

**1999 HOUSE NATURAL RESOURCES
HB 1169**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1169

House Natural Resources Committee

Conference Committee

Hearing Date 1/14/99

Tape Number	Side A	Side B	Meter #
1		x	10.5-60.0
2	x		0.0-60.0
2		x	0.0-60.0
3	x		0.0-0.7
Committee Clerk Signature <i>Keeni Larsh</i>			

Minutes:

SUMMARY OF THE BILL: A BILL for an Act to create and enact a new section to chapter 49-07 and a new section to chapter 49-21 of the North Dakota Century Code, relating to unauthorized telecommunications service; to amend and reenact section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public service commission; and to provide a penalty.

Chairman Grosz opened the hearing on HB 1169 in the Pioneer Room. All committee members were present: Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep. Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

Commissioner Susan E. Wefald of the Public Service Commission appeared in favor of HB 1169. (see attached testimony)

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1169

House Natural Resources Committee

Conference Committee

Hearing Date 2/04/99

Tape Number	Side A	Side B	Meter #
2		x	13.8-49.2
3	x		0.0-1.0
Committee Clerk Signature <i>Robin G. Small</i>			

Minutes:

REP. GROSZ wants to finish the committee work on HB 1169. GROSZ states that there is an amendment to be looked at from ILLONA JEFFCOAT - SACCO, PUBLIC SERVICE COMMISSION.

JEFFCOAT-SACCO addresses the committee and then explains the amendments that the P.S.C. would like to see adopted.

REP. NELSON asks about the slamming portion of the amendment, what is a better regulation of a notice on slamming. JEFFCOAT-SACCO replies that you should not confuse section 2, of the notice on the original bill, of something obvious. There were two notices to the committee. She refers to COMMISSIONER WEFALD. JEFFCOAT-SACCO then discusses that they are agreeable of the amendments as how they are.

REP. GROSZ asks about the local companies footing these bills. JEFFCOAT-SACCO replies not necessarily. The local companies would be producing the bill, but the cramming or slamming would show up on the persons MCI bill.

REP. NOTTESTAD asks if the company has the last say if a customer did not order a certain phone service and then is slammed or crammed? JEFFCOAT-SACCO replies yes they do, and at some point will go ahead and collect.

REP. KELSH asks why interstate is worded in the amendment. JEFFCOAT-SACCO replies that it refers to jurisdiction, it will mean the same thing if the word is there or not. REP. KELSH asks if we have jurisdiction over what service is over North Dakota? JEFFCOAT-SACCO turns the podium over to DAVE HEWLEY to reply to the question at hand. HEWLEY replies that there is a strong argument against the case law. There really isn't much difference under the circumstances.

JEFFCOAT-SACCO then goes on to tell the committee about which parts of the bill are obsolete if the amendment takes over. REP. GROSZ then says the rest of it is pretty self explanatory.

REP. GROSZ then states that the amendment that he has is a little bit different that JEFFCOAT-SACCO. JEFFCOAT-SACCO then confers with HEWLEY and WEFALD. They together agree that the amendment REP. GROSZ will be fine. The amendment REP. GROSZ was given to him was from JEFFCOAT-SACCO awhile back. GROSZ then took it to Legislative Council to get prepared.

REP. LUNDGREN expresses some concerns of notifying the customer of being slammed or crammed. JEFFCOAT-SACCO also agrees that it is a very important issue and it was discussed.

REP. GROSZ addresses the cost of the paperwork on US WEST'S part. GROSZ reads the letter from WEFALD and the ATTORNEY GENERAL.

REP. NELSON asks about the concerns of the rural telephone cooperatives and their jurisdictions and if their subject to all of this. REP. GROSZ replies that all telephone companies in North Dakota are subject to the P.S.C. jurisdiction. Yes everyone is covered by this bill.

REP. PORTER moves to accept the amendment. Seconded by REP. DEKREY. A voice vote was taken with 15 YES, 0 NO, 0 ABSENT.

REP. LUNDGREN would like to reinstate Page 2, Lines 26-31, Page 3, Lines 1-7. Seconded by REP. KELSH. A roll call vote was taken and it was 6 YES, 9 NO, 0 ABSENT. It did not pass.

REP. PORTER moved for a DO PASS AS AMENDED, seconded by REP. MARTINSON. The roll call vote was taken, being as follows 13 YES, 2 NO, 0 ABSENT. The CARRIER of the bill is REP. GROSZ.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1169

Amendment to:

Requested by Legislative Council

Date of Request: 1-5-99

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: *See attached supplement*

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	<i>Uncertain</i>	<i>N/A</i>	<i>Uncertain</i>	<i>N/A</i>	<i>Uncertain</i>	<i>N/A</i>
Expenditures:	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>	<i>N/A</i>

- What, if any, is the effect of this measure on the appropriation for your agency or department:

- For rest of 1997-99 biennium: *N/A*
- For the 1999-2001 biennium: *N/A*
- For the 2001-03 biennium: *N/A*

- County, City, and School District fiscal effect in dollar amounts: *No Effect*

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	Counties	School Districts	Counties	School Districts	Counties	School Districts

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 5, 1999*

Signed: 

Typed Name: *Jon H. Mielke, Executive Secretary*

Department: *Public Service Commission*

Phone Number: *328-2400*

Public Service Commission
Fiscal Note Supplement
HB 1169

1. Narrative: *This bill provides a penalty for slamming a telecommunications customer. The bill will not require additional staff; enforcement will be through the present Public Service Commission staff or the Attorney General's Consumer Protection Division. Enforcement may result in additional general fund revenues, but the impact is difficult to estimate because fines may be uncollectable, even if imposed.*

PROPOSED AMENDMENTS TO HB 1169

Page 1, line 1, remove "a new section to chapter 49-07 and"

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, remove "; and to provide a penalty"

Page 1, remove lines 6 through 16

Page 1, line 17, replace "2" with "1"

Page 1, line 23, replace "without express authorization from the customer." with "except in compliance with title 47, Code of Federal Regulations, part 64, subpart K. The provisions of title 47, Code of Federal Regulations, part 64, subpart K, apply to any telecommunications company submitting or executing an order on behalf of a subscriber of telecommunications service to change the subscriber's provider of intrastate telecommunications service, change the subscriber's intrastate telecommunications service, or initiate a subscriber's intrastate telecommunications service."

Page 2, remove lines 1 through 25

Page 2, line 26, replace "3." with "2."

Page 3, line 1, replace "4." With "3."

Page 3, remove lines 8 through 31

Page 4, line 1, replace "8. Cease and desist orders." with "4."

Page 4, line 15, replace "9. Consumer fraud violation." With "5."

Re-number accordingly

PROPOSED AMENDMENTS TO HB 1169

Page 1, line 1, remove "a new section to chapter 49-07 and"

Page 1, line 3, after the semicolon insert "and"

Page 1, line 4, remove "; and to provide a penalty"

Page 1, remove lines 6 through 16

Page 1, line 17, replace "2" with "1"

Page 1, line 20 after "1." replace "Unauthorized service initiation and change prohibited. A telecommunications" with "The provisions of title 47, Code of Federal Regulations, part 64, shall apply to any telecommunications company submitting or executing an order on behalf of a subscriber of telecommunications service to change the subscriber's provider of intrastate telecommunications service or add an intrastate telecommunications service."

Page 1, remove lines 21 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, line 1, replace "8. Cease and desist orders." with "2."

Page 4, line 15, replace "9. Consumer fraud violation." with "3."

Re-number accordingly

VK
2/4/99
10/2

HOUSE AMENDMENTS TO HOUSE BILL NO. 1169 2/5/99 NAT. RES.

Page 1, line 1, remove "a new section to chapter 49-07 and"

Page 1, line 4, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, remove lines 6 through 16

Page 1, replace lines 20 through 23 with:

- "1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.

2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1169 2/5/99 NAT. RES.

Page 2, removes lines 1 through 31

HOUSE AMENDMENTS TO THE HOUSE BILL NO. 1169 2/5/99 NAT. RES.

Page 3, remove lines 1 through 31

HOUSE AMENDMENTS TO HOUSE BILL NO. 1169 2/5/99 NAT. RES.

Page 4, line 1, replace "8" with "3" and remove "Cease and desist orders."

Page 4, line 4, after "section" insert "or title 47, Code of Federal Regulations, part 64, subpart k"

Page 4, line 15, replace "9" with "4" and remove "Consumer fraud violation."

Page 4, line 30, replace "sections" with "section" and remove "and 2"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1169 2/5/99 NAT. RES.

