July 15, 1999

Carole Washburn
WUTC
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

RE: ***Cramming and Slamming Rulemaking***
Docket No. UT-980675

Dear Ms. Washburn:

Enclosed please find an original and ten copies of the Comments of Public Counsel and Consumer Protection Re June 21 Draft Rules for filing in the above matter. Also included is a diskette formatted in WordPerfect 5.x for Windows. These comments were filed electronically on July 15, 1999.

Very truly yours,

Simon J. ffitch
Assistant Attorney General
Public Counsel

SJF/ljb
cc: Trisha McArdle

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Consumer Protections Related to "Cramming" and "Slamming"	DOCKET NO. UT-980675 COMMENTS OF PUBLIC COUNSEL AND CONSUMER PROTECTION RE JUNE 21 DRAFT RULES (JULY 15, 1999)

The following comments are submitted by Public Counsel and by the Consumer Protection Division of the Washington Attorney General, pursuant to the Commission's Notice of June 21, 1999.

Introduction

Public Counsel and Consumer Protection (CP) support the Commission's approach, to revise and strengthen its slamming rules. As noted by the FCC in implementing its revised slamming rules earlier this year, state involvement in working to combat this problem is of "greater importance than ever before". *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunication Act of 1996*, CC Docket 94-129, FCC 98-334, Second Report and Order, December 23, 1998, ¶ 77. While regulatory efforts have been increasingly focused on slamming, statistics indicate that the problem persists in Washington. CP Division records reflect approximately 400 slamming complaints for 1998, with 150 so far for 1999. The Commission's continued efforts to attack this practice are justified,

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

timely and necessary.

With regard to cramming, the CP Division records approximately 60 complaints for 1998 and 31 to date in 1999. While it is our understanding that the Commission has accepted staff's recommendation not to include cramming issues in this phase of the proceeding, Public Counsel and CP both urge reconsideration of that decision. Cramming is a real and documented problem. There are available regulatory tools which could help consumers. Reliance only upon self-policing or industry best practices is unlikely to provide adequate or uniform protection to customers.

Specific Comments on the Draft Rules

WAC 480-120-139
Section (1) Verification of Orders
Section (1)(a)(i)

Public Counsel and CP are unclear as to the justification for deletion of the phrase "billing telephone number" from the rule. *Inter alia*, it appears this may have the impact of eliminating one piece of information a customer or other party needs to verify accuracy of the change order.

Section (1)(b)

The second sentence should be modified to read: "Such authorization must be placed from the telephone number(s) (~~on~~) for which the preferred carrier is to be changed and must confirm the information required in paragraph (a)(i)-(vii) of this section." The purpose of this change is to eliminate any ambiguity about the specific information required to be confirmed.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

Section (1)(c)

As written, this section appears to contain weaker requirements for independent third party verification than those established for written or electronic verification. Public Counsel and CP question whether there is adequate justification for providing customers less protection simply on the basis of the type of verification the carrier chooses to employ. We recommend requiring the same confirming information required in section (1)(a)(i)-(vii).

Section (2) Separate Services, Separate Verifications

Section (2)(a)

Public Counsel and CP support inclusion of a 2 year record retention requirement in the rule. The requirement should be expanded, however, to require that, in the case of third party verification, a record of the entire conversation be maintained, and in the case of written or electronic verification the entire verification document should be retained. Mere retention of the order by itself will not necessarily result in a record of the verification. At a minimum, the rule should require retention of the verification itself.

In addition, the record retention provision should be relocated to an independent position in the rule, rather than being placed as a subparagraph under the rule requiring separate authorization for separate services. Leaving the provision in its current location will lead to confusion about whether the records requirement applies broadly, or only to transactions covered under section (2).

Section (3) Implementing Order Changes

We generally support this section. We recommend, however, the addition of a sentence reading as follows: "This section does not prohibit a LEC from investigating and responding to a

customer-initiated inquiry regarding a PIC or other account change." Under the current wording a LEC may believe that it is barred from responding to a customer who seeks assistance straightening out a slamming problem.

Public Counsel and CP also recommend the addition of a subparagraph to this section requiring the LEC to notify the customer on the bill in clear and conspicuous language that a change in primary interexchange carrier(s) has been executed. The Commission may wish to prescribe some basic form of words such as "Notice: Your Long Distance Carrier Has Been Changed. If you have a question or complaint contact your local carrier, long distance carrier, or the WUTC at 1-800-562-6150."

