered that number and, obviously, the wrong customer was switched to Sprint. When that customer complained, we immediately had the local telephone company switch back to the customer's prior long distance service and, instead, switch the correct customer to Sprint service. The event was recorded by the regulator as a "slamming incident," but it clearly was unintentional, inadvertent and regrettable.

In any event, because the process is so susceptible to error, it's Sprint's practice not to question customers who claim that their long distance service has been switched without their authorization. When we receive such a complaint, we immediately take all of the necessary actions with the local telephone company to see that the customer is switched back without delay, added cost or other penalty. We believe that, unlike some other long distance companies, Sprint goes the extra mile to ensure satisfaction, even if the person is not presently a customer of Sprint. We believe that striving for customer satisfaction in everything we do is one of the ways Sprint will be successful long term.

We, also, have implemented extensive checking and continuing improvement of our internal processes to try to eliminate all possibility of error. We also have some suggestions for improving the entire process, which I'll explain in more detail below.

I should also explain that a significant number of the complaints filed at the FCC were attributable to resellers, not directly to Sprint. When Sprint provides service to resellers, the reseller's customers are connected in the local telephone company's switch to circuits identified by Sprint's Carrier Identification Code (or CIC). If a reseller has slammed a customer, and that customer complains to the local telephone company, the local telephone company often assumes it was Sprint's fault because of the CIC and because the identity or even existence of the reseller is not easily ascertainable from the circuit records.

I would also point out that, while Sprint believes that any slams are wholly unacceptable, we believe the number attributed to Sprint by the FCC is, relative to Sprint's size, among the lowest in the long distance industry. We don't believe those results are an accident; we have no tolerance for slamming and work very hard to provide the best possible service to both our customers and potential customers.

I have to admit, in all honesty, that we have also experienced overzealous or misbehaving sales representatives who submit orders to change customers to Sprint when those customers may not have fully agreed to buy our service. Such actions should be caught and corrected in the verification process, but apparently some slip through. We work constantly, through training of new sales representatives and penalizing careless or reckless sales representatives, to minimize the possibility of inappropriate sales and incorrect orders.

What procedures does Sprint have in place to ensure that its agents or resellers adhere to FCC regulations for verification of carrier changes? Does Sprint report suspected slamming violations by its resellers to the FCC?

We believe that one of Sprint's most valuable assets is its brand, and we go to great lengths to protect its image, integrity and use. Agents are authorized by Sprint to use our brand, and they are required to do all the same things we do to ensure that they communicate a positive image to our customers, including taking all possible steps to prevent slamming.

Resellers, on the other hand, are not authorized to use the Sprint brand and are responsible for their own conduct in the marketplace. We constantly communicate with our resellers and they clearly understand our total intolerance of slamming. In fact, our standard contracts provide that the reseller shall not submit a customer's telephone number for activation without obtaining and maintaining proper authorization. If the reseller breaches this provision, Sprint has the right to stop accepting orders from the reseller (which we have done), to discontinue promotional discounts (if any), or to terminate the contract. We also can recover from the reseller any charges paid to local telephone companies for switching customers slammed by the reseller back to their original long distance service.

We do not monitor the marketplace activities or try to verify the sales of resellers, but we do try to intervene to quickly correct slamming problems when we're made aware. In that

regard, when and if a reseller slams a customer, the FCC (or state regulator) usually knows about it well before Sprint does. Nevertheless, we are always willing to work with the FCC (and other regulators) to do whatever we reasonably can to eradicate slamming.

Please comment on the current legislative and administrative proposals to control slamming.

As I tried to point out in my February 3 letter, I think it's important when trying to fashion a remedy for slamming that the Subcommittee keep a couple things in mind. First, our research reveals that slamming allegations arise from several different causes. Some seem to result from confusion in the customer's household about who had the authority to authorize a change, some from "buyer's remorse" (when a customer may authorize a change, but later regret and recant), and some from customers seeking to avoid having to pay change charges or even some or all of their long distance charges. Given human nature, there probably is no effective legislative or administrative remedy for these causes.

There are also, clearly, bad actors at work. In particular, there seems to be a significant number of outlaw carriers who deliberately and ruthlessly slam innocent customers, hoping they'll pay the bill without complaint. We need to eradicate those bad actors, who ignore the current rules and who will surely not be deterred by simply increasing current penalties. Criminal prosecution for fraud may be the most effective deterrent.

There are also, as described above, inadvertent slams. The fact is that a lot of data is exchanged between long distance carriers and local telephone companies to accomplish conversions of service, and there is created a real opportunity for error by either or both carriers. If a single digit is transposed in the customer's telephone number or the long distance carrier's identification code, the wrong customer could be connected to the wrong carrier, despite a valid order from the right carrier for the right customer. There is some evidence that such errors happen with some frequency, but the process is such that these types of errors are hard to detect and audit.

Which brings me to the second important point. That is the process by which customer long distance selections are changed is by submitting orders to the incumbent local telephone company. The telephone company, in order to be completely non-discriminatory, makes no judgment about the validity or appropriateness of any change order submitted to it, but simply executes it (hopefully, error free). Thus, unscrupulous actors knowingly can submit false orders to telephone companies, get the customers converted and hope they'll pay before discovering or complaining about the unauthorized service change. Indeed, the process somewhat seems to encourage such fraudulent submissions.

Thus, we suggest that an effective means to curb fraudulent slammers could be to put controls upon the submission of orders to telephone companies. In particular, we believe that a neutral third party could be inserted between the long distance carrier and local telephone company, who has the responsibility for the process of changing a customer's

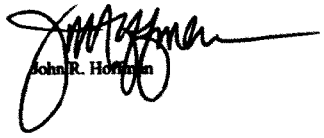
Primary Interexchange Carrier (or PIC). This neutral third party -- which could be the neutral Number Administrator created by the '96 Telecom Act -- could be empowered to develop systems to minimize mistakes and make the reconciliation process as error-free as possible. Long distance (and, when the market is open to competition, local) carriers would still be responsible for verification of orders; but the third-party administrator would have some discretion in processing customer changes from, for instance, carriers who've been proved to have fraudulently slammed unsuspecting customers in the past. Such a neutral third party could also eliminate the possibility of anticompetitive conduct by an incumbent telephone company that is also competing against long distance carriers.

We are, of course, aware of another possible solution being offered by some local telephone companies that "freezes" a customer's account, so that the long distance carrier (or PIC) can not be changed without direct contact between the customer and the local telephone company. This so-called PIC-Freeze option can reduce the incidence of slamming; but it also, unfortunately, has been abused by some local telephone companies. Sprint prosecuted complaints against one local telephone company, for instance, that attempted to employ a PIC-Freeze in several states to not just reduce slamming, but also gain an unfair advantage as local and toll markets were being opened to competition. Because PIC-Freezes can be anti-competitive, Sprint has not enthusiastically embraced them as a solution to slamming.