Page 5, after line 4, insert:

20/2

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

HB
1169

Date: 2.4.99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken amend. do pass

Motion Made By Porter Seconded By DeKrey

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz					
Vice-Chairman Dale Henegar					
Representative David Drovdal					
Representative Pat Galvin					
Representative Duane DeKrey					
Rep. Darrell D. Nottestad					
Representative Jon O. Nelson					
Representative Byron Clark					
Representative Todd Porter					
Representative Jon Martinson					
Reperesentative Lyle Hanson					
Representative Scot Kelsh					
Representative Deb Lundgren					
Representative Sally M. Sandvig					
Representative Dorvan Solberg					

Total (Yes) 15 No 0

Absent 0

Floor Assignment _____
If the vote is on an amendment, briefly indicate intent:

HB 1169

Date: 2.4.99
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken reinstated pg 2 lines 26-31 pg 3 lines 1-7

Motion Made By Lundgren Seconded By Kelsh

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz		✓			
Vice-Chairman Dale Henegar		✓			
Representative David Drovdal		✓			
Representative Pat Galvin		✓			
Representative Duane DeKrey		✓			
Rep. Darrell D. Nottestad		✓			
Representative Jon O. Nelson		✓			
Representative Byron Clark		✓			
Representative Todd Porter		✓			
Representative Jon Martinson	✓				
Representative Lyle Hanson	✓				
Representative Scot Kelsh	✓				
Representative Deb Lundgren	✓				
Representative Sally M. Sandvig	✓				
Representative Dorvan Solberg	✓				

Total (Yes) 6 No 9

Absent _____

Floor Assignment _____
If the vote is on an amendment, briefly indicate intent:

Date: 2.4.99
Roll Call Vote #: 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass^{ed} Amended

Motion Made By Porta Seconded By Martinson

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	✓				
Vice-Chairman Dale Henegar	✓				
Representative David Drovda	✓				
Representative Pat Galvin	✓				
Representative Duane DeKrey	✓				
Rep. Darrell D. Nottestad	✓				
Representative Jon O. Nelson	✓				
Representative Byron Clark	✓				
Representative Todd Porter	✓				
Representative Jon Martinson	✓				
Reperesentative Lyle Hanson	✓				
Representative Scot Kelsh	✓				
Representative Deb Lundgren		✓			
Representative Sally M. Sandvig		✓			
Representative Dorvan Solberg	✓				

Total (Yes) 13 No 2

Absent _____

Floor Assignment Grosz

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1169: Natural Resources Committee (Rep. Grosz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1169 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 49-07 and"

Page 1, line 4, remove "and" and after "penalty" insert "; and to declare an emergency"

Page 1, remove lines 6 through 16

Page 1, replace lines 20 through 23 with:

- "1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart k, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
2. A telecommunications company may not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider if the subscriber notifies the service provider within thirty days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty-day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided before cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law."

Page 2, removes lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, line 1, replace "8" with "3" and remove "Cease and desist orders."

Page 4, line 4, after "section" insert "or title 47, Code of Federal Regulations, part 64, subpart k"

Page 4, line 15, replace "9" with "4" and remove "Consumer fraud violation."

Page 4, line 30, replace "sections" with "section" and remove "and 2"

Page 5, after line 4, insert:

"SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 SENATE NATURAL RESOURCES

HB 1169

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1169

Senate Natural Resources Committee

Conference Committee

Hearing Date March 5, 1999

Tape Number	Side A	Side B	Meter #
1		x	970-5400
1	x		2480-2620
Committee Clerk Signature <i>Jula A. Tegen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1169: RELATING TO JURISDICTION OF THE PUBLIC SERVICE COMMISSION TO PROVIDE A PENALTY; AND TO DECLARE AN EMERGENCY.

CHARLES E. JOHNSON, Public Service Commission testified in support of HB1169. (See attached testimony)

SENATOR TRAYNOR asked for an illustration of slamming and cramming.

CHARLES E. JOHNSON replied that slamming occurs where without your consent a carrier is switched. The cramming is where you don't want the service, but it is applied to your bill.

SENATOR CHRISTMANN asked why doesn't FCC enforce the rules and why do we need to.

CHARLES E. JOHNSON replied FCC will, but it gives us the right to enforce them, too. The FCC may have bigger problems in bigger states than ND and if we have an activity going on in

ND that is important to North Dakotans, the FCC may not agree that it is not worth their time to enforce that law so we would have the opportunity to enforce it.

SENATOR FREBORG asked if a telecommunications company is not authorized to switch a subscriber, and a subscriber needs to switch back to their previous carrier, is the subscriber liable to pay a charge to switch back to the original carrier.

CHARLES E. JOHNSON replied this would have to be resolved but the subscriber would not be required to pay the charge.

SENATOR TRAYNOR asked could the slamming occur without the participation of the local phone company.

CHARLES E. JOHNSON replied yes that is correct. The long distance company has to notify the local exchange company and the local exchange company has to reprogram the computer to this change.

SENATOR REDLIN stated SRT has advertised for protection from cramming and slamming and have you heard of this.

CHARLES E. JOHNSON replied this is known as a pick freeze. If you do not want to be changed through slamming, ask for a pick freeze to be placed on your account. Your local company will not switch you even if they receive a call from a different company.

SUSAN E. WEFALD, ND Public Service Commission testified in support of HB1169. There are 2 disclosure amendments available for your consideration. (See attached amendments) The house committee directed our staff and Attorney General staff to work with the companies to redraft this bill since all parties agreed that it needed to be closer to the new federal rules. The companies did not like the disclosure portions of the bill, these were not included in the new

version. There was a vote on these disclosure matters in the House committee and they were removed from the bill. SD proposed legislation that required any company that slammed a customer in SD to pay the customer \$1,000. This is in addition to the penalties that the commission can place on the telecommunication company that did the slamming.

SENATOR CHRISTMANN asked are there just a few companies that do cramming and slamming.

SUSAN WEFALD replied this is happening from all companies. Pick freeze is a good choice for people, but it can be undone because some have been slammed who have pick freeze. The FCC is encouraging states to get involved in slamming regulations and want help to enforce it.

SENATOR HEITKAMP asked if most of the bill has been gutted.

SUSAN WEFALD replied it was changed in order to make it more compatible with the new federal rules.

SENATOR HEITKAMP asked do you think you can do the job to protect ND citizens against slamming and cramming with the bill as it is now.

SUSAN WEFALD replied yes and I can do the job with the bill the way it is now, but it could be better.

DAVID HUEY, Ass't Attorney General testified on consumer complaints of cramming and slamming which are increasing. (See attached example of consumer complaint) FCC does not have enough manpower to handle complaints so we are allowed to prosecute in ND and this bill allows us to do that. There are other forms of deregulation including utilities, electricity, natural gas, etc. Another factor is with deregulation, your local exchange companies are now providing billing services that they didn't provide before which makes the phone bills more complex.

Under the Consumer Fraud Law, the Attorney General's office has the authority to impose a \$5,000 per violation civil penalty. The burden of proof is put on the business that was involved in the change in the first place so they find it necessary to provide some good verification of their orders because they know if it is challenged the burden of proof is on them.

MEL KANBEITZ, US West testified in support of HB1169 and asked the committee to adopt the bill as it sits. US West employees spend a lot of time attempting to get the customer back to the proper carrier and that the customer gets proper credit. US West received over 400,000 calls last year.

MARILYN FOSS, MCI testified in support of HB1169.

MICHELLE LARSON, ND Partnership For Phone Competition testified in support of HB1169.

SENATOR TRAYNOR closed the hearing on HB1169.

COMMITTEE ACTION: March 11, 1999, Tape 1, Side A, Meter# 2480-2620: SENATOR HEITKAMP moved for a DO PASS, seconded by SENATOR CHRISTMANN. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR HEITKAMP volunteered to carry the bill.

Roll Call Vote #: /

Date: 3-11-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB1169

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PASS

Motion Made By Heitkamp Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Heitkamp

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 11, 1999 4:39 p.m.

Module No: SR-44-4621
Carrier: Heitkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1169, as engrossed: Natural Resources Committee (Sen. Traynor, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1169 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1169

John M. Olson
Attorney

OLSON CICHY
ATTORNEYS

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Fax: 701-223-0855

Joseph J. Cichy
Attorney



January 13, 1999

Chairman Mick Grosz and Members of the House Natural Resources Committee
State Capitol
Bismarck, ND

RE: House Bill 1169

Dear Chairman Grosz and Committee Members:

McLeod USA respectfully submits the attached comment and position statement on House Bill 1169, and in general reference to any slamming/cramming legislation. We ask that you consider these comments when evaluating the merits of House Bill 1169 or any other similar proposals relating to this important issue.

If there are any questions, or if the Committee desires any further information from McLeod USA, please do not hesitate to let me know. Thank you for your consideration.

Sincerely,

John M. Olson

JMO:rje
legislat\GroszLTR

McLeodUSA's Positions on Slamming/Cramming Legislation

1. McLeodUSA supports slamming/cramming legislation in general as long as it doesn't unreasonably inhibit competition, discriminate against new providers and is consistent with the FCC's regulations on slamming. It must be remembered that incumbent providers have an inherent competitive advantage because virtually 100% of the consumers in certain market segments are existing customers of the incumbent. As a result, slamming legislation necessarily impacts new entrants more than incumbents. Any bill that makes marketing materially more difficult for competitive providers could be viewed as a barrier to entry, which is unlawful under the Federal Act of 1996.

2. Proposals that impose new costs on new entrants like McLeodUSA that are not imposed on incumbent providers are discriminatory and anti-competitive. Thus, the fact a new entrant's ability to market to customers effectively requires the new entrant but not an incumbent to install expensive equipment and undertake market inhibiting sales procedures could be inconsistent with Federal act and therefore subject to preemption.

3. Proposals that require a signed letter of authorization from all types of customers before a provider can convert a customer to their service is unreasonably restrictive. This proposal would virtually eliminate McLeodUSA's ability to use telemarketing to reach mass markets such as residential customers, thereby slowing down competitive choices for residential and small business customers. Such a proposal also has a disparate impact on smaller market entrants such as McLeodUSA. Large new entrants such as AT&T, MCI and Sprint have the financial resources to use massive media campaigns to win customers; smaller players should be allowed to use consumer friendly telemarketing to reach the same audience cost effectively.

4. Proposals (HB No. 1169) that require the telecommunications provider to record the entire telemarketing solicitation with a tape being maintained for two years is economically burdensome and cost prohibitive. Estimated costs to McLeodUSA for the equipment alone was up to \$200,000. There would be, of course, additional operational costs associated with such a system. Given the fact that the legislation also requires a third party verification conference to be recorded, the benefits of making the telecommunications provider record the call is outweighed by the cost of making the second recording.