Finally, former section (3) relating to customer-initiated orders has been deleted. It is now unclear how customer initiated orders are handled under the new rules, or whether they are covered at all. The absence of any provision governing customer-initiated orders will likely cause confusion particularly in light of the provision in draft paragraph (3) which prohibits a LEC from verifying a change order. A record retention requirement should apply to customer-initiated changes as well.

<u>Section (4) Preferred Carrier Freezes</u>

Public Counsel and CP support the inclusion in the rule of a balanced PIC freeze option which provides customer protection but does not disadvantage competitors. We have a number of specific concerns with the rule as drafted, however.

The term "express consent" in the first sentence of section (4) needs to be defined. We suggest adding the following as a third sentence in the section: "Express consent means direct

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

written or oral direction by the subscriber."

Section (4)(a)

This section should be amended to make clear that the notification must be made to each customer on an individual basis. Requiring a bill insert would be an acceptable method. A bill message would not be an adequate form of notice, given the amount of information which must be conveyed.

Section (4)(b)

This section should be clarified. As written, the draft rule language does not address the duration of the one-time free PIC freeze. Carriers may, therefore, feel free to charge a customer for subsequent PIC freeze once the customer has made a change from the initial carrier selected at the time of the "free freeze." This makes no sense. The true benefit to the customer of a PIC freeze is the acquisition of control over the particular manner in which changes may be made in her account. This benefit is not inherently tied to the choice of a particular carrier. Once the customer selects the PIC freeze method of account control he should be able to maintain a PIC freeze without charge indefinitely, unless he chooses to relinquish this level of protection. So long as a subscriber with a PIC freeze is willing to provide direct written or oral verification of a change order, he or she should be permitted to change carriers as often as he or she likes without incurring a PIC freeze charge.

Section (4)(e)

In the first sentence, delete the words "who offer preferred carrier freezes." The provision is inconsistent with section 4, which states: 'All local exchange companies must offer

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

preferred carrier freezes."

Another concern we have with this section is the use of the term "carrier administering the freeze." It is unclear whether this refers to the local exchange carrier or other entity, and whether the term is consistent with other terminology in the rule.

(5) Remedies

This section raises the most concerns for Public Counsel and Consumer Protection. In general, we urge the Commission to significantly strengthen this portion of the rules. As written, the rules do not provide adequate disincentives for slamming companies to engage in unlawful conduct. Ultimately the best weapon against slamming is remove all financial incentives to slam consumers.

Specifically we recommend substituting the following provisions for the current draft language:

> (a) A subscriber whose selection of telecommunications carrier is changed without authorization verified in accordance with the Commission rule is absolved of liability for (i) all charges imposed by the unauthorized carrier for service provided, (ii) all charges required to return the subscriber to his or her properly authorized carrier; and (iii) all other charges imposed in connection with the unauthorized charge. Additionally, the properly authorized carrier must reinstate the subscriber to any premium program in which that subscriber was enrolled prior to the unauthorized change, and restore any premiums to which the subscriber would have been entitled had the unauthorized change not occurred.
>
> (b) In addition to any other remedy provided by law, a telecommunications carrier, person, firm, or corporation who requests a change in a subscriber's telecommunications carrier in violation of Commission rule shall receive no payment for service provided as a result of the unauthorized change, shall promptly refund to the subscriber any amounts collected as a result of the unauthorized change, and shall be liable to the subscriber's properly authorized carrier for an amount equal to all charges billed to the subscriber

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744

from the unauthorized carrier including any billing and collection expenses.

(c) In addition to any other remedy provided by law, if the Commission finds a pattern or practice of violations of WAC 480-129-139 by any telecommunications company, the Commission may, after notice and hearing, revoke the carrier's certificate of authority.

(d) Whenever a telecommunications carrier receives a slamming complaint from a subscriber, the carrier shall advise the subscriber of his or remedies under subsections (a) and (b) of this section.

Should the Commission not be inclined to adopt the foregoing language, we would urge the Commission to adopt, at a minimum, the remedies provisions of the FCC rules.

Conclusion

Thank you for your consideration of these comments. Public Counsel and Consumer Protection strongly support the Commission's efforts in this area and look forward to working with the Commission further on better protections for consumers.

ATTORNEY GENERAL OF WASHINGTON
Public Counsel
900 4th Ave., Suite 2000
Seattle, WA 98164-1012
(206) 464-7744