We sincerely believe that slamming can be eliminated altogether if the solution is directed at the root cause of the problem. We are genuinely concerned that simply increasing penalties for slamming will not deter the bad actors, and will lead to endless litigation by others. In that regard, we believe that existing laws -- not only directed at slamming, but others including wire fraud statutes -- already contain adequate penalties to prosecute the truly guilty.

Sprint is, as you know, most anxious to work with the Subcommittee to find and implement a solution to this problem, and hope that you'll call upon us to contribute. Please call me or James E. Lewin, Jr., Vice-President-Government Affairs in Sprint's Washington Office (202/828-7412) at any time. Thank you very much.

Respectfully submitted,



John R. Hoffman

Before the
U. S. Senate Permanent Subcommittee on Investigations
April 23, 1998

Statement of the
Telecommunications Resellers Association
Ernest B. Kelly, III
President

Unauthorized Transfers of Customer Accounts

The Telecommunications Resellers Association (TRA), on behalf of its more than 500 members nationwide, appreciates this opportunity to address the matter of unauthorized customer service account transfers (also known as "slamming") and suggest how the telecommunications industry, regulators, and the public may eliminate this serious and harmful practice through uniform competitively-neutral verification procedures, swift enforcement action, and consumer education.

Introduction

Founded in 1993, TRA is a national industry association representing companies who offer a variety of value-added, interexchange, local, wireless, and enhanced telecommunications services. Members are typically smaller companies. More than half of TRA's member companies earn annual revenues of less than $25M and more than a third of TRA's members earn less than $10M annually. TRA members primarily focus on the commercial market, although a number of TRA members serve the residential market as well. The rapid growth and emergence of Association members as viable service providers is testament to the desirability of the competitive services TRA members offer the public. TRA members represent the very competitive entities that Congress envisioned would deliver the benefits of telecommunications competition to the public when it passed the Telecommunications Act of 1996.

TRA members certainly share the growing concerns over the escalation of "slamming" incidents throughout the U.S. Slamming harms the innocent parties involved including legitimate carriers who, like the public, become unwitting victims of intentional slamming. Legitimate service providers too must bear the significant cost and inconvenience of intentional slamming at the hands of unscrupulous providers who disregard their obligations to the public. Unscrupulous providers taint the reputation of an otherwise responsible industry. Those few entities who intentionally engage in slamming are indeed criminals whose sole intent is to gain from deceiving and defrauding the public, and should be subject to swift, decisive, and harsh enforcement action accordingly.

Yet, it is important to recognize that claims of unauthorized account transfers also result from unintentional error from which no service provider is immune. The sheer volume of annual account transfers for example, estimated between 20M and 25M in 1997 alone, creates the potential for unintentional error.[1] In some instances, customers themselves experience "buyer's remorse" and claim that they have been slammed. In others, a spouse or resident authorizes a change in carriers without the knowledge or consent of others. Although erroneous slamming has been viewed under the same light as intentional slamming, a distinction between both types of slamming should be made. TRA finds any form of slamming unacceptable. All service providers have a responsibility to ensure that their procedures for obtaining new subscribers limit the potential for error. When honest errors do occur, however, service providers should be accorded due process to demonstrate their compliance with applicable regulations and to correct errors immediately and with a minimum impact to the end user.

[1] While the significant increase in slamming is alarming, the level of slamming in relation to the number of subscriber initiated requests for changes in primary carrier remains small - less than one percent for 1996 – based on figures from the Federal Communications Commission's Common Carrier Scorecard Report (December 1997).

The potential for abuse of the service subscription process also resides in the ability of individuals or incumbent carriers to "game" the process for their own dishonest or anti-competitive gain. Examples abound of individual end users claiming to have been slammed in an effort to receive "free" service. TRA has also witnessed examples of incumbent local exchange carriers who have capitalized on the public's fear of slamming by deceptively promoting a lock or "freeze" on their customers' accounts, effectively preventing customers from changing service providers, even if they so desired. Such practices are equally harmful to the public and advance of competition, and should be prohibited.

As will be discussed more fully below, the key to eradication of intentional unauthorized account transfers remains in effective competitively-neutral verification procedures, swift enforcement action, and consumer education. These functions, more than any other, will serve to prevent intentional slamming and redress its victims.

TRA's Code of Ethics and Member Education Serve to Discourage Intentional Slamming by TRA Members

At the time TRA was founded, the Association's members and leadership recognized the importance of establishing a Code of Ethics to guide TRA member business conduct. The new Association believed that its membership should be comprised exclusively of ethical entities committed to serving the public responsibly. This belief led to adoption of TRA's Code of Ethics, which all new members receive when joining the Association. TRA's Code of Ethics is recognized as the original such code in the telecommunications industry.

Under TRA's Code of Ethics, members are expected serve the public honestly and responsibly. Intentional slamming is identified as a violation of Code's responsible business practice obligations. Members who do not comply with the Code of Ethics are subject to censure procedures. Regrettably, instances of slamming have occurred among Association members, although these instances have been negligible in proportion to TRA's total membership. In the three cases where slamming by TRA members was determined to have been intentional, membership privileges were denied or membership terminated.

TRA's Code of Ethics by itself is not enough to ensure that Association members do not intentionally transfer customer accounts without authority. TRA frequently informs members of regulatory enforcement action through its monthly member publication, and more importantly, conducts periodic seminars which address slamming and preventative measures to curb unintentional slamming during its semi-annual conferences. TRA has also developed a white paper on slamming which is made available to the membership.

Through TRA's consumer outreach program, TRA strives to inform the public about slamming and how to guard against it. Slamming information appears in TRA's Internet web site. Consumer brochures are routinely been distributed to the media, consumer groups, and the public. The Association's emphasis on public and member education and enforcement of the Code of Ethics have paid dividends in eliminating unethical service providers from the ranks of TRA members.

Each Service Provider Must Assume Responsibility for its Own Actions

Each service provider, whether its manages and controls a network or resells the services of an underlying carrier, assumes responsibility for the manner in which it serves subscribers. From a regulatory perspective, most states do not differentiate between facilities-based carriers and resellers. Both types of service providers are subject to the same regulatory requirements. End users also do not distinguish between the type of service provider. When subscribing to a reseller, the end user holds the reseller fully responsible for the provision of service, not its underlying carrier – who is typically unknown to the subscriber.

Facilities-based carriers are network service vendors to resellers. Although facilities-based carriers remain responsible for the quality of the service they provider to resellers, they can not be held responsible for the

operations of a reseller any more than a radio manufacturer could be held responsible for a paint defect in the new automobile which carries the company's radio. The underlying carrier can not, nor should it be required to, assume responsibility for policing its resale customers, outside of enforcing its own contracts. This is not to suggest that underlying carriers may not exert discretion in which resellers they wish to serve. It is in a facilities-based carriers' best interest to serve reputable resellers. Yet, once a resale agreement is in effect, responsibility for service to end users and regulatory compliance rests squarely with the reseller.[2]

Effective Verification Procedures, Swift Enforcement Action, and Consumer Education are the Keys to Eliminating Intentional Slamming

Establishment of uniform, competitively-neutral verification procedures, swift regulatory enforcement action, and consumer education, will curb the proliferation of intentional slamming all too prevalent in today's competitive telecommunications markets.