5. Proposals (H.B. No. 1169) that require written notification to the customer within 10 days of the authorization are well intentioned but need to be amended like McLeodUSA currently does it. At McLeodUSA, we send a welcome kit to the customer when the upgrade is scheduled because we believe customers benefit by getting the information closer in time to when their phone service will be changed. The customer receives the welcome kit, which already includes written notification, shortly before the service is converted. It currently takes US West an average of 7-10 business days to convert service for McLeodUSA, because of the length of US West's Centrex Plus service intervals. McLeodUSA believes requiring written notification is not unduly burdensome, but the notification should simply be required before service is converted, to provide flexibility to address

unforeseen problems or delays.

6. McLeodUSA has a proven track record that protects consumers from being slammed or crammed while at the same time encourages competition. For example, McLeodUSA uses an independent, third-party verification process to protect consumers. When a McLeodUSA telemarketer calls a residential consumer or small business customer and explains the entire sales presentation, if the prospect then indicates their desire to switch to McLeodUSA services, a representative from an independently owned, third-party verification company joins the call and verifies: 1) that the person is authorized to order telephone service for the number called; and 2) each point of the sales transaction, including a) the service ordered, b) the monthly and non-recurring prices, and c) any term length agreed to by the customer to ensure that the customer fully understands the transaction. The independent third-party verification company records the entire verification conversation to clearly indicate what the customer agreed to. Copies of the verification recording are maintained by the independent verification company for five years and are provided to McLeodUSA for forwarding to a regulatory agency for their review usually within 48 hours of the request.

McLeodUSA believes it is noteworthy that because it uses this pro-consumer telemarketing process, no regulatory agency, including the North Dakota Public Service Commission, has ever determined that McLeodUSA unlawfully slammed a consumer's telephone service. Perhaps equally important, McLeodUSA has been able to bring the benefits of local exchange competition to residential consumers in more markets than any other new entrant in the United States because the above-outlined process enables McLeodUSA to market to residential consumers in a relatively cost-effective manner. Any increase in the cost of marketing to residential consumers for McLeodUSA, which would be imposed by virtue of the proposed legislation, would undoubtedly cause McLeodUSA to seriously reevaluate offering competitive residential service to ~~any~~ new customers in North Dakota.

HB 1169

Presented by: Commissioner Susan E. Wefald
Public Service Commission

Before: Natural Resources Committee
Representative Mick Grosz, Chairman

Date: January 13, 1999

TESTIMONY

Mr. Chairman and Committee Members:

North Dakota has a long history of protecting the real people of this state. As you will hear, slamming and cramming affects people of all income brackets and educational levels.

There is a natural and distinct difference between the interests of industry and business and the interests of customers. Passing this bill not only determines fair rules for industry, but also protects the interests of your constituents. I am sure that you want this to be a bill that helps your friends and neighbors as well as the telephone companies who do business in this state.

For example, some companies may tell you that they do not want you to put in place the customer disclosure requirements that the Commission and the Attorney General's office have included in our bill. They will probably tell you that it is too expensive to send out a notice ten days after a service is ordered. I do not deny that there will be a cost to do this, but think of the benefit to your constituents. People will have an opportunity to quickly see in writing what they have purchased and to quickly call the company if there is a mistake.

It is also so important to include the address as well as the telephone number on the billing statement. Many people these days call their phone company and cannot reach more than an answering machine for long periods of time.

Please make sure that you adopt the correct language for the amendment involving adoption of sections of the new Federal Communication Commission Rules so that customers are ensured of all of the important customer protections in this section. For example, the FCC has determined that if a customer switch has not been done correctly by the telephone company, the customer is entitled to 30 days of free service. After the

30 days of free service, the customer pays only the amount that he or she would have paid their original carrier. The FCC put these provisions in place after a great deal of thought and decided this was the most effective way to eliminate slamming because companies could gain no compensation for slammed services.

I have attached a copy of the new federal rules to my testimony. **Be very careful with the wording of the amendment about the federal rules, to ensure that our citizens on an intrastate basis receive all of the important customer protections in Part 64 of the Federal Rules.** I do not feel that the language suggested by US West is specific enough and definitively states that you are adopting the sections that deal with subscriber liability for charges, reimbursement procedures, and investigation procedures. The Commission has been struggling with its own language in this amendment to make sure that it covers these protections. I do know that the Commission is willing to work with the Committee and the Legislative Council on this important language.

There is no sense making any assumption that these protections are covered. You may want to include reference to all of the important subsections of part 64 to ensure that these customer protections are available to slamming victims for intrastate telephone service as well as for interstate telephone service. Let's not allow tricky wording to deprive your constituents of these important protections for instate calls.

APPENDIX A**RULES AMENDED**

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

Subpart K - Changes in Preferred Telecommunications Service Providers

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

§64.1150 Verification of Orders for Telecommunications Service

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

- (a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or
- (b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers 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 subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or
- (c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or

the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

§64.1160 Letter of Agency Form and Content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(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 as 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 subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language 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 preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the extent that a jurisdiction allows the selection of additional preferred carriers (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) 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.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

§ 64.1100 Changes in Subscriber Carrier Selections

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining: (A) authorization from the subscriber, and (B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. § 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) **Carrier Liability for Charges.** Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) **Subscriber Liability for Charges.** Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days

after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section 64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) **Submitting carrier:** a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) **Executing carrier:** an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of

unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Subpart.

§ 64.1170 Reimbursement Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

- (1) Proof of verification of the subscriber's authorization to change carriers; or
- (2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to

the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) **Subscriber Refunds or Credits.** Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) **Restoration of Premium Programs.** Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

§ 64.1180 Investigation Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

§ 64.1190 Preferred Carrier Freezes

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was

requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (*e.g.*, local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in section

64.1190(d)(3)(B)(i)-(iv). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (*e.g.*, for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the authorization must contain separate statements regarding the particular selections to be

frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (*e.g.*, the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

H.B. 1169

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Natural Resources Committee
Representative Mick Grosz, Chairman

Date: January 14, 1999

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, director of the Public Utilities Division of the Public Service Commission (Commission). I appear on behalf of the Commission in support of HB 1169.

This bill was drafted as a joint effort of the Attorney General's Consumer Protection Division and the Public Service Commission. We are all concerned with the proliferation of slamming and cramming nationwide. North Dakotans are not immune from these threats. We must all do all that we can to ensure that our citizens are not victimized by unscrupulous telecommunications providers or the marketing ploys they use to attract customers.

"Slamming" is the unauthorized switching of a customer from one telecommunications provider to another. **"Cramming"** is the unauthorized initiation of service by a telecommunications company. The incidence of problems with both slamming and cramming has grown in recent years. As technology develops, more services are available to more people, and it is easier to change providers. With the benefits of increased and easier choice comes the threat of abuse.

The local phone company is the only access most customers have to the telecommunications network and the services and providers available on that network. Consequently, the actual switching of a customer from one provider to another, or the actual addition or deletion of a service, happens in the local phone company's computer. However, in most circumstances, the local phone company is making that switch only at the direction of someone else. Either the customer himself or the new provider chosen by the customer tells the local company to make the switch. The local company does not decide itself to switch a customer or add a service (unless we are talking about "local" slamming or cramming).

Slamming or cramming occurs when someone directs the local company to flip a switch in the computer even though the customer didn't want to make the change and didn't authorize it. This can happen in many ways, but often happens as a result of misleading advertising or misleading telemarketing. State and federal governments have been trying to discover the secret recipe that will curb slamming and cramming. As yet, no one has.

As originally drafted, this bill represented our best efforts to incorporate lessons learned from our own experience, the experience of other jurisdictions, industry concerns, meaningful and hopefully deterrent consequences for violators, meaningful options for consumer victims, and administrative workability. Since this bill was filed with the Legislative Council, the Federal Communications Commission (FCC) has issued new rules regarding slamming. We have reviewed these new FCC rules and believe that they meet the needs of

North Dakota consumers and providers in many ways. In addition, we believe that unless there is an overriding public interest requiring different standards, it is best to strive for consistency in the standards for both interstate and intrastate service. For these reasons, we suggest the bill be amended as described below.

Section 1. We propose deleting section 1 from the bill, and allowing the general penalty provisions of chapter 49-07 to apply.

Section 2. We propose changing subsection 1 and deleting subsections 2, 5, 6 and 7 of section 2.

Subsection 1 imposes a basic prohibition against slamming and cramming. This should remain, except that it should refer to the FCC rules rather than the standards in the original draft.

Subsections 2, 5, 6 and 7 describe the standards to which companies must adhere when switching or initiating service, the customer credit when unauthorized changes or initiation of service occurs, and the rights and responsibilities of the companies. Rather than impose the provisions we originally drafted, we propose that the standards recently promulgated by the FCC should apply. This would ensure that companies would have to follow the same rules for both their interstate and intrastate business.

The FCC standards referenced in this section include the procedures by which companies initiate or change service or providers, the procedures used to verify such service changes, the form and content of verifications, the rights and responsibilities of the customers and the company when a dispute arises and the rights and responsibilities of the companies involved in or affected by the dispute.

While the FCC rules do not extend to cramming, the bill, as it is proposed to be amended, would apply the same FCC rules to cramming as well as slamming.

Subsection 3 of the original bill remains unchanged. This subsection requires the company to send written notice to the customer within 10 days after a service has been initiated or changed, or a provider has been changed. This is an important consumer protection, especially since under the FCC rules, consumers have only a 30-day window within which they are absolved of liability for payment of unauthorized charges. The 30-day period during which consumers are not liable for charges could really motivate companies to cease slamming and cramming. This will not happen, however, if the customer doesn't know about the slam or cram until after the 30-day period has run. The written notice requirement in subsection 3 will help ensure that consumers really do benefit from the 30-day consumer liability protection in the FCC rule.

