

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Consumer Protections  
Related to "Slamming"

DOCKET NO. UT-980675

COMMENTS OF PUBLIC COUNSEL  
RE DRAFT RULES (November 24,  
1999)

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The following comments are submitted by Public Counsel pursuant to the Commission's Notice of October 19, 1999. Public Counsel respectfully requests leave to file these comments late due to press of other matters. In addition, Public Counsel asks leave to file the comments by FAX and electronic mail, due to the lack of clerical assistance during Thanksgiving week.

Public Counsel support the Commission's approach to revise and strengthen its slamming rules. The Commission's continued efforts to redress this practice are justified, timely and necessary. 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. Even though regulatory efforts have been increasingly focused on slamming, statistics indicate that the problem persists in Washington.

## **Specific Comments on the Draft Rules**

While many issues raised in our earlier comments have been resolved, Public Counsel refers the Commission to comments it made earlier in this docket and urges that the FCC-based rules be modified to incorporate the additional improvements not already made. The most important issue remaining is that of remedies.

### Remedies

This section raises the most concerns for Public Counsel. 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 to remove all financial incentives to slam consumers. In a November, 1999 case the Ninth Circuit Court of Appeals upheld the California Public Utility Commission's imposition of slamming fines and a three-year suspension prohibiting a telecommunications company from providing intrastate long-distance services. The Telecommunications Act of 1996, 47 U.S.C. §253(b) authorizes states to "protect the public safety and welfare ... and safeguard the rights of consumers" so long as it is done on a "competitively neutral basis." The Ninth Circuit held that this §253 language empowers states to "implement regulations that are 'necessary' to 'protect the public' against slamming, which reasonably may include fines or suspensions needed to prevent such unlawful activity." *Communications Telesystems Intern. v. California Public Utility Com'n*, 1999 WL 997118 (9th Cir.(Cal.) Nov 04, 1999) (NO. 98-16400, 99-15940) 4-5. The Court explicitly stated that the CPUC slamming protections were not federally preempted and that "federal preemption of state regulation in the area of telecommunications must be clear and occurs only in limited

circumstances.” *Id.*, 3. Furthermore, the Court approvingly noted “the reality that fines or suspensions may be required to prevent or deter illegal behavior.” *Id.*, 5.

Given this recent authority, we specifically 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 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.

In addition, California’s slamming provision may provide a helpful guideline for linking appropriate fines to thresholds of slamming complaints in Washington. 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 strongly support the Commission's efforts in this area and look forward to working with the Commission further on better protections for consumers.