Uniform Competitively-Neutral Verification Procedures. Reliance on written letters of agency, electronic and third party verification procedures to confirm end-user account transfers pursuant to 47 C.F.R. §§64.1100 and 1150, has proven effective in documenting the basis for customer account transfers. No single verification process has been demonstrated to be decisively more effective than others, and none should be favored or mandated accordingly. The variety of verification methods has enabled service providers to institute a verification process best suited to their individual operations. These verification methods should be retained at both the federal and state levels.

Account transfer verification requirements should remain uniform throughout the country. While each state should retain the ability to establish state-specific requirements as necessary, state and federal requirements should be harmonized to prevent a patchwork quilt of regulatory approaches. A harmonized approach will avoid establishment of 51 unique, and potentially conflicting, regulatory approaches to protect against slamming. Congress, federal and state regulators, and the industry should work together to develop a flexible regulatory framework which can be overlaid on individual federal and state slamming rules.

Institution of primary (interexchange) carrier account "freezes" or "PIC freezes", which allow end users to block account transfers, has also demonstrated their effectiveness in curbing slamming. Yet PIC freezes should not be used as anti-competitive devices to lock in existing customers, primarily by incumbent local exchange carriers. End users should be in full control of exercising PIC freeze options and should not be coerced into PIC freezes. Nor should resellers be required to obtain costly carrier identification codes they do not require, simply to enable reseller PIC freezes to be available to the public. Imposition of such a requirement would unfairly single out resellers and impose unsustainable costs that would prevent most resellers from remaining in business with little countervailing benefit to the public.

Swift Enforcement Action. The removal of any financial incentive for engaging in the unauthorized transfer of customer accounts coupled with swift enforcement action is crucial to the eradication of slamming. Federal Communications Commission and state commission imposition of material fines on companies engaged in slamming and requirements to make victims financial whole have stemmed the tide of slamming abuse. These enforcement actions have sent the strong message that regulators embrace a zero tolerance slamming policy.

However, a distinction should be made between instances of intentional and unintentional slamming when considering the appropriateness of fines and penalties. When slamming is unintentional, service providers should nevertheless be held accountable for restoring the end user to its preferred carrier expeditiously, and assume all associated expenses. Service providers should not, however, be unilaterally required to refund all amounts billed for service, so long as the amount billed remains at or below the effective rate paid by

[2] "Resellers" and "Agents" are not synonymous. Where agents act exclusively as service provider representatives, resellers are service providers in their own right, responsible for their own operations and actions to the public. All service providers must assume responsibility for the actions of the agents who represent them.

the end-user to its preferred carrier. Otherwise, service providers may themselves become victims of repeated scams by unscrupulous individuals who claim to have been slammed in an effort to unfairly enrich themselves at the expense of legitimate service providers. These serious scams have been documented repeatedly and remain on the rise in the telecommunications industry.

Some have proposed a "three strikes you're out" approach whereby service providers found to have engaged in repeated intentional slamming would be prohibited from providing services to the public through revocation of operating authority. TRA generally supports the proposal to the extent that such an approach is taken in instances of repeated intentional slamming or failure to take corrective action. Revocation of operating authority is appropriate when an accused provider fails to demonstrate that it has taken decisive steps to eliminate slamming or has not controlled the actions of its representatives and agents, but only after according due process to service providers.

An expeditious process for enforcement action will enhance efforts to end slamming. In some instances, the enforcement process may exceed nine months before fines and other penalties are imposed. This process is entirely too long. Those entities determined to be engaging in willful slamming should be given no more than 10 business days to provide evidence that the entity properly complied with verification requirements. A provider's failure to provide such evidence should serve as *prima facie* evidence that the provider was not in compliance and engaged in intentional slamming. Commission enforcement action should follow immediately. Delays in enforcement action will accomplish little in stopping unscrupulous providers from striking again.

Consumer Education. The old adage "forewarned is forearmed" rings true in relation to slamming. Knowledgeable consumers are less likely be victims of slamming. By arming the public with information concerning the carrier selection process, consistent with the information required to appear on letters of agency pursuant to 47 C.F.R.§64.1150, the public will be less vulnerable to deceptive claims and advertising. Regulators and the industry share the responsibility of informing the public of how to protect themselves from the potential of slamming. To that end, TRA supports regulatory and industry efforts to fully disclose service information to the public.

Conclusion

Intentional slamming can be eradicated through uniform competitively-neutral verification procedures, swift enforcement action, and public education. While the potential for unintentional slamming will always remain, adoption of these actions will serve the public well in curbing the tide of intentional slamming. The Federal Communications Commission is currently concluding its investigation into slamming.[3] The Commission's investigation is expected to result in a regulatory framework that will effectively protect the public. TRA urges Congress to allow the Commission's investigation to be completed, and the effectiveness of its amended rules tested, before any additional legislation is considered. TRA pledges its continued support to work with legislators, regulators, its members, and the industry, to ensure that the public remains protected against the actions of unscrupulous individuals.

[3]CC Docket 94-129.

HELEIN & ASSOCIATES, P. C.
ATTORNEYS AT LAW

8180 GREENSBORO DRIVE
SUITE 700
MCLEAN, VA 22102

(703) 714-1300 (TELEPHONE)
(703) 714-1330 (FACSIMILE)
mail@helein.com (EMAIL)

WRITER'S DIRECT DIAL NUMBER:
(703) 714-1311

WRITER'S DIRECT EMAIL ADDRESS:
mmdowell@helein.com

April 17, 1998

VIA HAND DELIVERY

The Honorable Susan M. Collins
Chairman
Permanent Subcommittee on Investigations
United States Senate
Committee on Governmental Affairs
432 Hart Senate Office Building
Washington, DC 20510

Re: Slamming Investigation

Dear Senator Collins:

On behalf of the 230 members of America's Carriers Telecommunication Association ("ACTA"), thank you for your letter of April 2 regarding your subcommittee's investigation into the unauthorized switching of consumers' long distance service providers. ACTA is honored to provide you with the information you requested.

Last September, ACTA filed with the FCC its recommendations in response to the Commission's most recent notice of proposed rulemaking on this topic. Below is an outline of some of ACTA's recommendations.

- The FCC should clearly define slamming with a *mens rea,* or "known or should have known" or gross negligence element.

- A mere allegation of slamming should not be enough to satisfy a complainant's burden of proof.

- Because incumbent local exchange carriers ("ILECs") will be both submitting carriers and executing carriers, they should be held to a higher level of scrutiny -- at a minimum mandatory third-party verification.