Subsection 4 of the original bill also remains unchanged, for the same reasons. This subsection imposes a requirement that the first bill issued after a switch or initiation of service include notice that a service is new, or that a service or provider has changed. The section also requires the bill to contain enough information about each company appearing on the bill to allow consumers to contact the company about the charges. Again, the consumer protections included in the FCC rules will be much more effective if the customer knows about the slam or cram sooner, rather than later. We advise customers to carefully review their bills in order to become knowledgeable consumers as

competition develops. This cannot be accomplished if the bill does not provide sufficient information.

Subsection 8 is not proposed to be amended. This subsection describes the powers of the Public Service Commission concerning slamming and cramming violations when an emergency exists. The subsection authorizes the commission to issue an immediate cease and desist order against a company's marketing of telecommunications service if an emergency exist, the commission has reason to believe the company is violating the law, and certain other conditions are met.

Subsection 9 provides that a violation of this law is also a consumer fraud violation. We do not propose to change this subsection.

Section 3. No changes are proposed to section 3. This section provides an exception to the cooperative and small company exemption found in N.D.C.C. § 49-02-01.1. In other words, this section give the commission authority to enforce the slamming an cramming law against cooperatives and companies with less than 8000 local exchange subscribers.

Mr. Chairman, that concludes my testimony. I would be happy to respond to any questions from the committee at this time.

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This is an unofficial announcement of Commission action. Release of the full text of a Commission order constitutes official action. See *MCI v. FCC*, 515 F 2d 385 (D.C. Circ 1974).

Report No. CC 98-45

COMMON CARRIER ACTION

December 17, 1998

**FCC Adopts New Anti-Slamming Rules and Unveils Further Measures to Protect Consumers from Phone Fraud; Slammed Consumers Relieved From Paying Phone Charges
(CC Docket No. 94-129)**

The FCC today adopted new rules that will relieve consumers who have had their telephone service provider changed without their consent, a practice known as "slamming," from paying charges imposed by the unauthorized carrier for up to 30 days after being slammed. In addition, the Commission strengthened the verification procedures used to confirm telephone carrier switches and broadened the scope of its anti-slamming rules to further protect consumers. Also today, the Commission unveiled a series of new initiatives that will make it quicker and easier for consumers to file complaints about slamming and other telephone-related fraud, as well as speed resolution of consumer complaints. Highlights of today's rules are as follows:

Consumer Liability

The Commission agreed with many state commissions and consumer protection organizations, including the National Consumers League, National Association of Attorneys General, and the Virginia Corporation Commission, that absolving slammed consumers of liability for charges will discourage slamming by taking the profit out of this fraudulent practice. In so doing, the Commission was careful to balance the interests of consumers and the industry. A 30-day absolution period provides incentive for consumers to review their phone bills carefully and promptly, and it provides incentive for carriers that legitimately sign up customers to verify switches properly so as to have solid evidence of the change.

Under the new rules, any carrier that a consumer calls to report being slammed must inform the consumer that he or she is not required to pay any slamming charges incurred for the first 30 days after the unauthorized switch. If a consumer *does* pay the unauthorized carrier, however, the authorized carrier may recoup from the unauthorized carrier any slamming charges collected by the latter, in which case the authorized carrier is required to refund to the consumer any amount paid in excess of what the consumer would have paid absent the slam. Unauthorized carriers are also required to pay other expenses, such as reasonable billing and collection costs, including attorneys' fees, incurred by the authorized carrier in collecting charges from the unauthorized carrier.

The mechanisms formulated in today's decision rely on the authorized carrier to determine

whether its subscribers are slammed and provide appropriate relief. The Commission found that this approach forms a necessary baseline for ensuring that consumer problems arising from slamming are addressed adequately. The Commission recognized, however, that other approaches, such as a dispute resolution mechanism involving a third party administrator, may have merit. A third party administrator would provide consumers with one point of contact to resolve slamming problems, and it would benefit carriers by having a neutral body to resolve disputes regarding slamming liability. Accordingly, the Commission will entertain requests for waivers of the liability provisions for carriers that can work out an acceptable alternative.

Verification Methods

The Commission modified the methods by which a carrier can fulfill its obligation to verify consumers' authorizations to change their telephone service providers. In particular, the Commission eliminated the "welcome package" as a verification method. Under that method, a carrier that signs up a customer mails to the customer a package containing a postcard that the customer has 14 days to mail back if he or she wishes to cancel the change. The Commission noted that this method has been subject to abuse by unscrupulous carriers, and consumers should not have to take affirmative action to avoid being slammed.

As a result, there are now three acceptable methods to verify carrier changes: a consumer signature on an authorization form, known as a Letter of Agency; an electronic authorization, usually resulting from a customer-initiated call to toll-free number; and verification by an independent third party. Today's Order applies these verification methods to carrier switches that result from in-bound calls, thus providing consumers who *initiate* calls to carriers the same protection given to consumers who *receive* telemarketing calls. The Commission also applied the verification rules to all changes made in telecommunications carriers, including local carriers. (An exception was made, however, for wireless carriers since slamming is not currently a problem in that area.) In addition, the Commission applied the verification methods to requests for preferred carrier freezes, which provide an additional safeguard against slamming by requiring the local telephone carrier that executes a switch to confirm the switch with the customer. The Commission further required that solicitations for preferred carrier freezes be clear and explain to the consumer how such a freeze may be lifted. The Commission explained that, although preferred carrier freezes may protect consumers against slamming, the freezes may also be subject to anticompetitive abuses. The new rules are intended to address these concerns in a manner that protects consumer choice. The Commission also noted that its verification methods do not preempt state law; states must use these verification methods at a minimum but may add additional verification procedures for intrastate carrier changes.

The new slamming rules will go into effect 70 days after publication in the Federal Register. The liability provisions, however, go into effect 90 days after publication.

Additional Proposals

The Commission asked for comment on further methods to take the profit out of slamming, including a proposal that would enable both the authorized carrier and the consumer to recover any charges paid to the unauthorized carrier. Under such an approach, for example, an unauthorized carrier that collects \$30 from a consumer would be required to pay \$60 to the authorized carrier, who would then refund \$30 to the consumer. Other issues the Commission sought comment on include how carrier changes made by consumers using the Internet should be verified, whether carriers should submit to the FCC a report on the number of slamming complaints they receive, and a proposal requiring all carriers to register with the Commission.

Consumer Network Initiatives

The Common Carrier Bureau's Enforcement Division also today announced its new Consumer Network project, a broad plan to provide consumers with tools to better protect themselves from telephone-related fraud, including slamming, as well as to provide consumers an easy means to file complaints.

The Consumer Network will be implemented in three stages. First, beginning in January 1999, a new web site will allow consumers to file complaints electronically. (At present, all consumer complaints must be sent in writing to the Commission.) The new web site will also contain a variety of consumer protection information to help the public become aware of telephone-related fraud and make more informed choices in the telecommunications marketplace. The second phase of the Consumer Network will permit consumers to file complaints over the telephone, including calls placed to the FCC's toll-free number. The third phase involves establishing an electronic interface with carriers. This interface should improve industry response time to complaints as well as speed FCC resolution of complaints by creating a seamless paperless environment, from the filing of a complaint to the resolution of the dispute. The final two phases are expected to be complete within nine months.

Slamming is the FCC's largest area of telephone-related complaint. Thus far in 1998, the Commission has handled nearly 20,000 such complaints. The Commission has also this year proposed forfeitures in connection with slamming that total nearly \$13 million.

Action by the Commission December 17, 1998, by Second Report and Order and Further Notice of Proposed Rulemaking (FCC 98-334). Chairman Kennard, Commissioners Ness and Tristani, with Commissioner Furchtgott-Roth dissenting, Commissioner Powell concurring in part and dissenting in part, and Commissioners Ness, Furchtgott-Roth, Powell, and Tristani each issuing a separate statement.

-FCC-

News media contact: Rochelle Cohen at (202) 418-0253.
Common Carrier Bureau contact: Anita Cheng at (202) 418-0996.
TTY: (202) 418-2555.

HOUSE OF REPRESENTATIVES NATURAL RESOURCES COMMITTEE
MICK, GROSZ, CHAIRMAN
JANUARY 14, 1999

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1169

Mr. Chairman and members of the Natural Resources Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support House Bill No. 1169, with the amendments proposed by the Public Service Commission (hereafter "PSC or commission").

The Consumer Protection Division has worked closely on these telecommunications issues with the commission. The two agencies jointly drafted this proposed legislation regarding the very serious consumer and consumer fraud problems of "slamming" and "cramming" in North Dakota. This legislation will facilitate joint and cooperative enforcement on this growing problem for our North Dakota consumers. The conduct and circumstances vary but some situations or violations will suggest regulatory enforcement by the PSC while others will dictate a consumer fraud investigation and/or legal action.

"Slamming" is the unauthorized switching of local or long-distance telephone services. "Cramming" is the billing of unauthorized charges for additional services the consumer did not request and of which the consumers are not aware.

First I will address "slamming" and then I will briefly address "cramming."

The large majority of complaints involve the switching of long-distance service, but complaints have also been received about the unauthorized switching of local telephone service in areas where competition now exists. Most of the complaints are against resellers. The majority of consumers have never heard of these companies until the names appeared on their bills and don't discover they had been slammed until they receive their bills. Slamming is not a problem by or stemming from our local telephone companies. However, the local telephone companies make the switches as directed by the long-distance companies. Often, the local telephone companies may do the billing for the long-distance companies and so they may be necessarily but unwittingly involved in the process. The local telephone companies do not have knowledge of the slamming and, in fact, are very helpful to both the Attorney General's Office and the consumers in getting slamming and cramming problems resolved. With or without legislation we continue to rely on their assistance.