- The Telecommunications Act of 1996 unambiguously calls for the FCC to pre-empt state regulations, yet allows the states to enforce federal rules. FCC pre-emption of the states is necessary to avoid an unworkable and competitively hostile patchwork of 51 different state regulations.

- In-bound, customer-initiated solicitation calls should not be subject to third-party verification rules in the same manner as carrier-initiated telemarketing calls.

- Slammed consumers should not be absolved of all responsibility to pay any and all charges for services provided lest the FCC wishes to encourage rampant fraud perpetrated by unscrupulous consumers. Also, IXCs should not be made to pay twice for the same infraction: once to the consumer in the form of free service and a second time to the aggrieved carrier.

- Resellers should not be required to notify end-users of changes in underlying carriers as this would only confuse consumers and benefit large carriers. Furthermore, such decisions as the choice of the supplier of the underlying services should be solely that of the reseller -- as it is in any other industry.

ACTA encourages you and members of your subcommittee to read all of ACTA's slamming comments to better understand our position on this issue. Additionally, below we have listed each of your questions before our respective responses.

1) *What steps has America's Carriers Telecommunication Association taken to ensure that its members are not engaging in slamming consumers?*

Founded in 1985, ACTA's membership is comprised mainly of small to mid-sized telecommunications service providers including interexchange carriers ("IXCs"), competitive local exchange carriers ("CLECs"), Internet service provider ("ISPs") and other companies that service the telecommunications industry. As a member-driven association serving these entrepreneurs, ACTA believes that it is not the role of any association to attempt to police the behavior of its members. No association can guarantee the behavior of any given member. In fact, all major long distance carriers have had numerous slamming complaints filed against them at one point or another. At times the complaints are justified, but often these complaints are due to a number of innocent factors such as: spousal or household confusion where one spouse does not tell the other that he/she switched the long distance company; "fat fingers" where a data entry person for a carrier transposes the digits of a telephone number; etc. Please remember that most IXCs are honorable businesses eager to win over new customers and keep them satisfied.

Nonetheless, ACTA abhors the act of deliberate slamming as practiced by some unscrupulous carriers. Carriers that engage in the deliberate slamming of consumers are not only harming consumers and themselves, but they are undermining telecommunications competition at the same time. The actions of a few dirty players have the potential to cause a governmental backlash against

the competitive telecom community which could snuff out entrepreneurialism in telecom through the creation of overly burdensome regulations.

Instead of acting as an unofficial enforcement agency, for years ACTA has worked closely with industry and government representatives in attempts to craft industry-driven solutions and reasonable government regulations to help solve the slamming problem. ACTA is open to the idea of having an independent and privatized PIC change clearing house help govern PIC change requests provided that such an entity is not affiliated with or biased in favor of any particular telecommunications company or class of companies. Also, any costs associated with funding such a clearinghouse must be fair and affordable for all sizes of carriers. Such an entity must be answerable only to the FCC and Congress. ACTA has offered many other suggestions, such as those contained in the attached copy of ACTA's comments to the FCC in the latest slamming rulemaking.

2) *What procedures should facilities-based carriers have in place to ensure that its agents or resellers adhere to FCC regulations for verification of carrier changes? Should facilities-based carriers be required to report suspected slamming violations by its resellers to the FCC?*

The majority of ACTA's members are facilities-based, therefore we are particularly concerned with this issue. Consequently, ACTA has tentatively endorsed the general idea of a "psuedo-CIC," or special carrier identification code, designed to differentiate resellers from their underlying carriers. However, ACTA is wary about giving underlying carriers the duty or authority to act as private police officers. For example, historically AT&T experienced an inherent conflict of interest when it came to many of its resellers. It perceived resellers as competitors rather than customers. Each end user provisioned on to the reseller's "network" may have meant a diminished revenue stream to AT&T. As a result, AT&T had an incentive to thwart a reseller's efforts. Carriers similarly situated, therefore, may have an incentive to generate false slamming allegations being reported to the FCC. On the other hand, if underlying carriers are to have a duty to report suspected slammers to the FCC, what legal exposure does an underlying carrier face if it fails to report a slamming reseller? This issue must be specifically addressed before Congress or the FCC attempts to require carriers to have an affirmative duty to police their competitors.

A "psuedo-CIC" would help underlying carriers identify rogue resellers. However, rather than empowering underlying carriers to act as law enforcement officials, resellers and underlying carriers should resolve suspected slamming problems as they would other business issues. The relationship between underlying carrier and reseller, in this regard, is essentially one of contract and should be viewed by the government as such. However, carriers of all kinds, be they resellers or wholesalers, should have a continual and open dialogue with regulators to seek out and stop suspected slammers.

3) *Please comment on the current legislative and administrative proposals designed to control slamming.*

Please see ACTA's comments in the FCC's most recent rulemaking on this subject. However, in addition to those comments, Congress should remember that any attempt to criminalize slamming above and beyond already-existing consumer fraud protection laws must involve a clear definition of slamming and include a *mens rea* element as with any other crime. A mere allegation of slamming should not be enough to convict a carrier of this offense. Furthermore, due process must be part of any attempt to criminalize slamming.

ACTA appreciates the opportunity to respond to your investigation into slamming. We look forward to having this letter and ACTA's slamming comments to the FCC put into the printed hearing record. Please call me directly at (703) 714-1311 with any follow-up questions.

Respectfully submitted,

Robert M. McDowell
Deputy General Counsel
ACTA

Enclosure

cc: Timothy J. Shea, Esq.
Mr. John Neumann
ACTA Board of Directors

[redacted]

**SUPPLEMENTAL TESTIMONY OF AT&T CORP.
BEFORE THE COMMITTEE ON GOVERNMENT AFFAIRS
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS
U.S. SENATE
April 23, 1998**

On March 13, 1998, AT&T filed written testimony with the subcommittee in connection with the subcommittee's February 18, 1998 field hearing on the important issue of slamming. In that testimony, we described the bold, new initiatives that AT&T announced to the public early in March that we are undertaking to protect our customers against unscrupulous carriers that slam and to minimize the chance of our being involved in even inadvertently slamming other carriers' customers. In addition, we outlined key provisions that should be part of any anti-slamming legislation – in particular carrier-to-carrier remedies, federal preemption of inconsistent state anti-slamming statutes, and a neutral body to administer carrier selection -- and we offered specific suggestions for how various pending bills, including S. 1618, should be revised to better achieve Congressional objectives. This statement supplements our March 13, 1998 testimony and responds to Senator Collins's letter to AT&T dated April 2, 1998, asking us to address the three specific issues set out below.

> *Request: According to the FCC, 2,199 consumers complained in 1997 that AT&T switched their long distance service without their authorization. Please provide an explanation of how AT&T handled such complaints and the steps it has taken to ensure that the number of slamming complaints against it are reduced.*

As an initial matter, according to the FCC, the rate of complaints against AT&T is the best in the industry relative to the volume of business handled by

AT&T (*see* December 1997 FCC Common Carrier Scorecard and AT&T's March 13, 1998 testimony). To put the FCC's reported figure of 2,199 in further perspective, it is should be noted that AT&T provides service to about 80 million residential consumers and processes millions of changes annually. Indeed, as we explain below, one-fourth of the 2,199 complaints did not involve AT&T at all. Nevertheless, we do not think "best in the industry" is sufficient. AT&T has a zero tolerance policy for slamming, and under this policy even one complaint is one too many.

AT&T investigated every slamming complaint submitted concerning it to the FCC in 1997 and filed a reply to each complaint. As those replies show, many of the complaints did not even involve AT&T. Our records showed that 545 of the complaints did not involve AT&T; most of these were the result of reseller slams. When an unauthorized carrier change appears to have involved AT&T, we have adjusted the customer's bill to ensure that the customer paid no more for his or her calls as a result of the change.

As described in AT&T's March 1998 testimony, a copy of which is attached to this submission, AT&T has taken a number of actions to ensure that the number of slamming complaints against it are further reduced. First, AT&T has attempted to address the root cause of the complaints. In addition to actions related to resellers, AT&T has suspended the use of outside vendors in its feet-on-the-street marketing channel until we can be sure that those vendors meet AT&T's zero tolerance policy for slamming. Most of the consumer slamming complaints submitted to the FCC that involved AT&T were from the actions of

these vendors. Accordingly, this change alone should significantly reduce the number of complaints.

AT&T also has taken a number of steps to ensure that customers who think they have been slammed are able to get a quick response to their concerns. This should further eliminate many customer complaints to the FCC. AT&T has set up a special slamming resolution center to handle slamming inquiries. All calls to AT&T about potential slamming are referred to this special center. In the center, trained specialists have online access to AT&T customer records and can tell customers whether they have been switched to AT&T and under what circumstances. If the specialists need additional AT&T records, they get back to the customer promptly. The toll-free number for this slamming resolution center (1-800-538-5345) will also be included in the welcome kits that AT&T sends to new customers who result from AT&T's marketing efforts. Any new customer who believes that he or she should not have been switched to AT&T will know whom to call.

Request: What procedures does AT&T have in place to ensure that its agents or resellers adhere to FCC regulations for verification of carrier changes? Does AT&T report suspected slamming violations by its resellers to the FCC?

AT&T has taken bold steps to reduce the incidence of slamming by resellers who purchase service from AT&T. To elaborate on our March 13, 1998 comments, last fall AT&T began to include stiffer monetary penalties in our contracts with resellers, which are designed to eliminate slamming and misrepresentation. In particular, if a reseller misuses AT&T's name, we may

issue a Notice and if the misrepresentation is not cured in 15 days, the reseller loses its discount.

Then in early March, we filed a tariff revision enabling us to assess a "per slam charge" against any customer who submits a carrier change order to us for processing by the local exchange carrier without adequate and prompt authorization from the end user. We also have established a separate reseller complaint group, so that customers calling our 800 number to reach our slamming complaint center will be transferred to the reseller center on the third prompt.

Additional steps include that last month, we sent the attached letter to all reseller customers letting them know how serious we are about eliminating slamming, and outlining our specific expectations with respect to carrier change orders. The letter states: "If the reseller fails to meet these expectations, AT&T reserves the right to cease processing Carrier Change requests on behalf of the reseller, to refer the matter to appropriate federal or state regulatory/legal authorities, or to take other steps as appropriate under the circumstances."

AT&T is committed to taking decisive measures, including litigation, to eliminate deceptive marketing, one of the root causes of slamming. For instance, in March AT&T filed a complaint in Illinois federal court against Business Discount Plan, Inc. ("BDP"), claiming BDP used fraud and deception to routinely "slam" customers to its service. AT&T's complaint alleges that BDP's telemarketers falsely told customers that they were affiliated with AT&T, or identified themselves as "AT&T operators," offering discounted rates. AT&T has

found that some BDP customers were being charged up to triple the AT&T rates they previously paid. In addition to damages, AT&T has asked for an injunction against BDP requiring it to cease its deceptive marketing practices. The injunction would also require BDP to inform its customers that BDP is not affiliated with AT&T, and give customers the opportunity to return to their previous telecommunications service provider.

Request: Please comment on the current legislative and administrative proposals designed to control slamming.

In our March 13, 1998 testimony, AT&T urged the Congress to include in any legislation, and in S. 1618 in particular, these three provisions: carrier-to-carrier remedies which we have proposed be in the amount of $1,000 per unauthorized customer change; federal preemption of inconsistent state anti-slamming legislation, and an independent administrator for carrier selection -- and we refer the subcommittee to pages 8-12 of that testimony, which is attached.

Senator Collins' bill has three provisions that deserve additional comment. The first is the provision that would give customers who have been slammed the option to pay their authorized carrier the amount they would have paid but for the slamming. Making the customer and his or her authorized carrier "whole" is an important goal, but this proposal would not have that result. In reality, it would deprive the displaced carrier of any effective remedy. Instead of being able to look for relief to the slamming carrier (who can collect the re-rated amount for usage), the displaced carrier would have to pursue individual customers -- a

nearly impossible task. Indeed, because a displaced carrier could never be sure whether the customer had paid the charges -- and, if so, to whom -- it could easily be "ping-ponged" between the customer and the slamming carrier, and get relief from neither. It is far preferable for the slamming carrier to act as the collection agent and then pay over those charges to the displaced carrier, as present Section 258 requires. It is far better still for that carrier to be liable to the displaced carrier for liquidated damages, such as the $1,000 amount per unauthorized customer change, as we have proposed in our March testimony.

As for the proposed criminal penalties, slamming can already be punished under existing laws, including the mail and wire fraud statutes. The problem is not a lack of existing criminal penalties as a deterrent to slamming; rather, those penalties that are on the books should be enforced in appropriate cases.

Finally, in AT&T's view, the FCC already has authority to order carriers to provide summary reports on the number of slamming complaints they receive. But it has not done so. Collection of such information may impose disparate and unwarranted burdens. While AT&T would comply in good faith with any such directive, resellers who commonly engage in slamming may either ignore the reporting requirement or construe complaints in a way that renders their data meaningless or even misleading.

AT&T appreciates the opportunity to submit this supplemental statement to the subcommittee for the record. AT&T strongly supports efforts to curb slamming, and we look forward to continuing to work with the Congress, the FCC and the states in this endeavor.

Dear _____:

AT&T has been receiving an increasing volume of customer and state utility commission complaints regarding slamming and misrepresentation by some AT&T resellers. Based on the volume of complaints, it appears that there are substantial issues concerning the validity of a number of carrier change requests we have processed on behalf of reseller-customers. We are therefore sending this letter to all our reseller customers, asking them to take steps to ensure that they are in compliance with federal/state rules and policies regarding carrier changes as a condition of AT&T continuing to process carrier change requests.*

To that end, I have enclosed a statement of AT&T's expectations with respect to Carrier Change Orders. If a reseller fails to meet these expectations, AT&T reserves the right to cease processing Carrier Change requests on behalf of the reseller, to refer the matter to appropriate federal or state regulatory/legal authorities, or to take other steps as appropriate under the circumstances.