Slamming and cramming are both very frustrating and often difficult to resolve. Slamming and cramming is not simply an issue of watching the sports game or evening movie when you get a call to change long distance carriers and you innocently or unwittingly agree to a change in your service without realizing it. Often the conduct involved is blatant, egregious or outrageous. The problem is widespread and is proliferating. There are no boundaries or favorites. The companies implementing the unauthorized services can be a Regional Bell Operating Company (RBOC) or a cooperative telephone company. The customers of both companies suffer the consequences. In fact, we recently received a complaint that one company was deceptively calling the customers of a cooperative, and when reaching one of the board members as part of their solicitations, suggested that the cooperative was affiliated with or otherwise had requested, approved or endorsed the proposed change in service. This information was untrue and the cooperative then contacted our office about this situation. We wrote a letter to the company advising them if the conduct continued we would commence an investigation.

The National Fraud Information Center (NFIC), created by the National Consumers League, maintains a hotline service for fraud reports and complaints. By the end of 1997, the NFIC had received 807 complaints about unauthorized switching, making it the 5th most frequent fraud report. However, in just the first 5 months of 1998, the NFIC had already received 825 slamming complaints, elevating its ranking to the number 2 fraud, second only to "cramming," the number 1 telephone-service related fraud involving the billing of unauthorized charges to consumers. With slamming complaints we are seeing only a small part of the entire picture. A recent survey in 3 large Midwest markets revealed that one-third of the respondents had been slammed themselves or knew someone who had. Only 7% complained to a government agency and 2% to a consumer advocate agency, with most consumers complaining to the slammer, the original carrier, or the local exchange carrier. In North Dakota, the slamming complaints actually filed with the Consumer Protection Division have increased approximately **645%** from 1997 to 1998.

Some consumers don't know how their service was switched, since they contend they never had any conversation or contact with the companies. Certainly this sort of blatant consumer fraud occurs. However, the majority of consumers probably are switched as the result of various questionable or deceptive tactics. These scams and gimmicks include: 1) calls from companies claiming to be the consumers' regular carriers, or to be affiliated with their regular carriers, offering to consolidate their billings, 2) entering drawings, raffles, lotteries or other promotions at tradeshow, malls, county fairs, convenience stores, etc; 3) signing up to receive coupons for products; 4) being offered discount plans by companies falsely claiming to be their regular carriers; 5) someone in the household who is not the account holder signs a promotional form; 6) a minor in the household calls a pay-per-call number; 7) calls from someone supposedly conducting a survey and so forth. The ingenuity, creativity and persistence of slammers may be unlimited.

What are the problems consumers experience once they have been slammed?

They may have difficulty reaching the slammer. There may be no answer at the company's number, or the consumer gets a recording, or the company gives the consumer the runaround or simply hangs up. Often the company name and number on the bill is that of a billing agent acting on behalf of several different carriers. Sometimes even the local carriers can't tell the consumers the names of carriers or how to reach them, making resolving complaints and slamming enforcement difficult.

Problems with the proof of the authorization for switching include, the signature on the written authorization was forged; claims that someone else at the business approved the switch were false; the taped authorization was not the voice of the account holder; the person giving authorization was not the account holder; the consumer received a "negative option" notice of switching but didn't understand that the failure to respond constituted authorization.

Consumers have difficulty resolving billing disputes. They are charged exorbitant amounts; they are charged by more than one company for the same billing period; they have difficulty getting adjustments for overcharges; they are threatened with collection or loss of phone service for failure to pay disputed charges; and, if they have already paid, they cannot get refunds.

What are some suggestions for or steps to fighting slamming?

The three elements to fighting and protecting consumers from both slamming and cramming are: 1) legislation, 2) enforcement and 3) education. The Attorney General is working jointly with the Public Service Commission on these efforts. The Attorney General has been proactively conducting consumer education on these problems for some time already, because promptly noticing the problem is the first step to addressing and resolving it. And then the consumers must understand their rights. However, new and specific legislation really is the crux or touchstone of combined and effective enforcement efforts between the PSC and the Attorney General. We also recognize the education and assistance efforts of the local telephone companies in educating and assisting consumers. We are encouraged by the cooperation and assistance of the telecommunications industry in North Dakota in addressing the legitimate consumer concerns, as demonstrated by their participation and assistance in discussing and drafting new legislation.

Generally the last thing telephone companies, or any business for that matter, want is more regulation. However, while we are being proactive, we also are being reactive to what could be a serious backlash or reaction by North Dakota consumers that are frustrated and outraged by slamming. The Consumer Protection Division staff frequently are asked how this can happen, what can be done to prevent it and whether there are any consequences to these companies. However, the circumstances vary and the requirements or elements for a consumer fraud action are significantly different and more difficult if there are no regulatory standards for enforcement by the commission. **We are not aware of any other consumer or consumer fraud problem that has increased by over 600% in North**

Dakota. Due to the gravity and nature of the problem, it is not realistic or reasonable to argue that legislation is not required to address the problems.

We would like to generally address some of the measures that can be considered for deterring and preventing slamming. Many of these measures or standards are included in the Federal Communications Commission's (FCC's) Rules that are, in essence, being adopted by incorporation in this legislation through the proposed amendments to this bill.

Verification Procedures- Many of the problems addressed above stem from poor or no verification procedures. Suggestions for improved verification procedures include banning contest entry forms for promoting telephone services; banning negative option notice of carrier switching; verification procedures should be required regardless of whether initial customer contact was in-bound or out-bound; The FCC Rules appear to provide good verification procedures.

Notice of Carrier Change- Consumers must have conspicuous and clear notice of any new or changed services. The service provider should send a notice separate from the bill to the consumers immediately after a carrier change has been processed. In addition, the first bill after the change or initiation should prominently disclose the change or initiation of services. Furthermore, it is our understanding the proposed "Truth in Billing" Rules or guidelines to be promulgated or issued by the FCC in the next several months will contain the requirements for these notices.

Liability for Payment- The most effective way to deter slamming and cramming is to prevent the wrongdoers from reaping any financial reward for doing so. The adoption of the FCC Rules should accomplish this purpose.

Payment Obligations- Consumers need to be treated treated fairly and appropriately regarding charges assessed for unauthorized services. The FCC Rules appear to provide some relief to the consumers and the authorized carrier by relieving the consumer of the obligation when the consumer has not paid the unauthorized carrier and re-rating for payment to the authorized carrier when the consumer has already paid the unauthorized carrier.

State Action- We understand the importance of consistency and clarity to the telecommunications industry. Adopting the FCC Rules should provide such consistency. For those reasons the Attorney General supports this new legislation with the amendments proposed by the commission. This will allow the PSC and the Attorney General to quickly and effectively enforce the FCC requirements through state law and state action. With all due respect to our federal counterparts and agencies, I can tell you, based on our considerable experience in consumer fraud in working with federal regulatory and law enforcement agencies in joint and multi-state investigations and legal actions, the state regulatory agencies often can act more quickly to stop illegal practices than the federal government. Therefore,

it is important to provide for and allow North Dakota state agencies to quickly address and remedy citizens' problems under state law. The proposed legislation with the amendments proposed by the PSC will allow this state enforcement of consistent laws with some minor but important and necessary additions to or deviation from the FCC Rules.

Increased Penalties- Assessment of increased penalties for slamming and cramming where circumstances dictate such appropriate action by the PSC or Attorney General are needed. The illegal practices have to have some economic consequences other than lost business already stolen.

Education- A strong consumer education campaign is necessary to inform consumers about their choices and rights. The Attorney General's Consumer Protection Division will continue a strong education program regarding consumer education on slamming and cramming and likely the PSC will also continue to do so.

CRAMMING

We must address serious concerns about "cramming," which is the unauthorized addition of phone services and charges to the customer's bill without the customer's knowledge and permission. These charges might include charges for 1) a personal 800 number; 2) paging or voice mail; 3) a calling plan or membership; 4) charges for "enhanced services;" 5) a "monthly fee" etc. In some cases the fraudulent charges are blatantly and intentionally slipped into the bill by the provider hoping the customer won't notice. In other instances, consumers unknowingly authorize a new service or call as a result of accepting a collect call, filling out a contest entry form or responding to voice prompts in the course of placing a call. Consumers should be encouraged to read their telephone bills very carefully.

Cramming is a serious problem in North Dakota as well as nationwide. The cramming complaints filed in North Dakota have increased over **900%** from the complaints filed in 1997. Something must be done now to deter or prevent this practice. This legislation with the amendments proposed by the PSC is that something.

Today it's the slamming of your long-distance telephone services often with increased rates. Tomorrow it's the slamming of your local and telephone cable services. Thereafter, with the deregulation of the electrical utilities, it could be an unauthorized change in your electrical service. Next, you just signed up for a new credit card with a reliable company and very low interest rates of approximately 3.9 per cent. No one calls you and no one notifies you but, all of the sudden you receive your next monthly statement, it probably looks like your previous statement, but somewhere you may or may not notice and you are being billed by a different credit card company and you are being billed at 18 per cent interest. The Attorney General already is receiving complaints about unauthorized charges on

telephone bills for Internet advertising web sites that were not ordered by the consumers. Where does it end? The start of the end is this legislation.

This legislation may not be perfect and may require adjustments in the next session. But it will be a huge and useful improvement for consumers now. The FCC Rules already apply equally to the RBOCs and the telephone cooperatives. It is just a matter of incorporating that in state law now with some changes regarding notice requirements that soon will be enforced by the FCC.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General and the Consumer Protection Division, I respectfully urge this committee to give House Bill 1169, with the amendments proposed by the PSC, a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.