AT&T reserves the right to require reasonable verification of a customer's compliance with these expectations. For example, when AT&T requests proof of authorization concerning specific slamming complaints, AT&T will consider the order which requested the carrier change to have been an unauthorized order (i.e., a slam), unless the reseller provides adequate proof of authorization within fifteen days after the date of AT&T's request. Moreover, if AT&T receives a substantial volume of slamming complaints with respect to any reseller-customer, AT&T may require the customer to submit to AT&T copies of marketing material (including telemarketing scripts), third-party verification scripts and letters of agency, that are used in connection with the customer's efforts to obtain authorization for Carrier Changes. Likewise, when third party verification procedures are not effective in stemming slamming/misrepresentation complaints to AT&T from end users, AT&T may require process changes, including use of an approved third party verification script and adherence to measures that ensure the independence and integrity of the third-party verifier.

Sincerely,

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* As you know, changing an end user's Primary Interexchange Carrier (PIC) without valid authorization is a violation of FCC Rules (47 C.F.R. §§ 64.1100 and 64.1150). In the resale context, the carrier that has the contractual/tariff relationship with the end user is the Primary Interexchange Carrier. When AT&T submits or processes a change order on behalf of a switchless reseller, it does so as an accommodation to its reseller-customer. An unauthorized carrier change is also an abuse of service in violation of AT&T's Tariffs (see Tariff F.C.C. No. 1, Section 2.2.3.B. and Tariff F.C.C. No. 2, Section 2.2.3).

STATEMENT OF AT&T's EXPECTATIONS
REGARDING CARRIER CHANGE ORDERS

1. A reseller shall comply with all applicable laws and regulations regarding a Carrier Change (i.e., the changing of a subscriber's selection of a carrier of telephone exchange service or telephone toll service).

2. A reseller shall not submit to AT&T a Carrier Change order generated by telemarketing unless and until the order has first been confirmed in accordance with the procedures specified in F.C.C. Rule 64.1100 (47 C.F.R. 64.1100).

3. A reseller shall not submit to AT&T a Carrier Change order supported by written authorization of the subscriber unless and until the reseller has obtained a letter of agency that conforms with the requirement specified in F.C.C. Rule 64.1150 (47 C.F.R. 64.1150).

4. A reseller's customer-acquisition marketing, verification, and letter of agency practices shall clearly identify the reseller as the carrier soliciting the end user's business, and shall not misrepresent the reseller's relationship to AT&T.

5. A reseller shall maintain sufficient proof of its authority to effect a Carrier Change on file for use in dispute resolution, and, upon request, shall promptly furnish such proof of authority to AT&T and to any subscriber that has been subject to a Carrier Change submitted or executed by the reseller.

6. If a reseller fails to meet these expectations, AT&T reserves the right to cease processing Carrier Change requests on behalf of the reseller, to refer the matter to appropriate federal or state regulatory authorities/prosecutors, or to take other steps as appropriate under the circumstances.

COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

Senate Permanent Subcommittee on Investigations
EXHIBIT # 48

Statement of
H. Russell Frisby, Jr.
President
Competitive Telecommunications Association (COMPTEL)

Senate Governmental Affairs
Permanent Subcommittee on Investigations
April 23, 1998

Thank you Chairman Collins for inviting me to submit testimony to the Subcommittee as part of its hearing on "slamming" — the intentional, unauthorized transfer of a customer's local or long distance service provider. My name is H. Russell Frisby, Jr., and I am President of the Competitive Telecommunications Association (CompTel), a national industry association representing more than 230 competitive telecommunications carriers and their suppliers.

For local newspaper readers in the nation's capital, the choice is between *The Washington Post* and *The Washington Times*. These two newspapers are quite different in tone, style, ideological flavor, and — by extension — readership characteristics. Not surprisingly, *Post* fans would be aghast if they went out onto their front steps in the morning to find the *Times*, and most *Times* admirers would be equally disgusted if their subscriptions had been handed to the *Post*. Similarly, as the Internet becomes increasingly widespread, on-line service disciples would be horrified if they were switched from one provider to another without having provided their consent.

In the telecommunications field, it's called "slamming," and CompTel's members agree that it is a reprehensible, underhanded way of acquiring — or, rather, stealing customers. CompTel advocates that *all* carriers adhere to *or exceed* all applicable federal and state laws and regulations designed to prevent slamming and "cramming" — the intentional, unauthorized addition of services to a customer's bill. But although slamming has been the bane of the long-distance industry as long as there has been competition in that market, it may eventually cast its shadow on the local exchange market — if and when there is any meaningful competition for local exchange services beyond the ongoing scramble for large business customers.

CompTel members are committed to the goal of expanding consumer choice in the *local* exchange and exchange access markets, where competitive alternatives do not exist today.

1900 M Street, N.W. • Suite 800 • Washington, D.C. 20036-3508 • Phone: (202) 296-6650 • Fax: (202) 296-7585

Since its inception in 1981, CompTel has advocated policies to promote the development of full and fair competition in telecommunications services. Today, CompTel's members encompass all types of competitive telecommunications service providers, including small and mid-sized long distance (or, interexchange) carriers (IXCs), competitive local exchange carriers (CLECs) and Internet service providers (ISPs). CompTel was intimately involved in the legislative debates culminating in the Telecommunications Act of 1996 (Act), and has participated extensively in proceedings by the Federal Communications Commission (FCC) and state public service commissions implementing the Act's various provisions.

Most significantly for purposes of today's hearing, Section 258 of the 1996 Act explicitly prohibits any telecommunications carrier — local or long-distance — from submitting or executing a change in a subscriber's carrier selection, except in accordance with the FCC's verification procedures. Section 258 further provides that any carrier that violates these verification procedures and collects charges for service must be liable to the subscriber's properly authorized carrier for all charges collected. CompTel has participated extensively in the FCC's rulemaking proceeding implementing Section 258's subscriber carrier selection change provisions. In Section 258, Congress not only expressed a clear intent to prevent slamming in *all* telecommunications markets — local, intraLATA (local toll) and interLATA (long distance) services — but it also sought to ensure that consumers would be able to receive service from the carriers they choose when they choose them.

COMPTEL "CUSTOMER CHOICE" PRINCIPLES: PROTECTING CONSUMERS FROM "SLAMMING" AND "CRAMMING"

Over the past twenty years, as competition among long-distance carriers has intensified, carriers have come up with increasingly inventive ways to expand their customer base. Carriers might send so-called "welcome packages" — postcards mailed to the potential customer's home. If the postcard is not returned within, say, 14 days, the potential customer is automatically switched to the carrier who sent the card. In some cases, these welcome packages are sent simply as follow-up to confirm an earlier oral consent given by the customer to a telemarketer. But critics of welcome packages worry that they constitute a "negative option" Letter Of Agreement (LOA).

Other carriers have used techniques involving fine print at the bottom of or on the back of sweepstakes entry forms, magazine subscriptions, and other types of promotional materials. These techniques may capitalize on the unwariness of consumers by serving as proof-positive that the customer has initiated the request to change carriers, but it remains unclear whether they constitute slamming in the strictest sense of the word as defined in the 1996 Act. Unfortunately, "deceptive" may not always prove to be illegal when the degree of deceit involved is measured subjectively.

On April 2, 1998, CompTel unveiled a set of proposals designed to maximize choice and protect telephone consumers from slamming and cramming. Specifically, CompTel

advocates that *all* carriers accept the responsibility to prevent slamming and cramming, and to fully educate their customers, employees, and agents about these practices.

In addition, CompTel proposed a *"zero tolerance"* policy toward intentional slamming and cramming — whereby carriers would agree to: (1) investigate fully all allegations of slamming and cramming; (2) take appropriate action to remunerate consumers who have been victimized by any slamming or cramming; and (3) terminate any employees or agents who knowingly and wilfully engage in such practices. CompTel also has called on carriers to avoid using deceptive, inappropriate or "high pressure" sales tactics, and to redouble their efforts to minimize instances of unintentional changes and pursue all appropriate remedies when slamming or cramming is attributable to the executing local carrier.

CompTel further has proposed specific policy recommendations governing how telecommunications service providers handle primary carrier (PC) changes and unauthorized charges. These recommendations reflect four principles:

1. Customers must be able to choose their local and long distance service providers without fear of unauthorized changes or charges;

2. Adequate information must be provided to customers in order that they can make informed choices when selecting telecommunications services and providers;

3. Rules and laws regarding the carrier selection process should be competitively neutral. In addition, the rules and laws governing the carrier selection process and unauthorized customer charges must apply to all telecommunications service providers, including incumbent local exchange carriers (ILECs); and,

4. Customers and providers alike must be able to rely on uniform, nationally-consistent, and fair requirements.

Moreover, CompTel supports *uniform* federal and state requirements, noting that requiring providers to comply with differing requirements for interstate and intrastate services, as well as differing requirements among the states, will lead to customer confusion and increased costs of service. These increased costs of service ultimately will be borne by customers in the form of higher rates. Therefore, CompTel has recommended that penalties and fines should be assessed only when it has been shown that a carrier has engaged in willful and intentional slamming and cramming. The complete text of CompTel's *"Customer Choice" Principles* is attached.

FCC SUBSCRIBER CARRIER SELECTION CHANGES REQUIREMENTS

As part of the FCC's implementation of Section 258, Chairman William Kennard is expected to testify today on how and whether the FCC will apply anti-slamming rules it adopted in 1995 more broadly to all types of carriers; and how it will tighten those existing rules to provide additional protections for consumers.

At this point in time when incumbent local exchange carriers (ILECs) are entering or are seeking to enter long distance markets and competitors are entering or are seeking to enter the local exchange and intraLATA toll markets, CompTel believes it is critical that the FCC also take action to safeguard against and eliminate ILEC gaming of the primary carrier (PC)-selection process. Because ILECs have the unavoidable role of executing carrier as well as an incumbent's advantage and residual control over bottleneck facilities, CompTel believes that the FCC ought to focus its attention on crafting rules that ensure that ILECs are not able to game the PC-selection process anticompetitively.

To accomplish this goal, CompTel has recommended in FCC Common Carrier Docket No. 94-129 that the FCC adopt the following safeguards:

1. ILECs must give PC-change information customer proprietary network information (CPNI) protection;

2. ILECs must be subject to an unqualified nondiscrimination standard for PC-change execution;

3. ILECs must submit quarterly reports showing PC-change performance intervals and error ratios; and,

4. ILECs serving the dual role of submitting and executing carrier must (a) obtain third party verification and (b) serve verification materials on the FCC or any requesting carrier setting forth reasonable cause for suspecting an improperly authorized PC-change.

CompTel also requests that the FCC explore the viability of requiring the use of a neutral third party administrator for the entire PC-selection process.

Further, CompTel believes that the FCC must act to eliminate ILECs' anticompetitive use of PC-freezes. Specifically, CompTel recommends that the FCC prohibit ILECs from soliciting or enforcing PC-freezes for local and intraLATA services until six months after they become subject to competition. CompTel advocates the adoption of rules that prohibit ILECs from (1) engaging in discriminatory or otherwise anticompetitive PC-freeze practices, and (2) using deceptive or misleading PC freeze solicitations.

Finally, customers who are slammed should have no liability with regard to the unauthorized (i.e., slamming) carrier. With regard to a slammed customer's liability for services rendered, CompTel maintains that the FCC should adopt rules requiring payment to the *authorized* carrier at *authorized* rates. This is necessary for two important reasons: (1) to prevent the formation of a cottage industry based on fraudulent claims of slamming that would result if slammed customers automatically were absolved of liability for service charges; and (2) to assure the authorized carrier of reasonably expected revenues.

S. 1618, THE CONSUMER ANTI-SLAMMING ACT OF 1998

S. 1618, a bill sponsored by Senator John McCain (R-AZ) and Senator Ernest "Fritz" Hollings (D-SC), would amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers. This bill was reported from the Senate Commerce Committee on March 12, 1998, and CompTel members have worked extensively with the bill's authors on minor amendments addressing several concerns.

First, CompTel believes that a telecommunications carrier should not be in violation of S. 1618 solely because an *unaffiliated* reseller of its telecommunications carrier's service or facilities violates the bill's provisions. There are ample cases where a slamming complaint results from an unauthorized change by a carrier's *unaffiliated* reseller (i.e., where service is not sold under the same brand name as the underlying carrier). In such cases, the reseller, and not the underlying carrier, may be liable for damages.

Moreover, even the most reputable carriers sometimes may initiate an unauthorized customer change unintentionally through mistake or inadvertence, such as the misreading of a customer's telephone number or data entry error. Unintentional changes or charges also may result from errors made by the executing local carrier. CompTel advocates that carriers re-double their efforts to minimize unintentional changes or charges, and to pursue all appropriate remedies when it is found that slamming or cramming is attributable to the executing local carrier.

For this reason, and because the penalties under S. 1618 are severe, CompTel believes that, should S. 1618 ultimately pass and be enacted, the FCC should use its discretion to punish wrongful behavior and should *not* apply the penalties in cases where a slamming complaint is inadvertent. S. 1618 gives considerable discretion to the FCC and to the courts in determining fault and imposing penalties on carriers who make unauthorized changes of telephone service providers. This discretion is critical, because it allows the FCC and the courts to focus on punishing fraudulent carriers who seek to profit from changing a consumer's telephone provider without permission, while dispensing with complaints that have been brought in error or are unfounded.