Telephone Statistics

Telephone Complaints

97 98

General Service

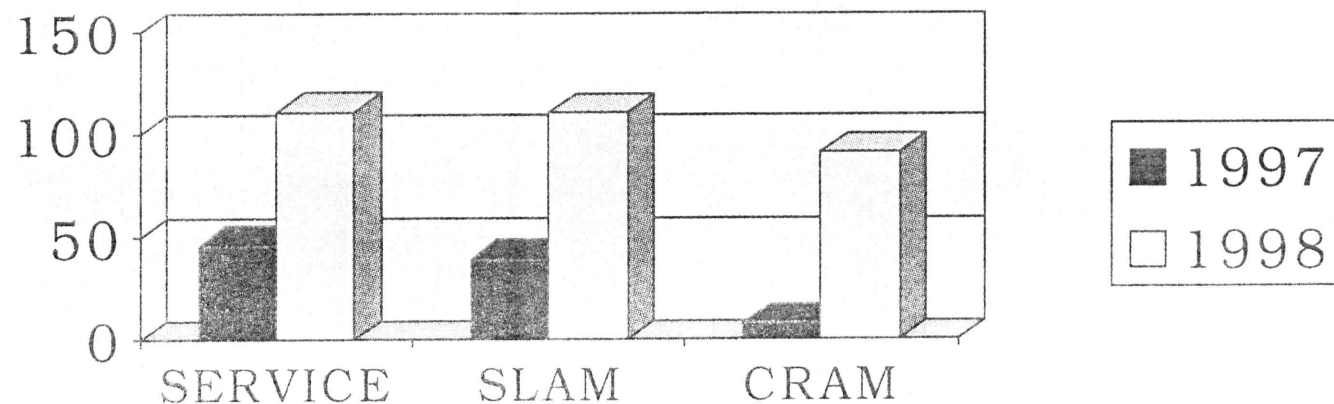
46 111

Slamming

39 110

Cramming

8 91



H.B. 1169

Presented by: Mel A. Kambeitz
U S WEST

Before: Natural Resources Committee
Representative Mick Grosz, Chairman

Date: January 14, 1999

TESTIMONY

Mr. Chairman and committee members, I am Mel Kambeitz, Director of Public Affairs for U S WEST in North Dakota. I appear on behalf of U S WEST in support of HB 1169.

U S WEST supports the enactment of strong legislation to stop the practice of slamming telephone customers. Currently, U S WEST employees spend a substantial amount of time and resources responding to complaints and getting the correct service restored to customers that were slammed by long distance companies. Unless the practice is stopped, the problem will only get worse as competition grows in the sale of local exchange telephone service.

U S WEST worked with the Public Service Commission in developing and drafting the anti-slaming concepts in HB 1169. However, since HB 1169 was drafted, the Federal Communications Commission issued new regulations that deal with slamming of interstate telephone services by long distance companies. A copy of the FCC rules is attached. Most of the requirements and procedures

adopted by the FCC are similar but not identical to the requirements and procedures of HB 1169.

The new FCC rules will put a stop to most instances of slamming and will provide consumers, competing companies, and regulators with a means of dealing with slamming when it does occur.

Because companies marketing telecommunications services are often selling both interstate and intrastate services, it is important that anti-slamming regulations be consistent at both the state and federal level. Consistency at both the state and federal level will make compliance and administration easier for legitimate companies and also make education and enforcement easier for both consumers and regulators when dealing with unscrupulous companies.

U S WEST proposes that HB 1169 be amended to specifically adopt the federal regulations for companies selling intrastate telecommunications services in North Dakota. Proposed amendments to HB 1169 that would adopt the federal rules are attached.

In addition to adopting the FCC rules, the proposed amendments would retain the provisions of HB 1169 allowing the PSC to order cease and desist orders in emergency situations against companies violating the anti-slamming requirements and also would make a violation of the rules a consumer fraud violation. The amendments remove the civil penalty provisions in section 1 of HB 1169, however, the PSC could still impose civil penalties under N.D.C.C. § 49-07-01 of \$5,000 for each violation.

Part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

1. The title of Part 64, Subpart K, is amended to read as follows:

Subpart K - Changes in Preferred Telecommunications Service Providers

2. Part 64, Subpart K, is further amended by redesignating section 64.1100 as section 64.1150, and modifying new section 64.1150 to read as follows:

64.1150 Verification of Orders for Telecommunications Service

No telecommunications carrier shall submit a preferred carrier change order unless and until the order has first been confirmed in accordance with one of the following procedures:

(a) The telecommunications carrier has obtained the subscriber's written authorization in a form that meets the requirements of section 64.1160; or

(b) The telecommunications carrier has obtained the subscriber's electronic authorization to submit the preferred carrier change order. Such authorization must be placed from the telephone number(s) on which the preferred carrier is to be changed and must confirm the information required in paragraph (a) of this section. Telecommunications carriers 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 subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the originating automatic numbering identification; or

(c) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must (1) not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier change; or

(d) Any State-enacted verification procedures applicable to intrastate preferred carrier change orders only.

3. Part 64, Subpart K, is further amended by redesignating section 64.1150 as section 64.1160, and modifying new section 64.1160 to read as follows:

64.1160 Letter of Agency Form and Content

(a) A telecommunications carrier may use a letter of agency to obtain written authorization and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this subpart.

(b) The letter of agency shall be a separate document (or an easily separable document) containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document with inducements of any kind.

(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 as 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 subscriber is authorizing a preferred carrier change by signing the check. The letter of agency language 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 preferred carrier change order;

(2) The decision to change the preferred carrier from the current telecommunications carrier to the soliciting telecommunications carrier;

(3) That the subscriber designates [name of submitting carrier] to act as the subscriber's agent for the preferred carrier change;

(4) That the subscriber understands that only one telecommunications carrier may be designated as the subscriber's interstate or interLATA preferred interexchange carrier for any one telephone number. To the

extent that a jurisdiction allows the selection of additional preferred carriers (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, or international interexchange) the letter of agency must contain separate statements regarding those choices, although a separate letter of agency for each choice is not necessary; and

(5) That the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier.

(f) Any carrier designated in a letter of agency as a preferred carrier must be the carrier directly setting the rates for the subscriber.

(g) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current telecommunications carrier.

(h) 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.

4. Part 64, Subpart K, is further amended by adding new sections 64.1100, 64.1170, 64.1180, and 64.1190 to read as follows:

64.1100 Changes in Subscriber Carrier Selections

(a) No telecommunications carrier shall submit or execute a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service except in accordance with the procedures prescribed in this Subpart. Nothing in this section shall preclude any State commission from enforcing these procedures with respect to intrastate services.

(1) No submitting carrier shall submit a change on the behalf of a subscriber in the subscriber's selection of a provider of telecommunications service prior to obtaining:

(A) authorization from the subscriber, and

(B) verification of that authorization in accordance with the procedures prescribed in section 64.1150. For a submitting carrier, compliance with the verification procedures prescribed in this Subpart shall be defined as compliance with subsections (a) and (b) of this section, as well with section 64.1150. The submitting carrier shall maintain and preserve records of verification of subscriber authorization for a minimum period of two years after obtaining such verification.

(2) An executing carrier shall not verify the submission of a change in a subscriber's selection of a provider of telecommunications service received from a submitting carrier. For an executing carrier, compliance with the procedures prescribed in this Subpart shall be defined as prompt execution, without any unreasonable delay, of changes that have been verified by a submitting carrier.

(3) Commercial mobile radio services (CMRS) providers shall be excluded from the verification requirements of this Subpart as long as they are not required to provide equal access to common carriers for the provision of telephone toll services, in accordance with 47 U.S.C. 332(c)(8).

(b) Where a telecommunications carrier is selling more than one type of telecommunications service (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) that carrier must obtain separate authorization from the subscriber for each service sold, although the authorizations may be made within the same solicitation. Each authorization must be verified separately from any other authorizations obtained in the same solicitation. Each authorization must be verified in accordance with the verification procedures prescribed in this Subpart.

(c) Carrier Liability for Charges. Any submitting telecommunications carrier that fails to comply with the procedures prescribed in this Subpart shall be liable to the subscriber's properly authorized carrier in an amount equal to all charges paid to the submitting telecommunications carrier by such subscriber after such violation, as well as for additional amounts as prescribed in section 64.1170 of this Subpart. The remedies provided in this Subpart are in addition to any other remedies available by law.

(d) Subscriber Liability for Charges. Any subscriber whose selection of telecommunications service provider is changed without authorization verified in accordance with the procedures set forth in this Subpart is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. Upon being informed by a subscriber that an unauthorized change has occurred, the authorized carrier, the unauthorized carrier, or the executing carrier shall inform the subscriber of this 30-day absolution period. The subscriber shall be absolved of liability for this 30-day period only if the subscriber has not already paid charges to the unauthorized carrier.

(1) Any charges imposed by the unauthorized carrier on the subscriber after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. Upon the subscriber's return to the authorized carrier, the subscriber shall forward to the authorized carrier a copy of any bill that contains charges imposed by the unauthorized carrier after the 30-day period of absolution. After the authorized carrier has re-rated the charges to reflect its own rates, the subscriber shall be liable for paying such re-rated charges to the authorized carrier.

(2) If the subscriber has already paid charges to the unauthorized carrier, and the authorized carrier recovers such charges as provided in paragraph (c), the authorized carrier shall refund or credit to the subscriber any charges recovered from the unauthorized carrier in excess of what the subscriber would have paid for the same service had the unauthorized change not occurred, in accordance with the procedures set forth in section

64.1170 of this Subpart.

(3) If the subscriber has been absolved of liability as prescribed by this subsection, the unauthorized carrier shall also be liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier, if applicable.

(e) Definitions. For the purposes of this Subpart, the following definitions are applicable:

(1) Submitting carrier: a submitting carrier is generally any telecommunications carrier that: (A) requests on the behalf of a subscriber that the subscriber's telecommunications carrier be changed, and (B) seeks to provide retail services to the end user subscriber. A carrier may be treated as a submitting carrier, however, if it is responsible for any unreasonable delays in the submission of carrier change requests or for the submission of unauthorized carrier change requests, including fraudulent authorizations.

(2) Executing carrier: an executing carrier is generally any telecommunications carrier that effects a request that a subscriber's telecommunications carrier be changed. A carrier may be treated as an executing carrier, however, if it is responsible for any unreasonable delays in the execution of carrier changes or for the execution of unauthorized carrier changes, including fraudulent authorizations.

(3) Authorized carrier: an authorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service with the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(4) Unauthorized carrier: an unauthorized carrier is generally any telecommunications carrier that submits a change, on behalf of a subscriber, in the subscriber's selection of a provider of telecommunications service but fails to obtain the subscriber's authorization verified in accordance with the procedures specified in this Subpart.

(5) Unauthorized change: an unauthorized change is a change in a subscriber's selection of a provider of telecommunications service that was made without authorization verified in accordance with the verification procedures specified in this Subpart.

64.1170 Reimbursement Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred, as defined by section 64.1100(e)(5) of this Subpart, and the subscriber has paid charges to an allegedly unauthorized carrier. Upon receiving notification from the subscriber or a carrier that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized carrier, the properly authorized carrier must, within 30 days, request from the allegedly unauthorized carrier proof of verification of the subscriber's authorization to change carriers. Within ten days of receiving such request, the allegedly unauthorized carrier shall forward to the authorized carrier either:

- (1) Proof of verification of the subscriber's authorization to change carriers; or
- (2) The following:

(A) An amount equal to all charges paid by the subscriber to the unauthorized carrier; and

(B) An amount equal to any charge required to return the subscriber to his or her properly authorized carrier, if applicable;

(C) Copies of any telephone bill(s) issued from the unauthorized carrier to the subscriber.

(b) If an authorized carrier incurs any billing and collection expenses in collecting charges from the unauthorized carrier, the unauthorized carrier shall reimburse the authorized carrier for reasonable expenses.

(c) Where a subscriber notifies the unauthorized carrier, rather than the authorized carrier, of an unauthorized subscriber carrier selection change, the unauthorized carrier must immediately notify the authorized carrier.

(d) Subscriber Refunds or Credits. Upon receipt from the unauthorized carrier of the amount described in paragraph (a)(2)(A), the authorized carrier shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized carrier would have charged the subscriber absent the unauthorized change. If the authorized carrier has not received from the unauthorized carrier an amount equal to charges paid by the subscriber to the unauthorized carrier, the authorized carrier is not required to provide any refund or credit. The authorized carrier must, within 60 days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized carrier and inform the subscriber of his or her right to pursue a claim against the unauthorized carrier for a refund of all charges paid to the unauthorized carrier.

(e) Restoration of Premium Programs. Where possible, the properly authorized carrier must reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change, if that subscriber's participation in the

premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized carrier, the properly authorized carrier shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized carrier must comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized carrier any charges that were paid by the subscriber.

64.1180 Investigation Procedures

(a) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred and such subscriber has not paid for charges imposed by the unauthorized carrier for the first 30 days after the unauthorized change, in accordance with section 64.1100(d) of this Subpart.

(b) The unauthorized carrier shall remove from the subscriber's bill all charges that were incurred for service provided during the first 30 days after the unauthorized change occurred.

(c) The unauthorized carrier may, within 30 days of the subscriber's return to the authorized carrier, submit to the authorized carrier a claim that the subscriber was not subjected to an unauthorized change, along with a request for the amount of charges for which the consumer was credited pursuant to paragraph (b) and proof that the change to the subscriber's selection of telecommunications carrier was made with authorization verified in accordance with the verification procedures specified in this Subpart.

(d) The authorized carrier shall conduct a reasonable and neutral investigation of the claim, including, where appropriate, contacting the subscriber and the carrier making the claim.

(e) Within 60 days after receipt of the claim and the proof of verification, the authorized carrier shall issue a decision on the claim to the subscriber and the carrier making the claim.

(1) If the authorized carrier decides that the subscriber was not subjected to an unauthorized change, the authorized carrier shall place on the subscriber's bill a charge equal to the amount of charges for which the subscriber was previously credited pursuant to paragraph (b). Upon receiving this amount, the authorized carrier shall forward this amount to the carrier making the claim.

(2) If the authorized carrier decides that the subscriber was subjected to an unauthorized change, the subscriber shall not be required to pay the charges for which he or she was previously absolved.

64.1190 Preferred Carrier Freezes

(a) A preferred carrier freeze (or freeze) prevents a change in a subscriber's preferred carrier selection unless the subscriber gives the carrier from whom the freeze was requested his or her express consent. All local exchange carriers who offer preferred carrier freezes must comply with the provisions of this section.

(b) All local exchange carriers who offer preferred carrier freezes shall offer freezes on a nondiscriminatory basis to all subscribers, regardless of the subscriber's carrier selections.

(c) Preferred carrier freeze procedures, including any solicitation, must clearly distinguish among telecommunications services (e.g., local exchange, intraLATA/intrastate toll, interLATA/interstate toll, and international toll) subject to a preferred carrier freeze. The carrier offering the freeze must obtain separate authorization for each service for which a preferred carrier freeze is requested.

(d) Solicitation and imposition of preferred carrier freezes.

(1) All carrier-provided solicitation and other materials regarding preferred carrier freezes must include:

(A) An explanation, in clear and neutral language, of what a preferred carrier freeze is and what services may be subject to a freeze;

(B) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in sections 64.1150 and 64.1160 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze; and

(C) An explanation of any charges associated with the preferred carrier freeze.

(2) No local exchange carrier shall implement a preferred carrier freeze unless the subscriber's request to impose a freeze has first been confirmed in accordance with one of the following procedures:

(A) The local exchange carrier has obtained the subscriber's written and signed authorization in a form that meets the requirements of section 64.1190(d)(3); or

(B) The local exchange carrier has obtained the subscriber's electronic authorization, placed from the telephone number(s) on which the preferred carrier freeze is to be imposed, to impose a preferred carrier freeze. The electronic authorization should confirm appropriate

verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-

(iv). Telecommunications carriers electing to confirm preferred carrier freeze orders electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a subscriber to a voice response unit, or similar mechanism that records the required information regarding the preferred carrier freeze request, including automatically recording the originating automatic numbering identification; or

(C) An appropriately qualified independent third party has obtained the subscriber's oral authorization to submit the preferred carrier freeze and confirmed the appropriate verification data (e.g., the subscriber's date of birth or social security number) and the information required in section 64.1190(d)(3)(B)(i)-(iv). The independent third party must (1) not be owned, managed, or directly controlled by the carrier or the carrier's marketing agent; (2) must not have any financial incentive to confirm preferred carrier freeze requests for the carrier or the carrier's marketing agent; and (3) must operate in a location physically separate from the carrier or the carrier's marketing agent. The content of the verification must include clear and conspicuous confirmation that the subscriber has authorized a preferred carrier freeze.

(3) Written authorization to impose a preferred carrier freeze. A local exchange carrier may accept a subscriber's written and signed authorization to impose a freeze on his or her preferred carrier selection. Written authorization that does not conform with this section is invalid and may not be used to impose a preferred carrier freeze.

(A) The written authorization shall comply with section 64.1160(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

(B) At a minimum, the written authorization must be printed with a readable type of sufficient size to be clearly legible and must contain clear and unambiguous language that confirms:

(i) The subscriber's billing name and address and the telephone number(s) to be covered by the preferred carrier freeze;

(ii) The decision to place a preferred carrier freeze on the telephone number(s) and particular service(s). To the extent that a jurisdiction allows the imposition of preferred carrier freezes on additional preferred carrier selections (e.g., for local exchange, intraLATA/intrastate toll, interLATA/interstate toll service, and international toll), the

authorization must contain separate statements regarding the particular selections to be frozen;

(iii) That the subscriber understands that she or he will be unable to make a change in carrier selection unless she or he lifts the preferred carrier freeze; and

(iv) That the subscriber understands that any preferred carrier freeze may involve a charge to the subscriber.

(e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:

(1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written and signed authorization stating her or his intent to lift a preferred carrier freeze; and

(2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze.

TESTIMONY

MARILYN FOSS

FOR MCI WORLDCOM

to the Natural Resources Committee

North Dakota Legislature

January 14, 1999

MCI WorldCom supports efforts to combat fraudulent telemarketing activity and combat deliberate slamming abuses. However, any legislative proscription should be carefully and narrowly drafted to penalize the "con" artists and deliberate fraudulent scams rather than adding costly regulation to legitimate business already regulated by federal laws and, now, extensive regulations from the Federal Communications Commission (FCC).

Simply put, the State of North Dakota should not burden firms acting in good faith, which make very attempt through their business practices to limit unintentional switches of local or long distance providers.

MCI WorldCom advocates stringent national regulations, as proposed by the FCC in its 150 page Rulemaking order, issued December 23, 1998, less than a month ago. Federal law or regulations are necessary since most long distance telecommunications companies operate nationally and all the larger local exchange providers operate across many states. Obviously, the burden and cost of implementing different laws and rules in 50 states is obvious and should be avoided.

Let me summarize the FCC rules briefly: the heart of the FCC slamming rules is to take the profit out of slamming - even for the fly by night operations.

Under the FCC rules, independent verification procedures are applied to in-bound and out-bound calls and apply to all carriers and to both local and long distance providers.

MCI WorldCom has pioneered aggressive measure to assure accurate sales and satisfied customer interaction in our telemarketing sales. We create the "gold standard" of perfecting independent third party verification process for all sales. This FCC approved method provides consumers, state and federal regulators and MCI WorldCom taped verification of customers intentions.