Finally, with respect to S. 1618's FCC "Top 10" slamming report provisions, CompTel believes that the FCC should focus on reporting complaints that reflect wrongdoing on the part of a carrier. In CompTel's view, the FCC should *verify* complaints received from consumers and use only *verified* complaints as the basis for its final report to Congress citing the ten carriers that have been the object of the highest number of complaints. Complaints that have been fully investigated, found to have merit, and attributed to the actual wrongdoer will provide Congress factual information on those carriers who intentionally slam consumers.

Thank you for the opportunity to submit this statement.

COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (COMPTEL)

"Customer Choice" Principles

Competition in all telecommunications markets will bring to customers the benefits of lower prices, greater choices and improved service. For these benefits of competition to be fully realized, customer choice must be maximized and each customer's choice of carrier(s) and service(s) must be honored. In particular, the intentional, unauthorized transfer of a customer's local or long distance service provider (a.k.a. "slamming") or the intentional, unauthorized addition of services on a customer's bill (a.k.a. "cramming") are unacceptable practices. Consistent with the goal of maximizing choice and protecting customers, CompTel offers the following principles:

- CompTel advocates that carriers accept the responsibility to prevent slamming and cramming, and to fully educate their customers, employees, and agents on the practice and unacceptability of intentional slamming and cramming.
- CompTel supports a *zero tolerance* policy toward intentional slamming and cramming. A *zero tolerance* policy means that carriers agree to:
  - investigate fully all allegations of slamming and cramming;
  - take all appropriate action to make consumers whole in the event they are slammed or crammed;
  - terminate any employee or agent found to have knowingly and willfully engaged in slamming or cramming;
- CompTel advocates that all carriers adhere to or exceed all applicable federal and state laws and regulations designed to prevent slamming and cramming.
- CompTel advocates that carriers not engage in deceptive, inappropriate or "high pressure" sales tactics.
- Even the most reputable carriers sometimes *unintentionally* may initiate an unauthorized customer change through mistake or inadvertence, such as the misreading of a customer's telephone number or data entry error. Unintentional charges also may result from errors made by the executing local carrier. CompTel advocates that carriers re-double their efforts to minimize unintentional charges and to pursue all appropriate remedies when it is found that slamming or cramming is attributable to the executing local carrier.

1900 M Street, N.W. • Suite 800 • Washington, D.C. 20036-3508 • Phone: (202) 296-6650 • Fax: (202) 296-7585

COMPTEL COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION (COMPTEL)

Primary Carrier Changes & Unauthorized Charges

Competition in all telecommunications markets will bring to customers the benefits of lower prices, greater choices and improved service. For these benefits of competition to be fully realized, customer choice must be maximized and each customer's choice of carrier(s) and service(s) must be honored. In particular, the intentional, unauthorized transfer of a customer's local or long distance service provider (a.k.a. "slamming") or the intentional, unauthorized addition of services on a customer's bill (a.k.a. "cramming") are unacceptable practices. Consistent with the goal of maximizing choice and protecting customers, CompTel offers the following proposals:

I. ***Customers must be able to choose their local and long distance service providers without fear of unauthorized changes or charges.***

- All telecommunications service providers that submit primary carrier changes ("PC changes") should be required to demonstrate affirmative customer verification for the change in one of the following ways:
  - a document signed by the authorized subscriber
  - verification by an unaffiliated third party
  - by appropriate electronic means
- Service providers serving the dual role of submitting and executing carrier must (1) obtain affirmative customer verification and (2) provide such verification materials to the FCC, a state and/or any requesting carrier that sets forth reasonable cause for suspecting an improperly authorized PC change.
- Customers who are subjected to an unauthorized PC change should pay only the authorized carrier's rates, and should be entitled to full reimbursement of the difference between any payments made and the payment that would have been made had the unauthorized change not occurred (including any fee paid to switch a customer's primary carrier(s)). Such reimbursement will be in addition to any other payments or damages that may be awarded by the appropriate government agency or court.
- Customers who are subjected to cramming should not be held liable for those charges, nor should they be assessed late fees or risk having their service disconnected while the unauthorized charges are in dispute. Customers also should be entitled to full reimbursement for any unauthorized charges which they have paid.

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II. ***Adequate information must be provided to customers in order that they can make informed choices when selecting telecommunications services and providers.***

- Customer information concerning PC changes should be made available in competitively neutral, detailed and clear language to ensure that customers are aware of their alternatives.

- Providers using letters of agency (LOAs) for initiating and verifying PC changes must fully translate them into the same language as their associated promotional materials or oral descriptions and instructions.

- The availability of a primary carrier "freeze" ("PC freeze") where a customer may instruct his current local service provider *not* to execute a change in that customer's local and/or toll service provider(s) absent his explicit authorization can be a useful means for customers to protect themselves against slamming. In some instances, however, incumbent local exchange carriers (ILECs) have failed to adequately inform customers that the PC freeze applies to their local service and intraLATA toll calls, in addition to their interLATA toll calls. To the extent a PC freeze is permitted, customers should be required to affirmatively request this option for each type of service to which they subscribe. Customers also must be fully informed on how to override a PC freeze should they later want to switch carriers.

III. ***Rules and laws regarding the carrier selection process should be competitively neutral.***

- The rules and laws governing the carrier selection process and unauthorized customer charges must apply to all telecommunications service providers, including ILECs.

- PC change information should be afforded customer proprietary network information (CPNI) protection, so that it is available only to carrier personnel tasked with executing PC change requests. In no case should an executing carrier's marketing and sales personnel have access to PC change information.

- Carriers should be liable for failures to properly process and execute PC change requests and they should be liable to the submitting carrier for revenues in the event of unreasonable delay between submission and execution of the PC change.

- ILECs should be prohibited from soliciting or enforcing PC freezes for local and intraLATA services until at least six months after those services become subject to competition in a particular market.

- ILECs should be held liable when found to have used PC freezes anti-competitively so as to discourage customer's from switching to competitive local and toll service providers.

- Access to information concerning whether a customer has selected a PC freeze must be made available to all carriers on nondiscriminatory terms and conditions.

- Where a carrier offers PC freeze options to its own customers, it must offer the same PC freeze options to customers pre-subscribed to other carriers.

IV. ***Customers and providers alike must be able to rely on uniform, consistent, and fair requirements.***

- Federal and state rules and laws governing customer changes and unauthorized charges should be uniform and consistent on a national basis. Requiring providers to comply with different requirements for interstate and intrastate services, as well as different requirements among the states, will lead to customer confusion and increased costs of service. These increased costs of service ultimately will be borne by customers in the form of higher rates.

- Penalties and fines should be assessed only when it has been shown that a carrier has engaged in willful and intentional slamming and cramming. Penalties and fines should not be based on allegations of slamming or cramming.