TPV has proven that it reduces unintentional slams by insuring that the customer understand the transaction, confirms that the customer is a decision-maker in the household and verifies the individual's identity. In fact, by using TPV, mainstream carriers such as MCI and others have the lowest incidence of unintentional switches, those caused by human error, rather than fraudulent practices.

MCI WorldCom also offers a customer satisfaction guarantee: we will pay to switch a customer back to their previous long distance carrier if the customer is dissatisfied with us for any reason.

For these reasons, we believe that HB 1169, while well intentioned before the issuance of the FCC rules is duplicative, unnecessary, costly and punitive regulation in light of the federal regulations.



Public Service Commission

State of North Dakota

600 E Boulevard Ave. Dept. 408
Bismarck, North Dakota 58505-0480
e-mail: msmail.sab@oracle.psc.state.nd.us
TDD 800-366-6888
Fax 701-328-2410
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COMMISSIONERS

Leo M. Reinbold
President
Bruce Hagen
Susan E. Wefald

MEMORANDUM

Executive Secretary
Jon H. Mielke

To: Honorable Albert "Mick" Grosz, Chairman
House Committee on Natural Resources

Committee Members
House Committee on Natural Resources

From: Illona A. Jeffcoat-Sacco
Director, Public Utilities Division

A handwritten signature in black ink, appearing to read "IAS" with a stylized flourish.

Re: Amendments to HB 1169

Date: 3 February 1999

Commissioner Susan Wefald asked me to inform you that while she does support the attached amendments, she also believes a customer notice requirement is very important and should be incorporated into the amendment package.

Thank you again for your consideration of HB 1169, the suggested amendments and the customer notice issue.

PROPOSED AMENDMENTS TO HB 1169

Page 1, line 1, remove "a new section to chapter 49-07 and"

Page 1, line 4, replace "provide a penalty" with "declare an emergency"

Page 1, remove lines 6 through 16

Page 1, after line 19, insert:

"1. A telecommunications company shall comply with the provision of title 47, Code of Federal Regulations, part 64, subpart K, regarding changes in a subscriber's selection of a provider of telecommunications service. The commission shall enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart K.

2. A telecommunications company shall not initiate an intrastate telecommunications service to a subscriber without authorization. A subscriber for whom an intrastate telecommunications service is initiated without authorization is absolved from liability for charges imposed by the service provider, if the subscriber notifies the service provider within 30 days after the first billing for the unauthorized service. Upon being informed by the subscriber that an unauthorized initiation of service has occurred, the telecommunications company providing the service shall cancel the service, inform the subscriber of the thirty day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for the service provided prior to the cancellation if the company determines the service initiation was authorized. The remedies provided in this section are in addition to any other remedies available at law."

Page 1, remove lines 20 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, line 1, replace "8" with "3"

Page 4, line 4, after "section" insert "or title 47, Code of Federal Regulations, part 64, subpart K"

Page 4, line 15, replace "9" with "4"

Page 4, line 30, remove "section 1 and 2 of"

Page 5, after line 4, insert "SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Re-number accordingly



OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Heidi Heitkamp
ATTORNEY GENERAL

MEMORANDUM

CAPITOL TOWER

State Capitol
600 E. Boulevard Ave.
Bismarck, ND 58505-0040
701-328-2210
FAX 701-328-2226

**Consumer Protection
and Antitrust Division**

701-328-3404
800-472-2600
Toll Free in North Dakota
701-328-3409 (TDD)
FAX 701-328-3535

Gaming Division

701-328-4848
FAX 701-328-3535

Licensing Section

701-328-2329
FAX 701-328-3535

CAPITOL COMPLEX

State Office Building
900 E. Boulevard Ave.
Bismarck, ND 58505-0041
FAX 701-328-4300

Civil Litigation

701-328-3640

Natural Resources

701-328-3640

Racing Commission

701-328-4290

**Bureau of Criminal
Investigation**

P.O. Box 1054
Bismarck, ND 58502-1054
701-328-5500
800-472-2185
Toll Free in North Dakota
FAX 701-328-5510

Fire Marshal

P.O. Box 1054
Bismarck, ND 58502-1054
701-328-5555
FAX 701-328-5510

Argo Office

P.O. Box 2665
Argo, ND 58108-2665
701-239-7126
FAX 701-239-7129

TO: Honorable Albert "Mick" Grosz, Chairman, House
Committee on Natural Resources

Members, House Committee on Natural Resources

FROM: David W. Huey, Assistant Attorney General

RE: Amendments to House Bill 1169

DATE: February 4, 1999

The Attorney General's office appreciates having had the opportunity to work with the Public Service Commission and interested private parties such as USWEST, and the North Dakota Association of Rural Telephone Cooperatives in an effort to develop amendments to House Bill 1169. While we are in general agreement with the proposed amendments, prepared by USWEST, we continue to believe that the consumer notice provisions should remain in the bill. These provisions appear in the bill at page 2, lines 26-31, and at page 3, lines 1-7.

Consumer notice is of particular importance with respect to the cramming provisions of the bill, because the amendments eliminate the verification requirements with respect to services other than long distance. We believe that it is fundamentally unfair to allow third parties to unilaterally add a charge to a consumer's phone bill without first advising the consumer regarding the amount and nature of the charge.

Thank you for permitting the Attorney General to be heard on behalf of telecommunications consumers.

ENGROSSED H.B. 1169

Presented by: Charles E. Johnson
Public Service Commission

Before: Natural Resources Committee
Senator John T. Traynor, Chairman

Date: March 5, 1999

TESTIMONY

Mr. Chairman and committee members, I am Charles E. Johnson, an attorney with the Public Service Commission (Commission). I appear on behalf of the Commission in support of Engrossed HB 1169.

This bill was drafted as a joint effort of the Attorney General's Consumer Protection Division and the Public Service Commission. We are all concerned with the proliferation of slamming and cramming nationwide. North Dakotans are not immune from these threats. We must all do all that we can to ensure that our citizens are not victimized by unscrupulous telecommunications providers or the marketing ploys they use to attract customers.

"Slamming" is the unauthorized switching of a customer from one telecommunications provider to another. **"Cramming"** is the unauthorized initiation of service by a telecommunications company. The incidence of problems with both slamming and cramming has grown in recent years. As technology develops, more services are available to more people, and it is easier to change providers. With the benefits of increased and easier choice comes the threat of abuse.

The local phone company is the only access most customers have to the telecommunications network and the services and providers available on that network. Consequently, the actual switching of a customer from one provider to another, or the actual addition or deletion of a service, happens in the local phone company's computer. However, in most circumstances, the local phone company is making that switch only at the direction of someone else. Either the customer himself or the new provider chosen by the customer tells the local company to make the switch. The local company does not decide itself to switch a customer or add a service (unless we are talking about "local" slamming or cramming).

Slamming or cramming occurs when someone directs the local company to flip a switch in the computer even though the customer didn't want to make the change and didn't authorize it. This can happen in many ways, but often happens as a result of misleading advertising or misleading telemarketing. State and federal governments have been trying to discover the secret recipe that will curb slamming and cramming. As yet, no one has.

As originally drafted, this bill represented our best efforts to incorporate lessons learned from our own experience, the experience of other jurisdictions, industry concerns, meaningful and hopefully deterrent consequences for violators, meaningful options for consumer victims, and administrative workability. Since this bill was filed with the Legislative Council, the Federal Communications Commission (FCC) has issued new rules regarding slamming. We reviewed these new FCC rules and believe that they meet the needs of North

Dakota consumers and providers in many ways. In addition, we believe that unless there is an overriding public interest requiring different standards, it is best to strive for consistency in the standards for both interstate and intrastate service. For these reasons, after the hearing in the House, we met with industry and the Attorney General's Consumer Protection Division and to produce the amendment package that was adopted in the House, resulting in Engrossed HB 1169.

Section 1.

Subsection 1 imposes a basic requirement that companies switch a customer only as provided in the FCC rules, thereby prohibiting slamming. The subsection also authorizes the Commission to enforce the federal provisions.

The FCC standards referenced in this section include the procedures by which companies change service or providers, the procedures used to verify such service changes, the form and content of verifications, the rights and responsibilities of the customers and the company when a dispute arises and the rights and responsibilities of the companies involved in or affected by the dispute.

Subsection 2 concerns initiation of service, or cramming. The federal rules do not address cramming, so Engrossed HB 1169 imposes this subsection to address the problem. This subsection provides a customer with a window during which the customer is absolved from liability when an unauthorized initiation of service occurs. If the company believes the service was authorized, the company can rebill for the service.

Subsection 3 describes the powers of the Public Service Commission concerning slamming and cramming violations when an emergency exists. The

subsection authorizes the commission to issue an immediate cease and desist order against a company's marketing of telecommunications service if an emergency exist, the commission has reason to believe the company is violating the law, and certain other conditions are met.

Subsection 4 provides that a violation of this law is also a consumer fraud violation.

Section 2. This section provides an exception to the cooperative and small company exemption found in N.D.C.C. § 49-02-01.1. In other words, this section gives the commission authority to enforce the slamming and cramming law against cooperatives and companies with less than 8000 local exchange subscribers.

Mr. Chairman, that concludes my testimony. I would be happy to respond to any questions from the committee at this time.

ENGROSSED HOUSE BILL 1169

Present by: Susan E. Wefald
Commissioner

Before: Senate Natural Resources Committee
Senator John T. Traynor, Chairman

Date: March 5, 1999

TESTIMONY

Mr. Chairman and committee members, today, I am here to let you know that there are two good disclosure amendments available for your consideration if you are interested in exploring them.

The original version of this bill contained language regarding disclosure. One provision required companies to send a notice to customers within 10 days of changing or initiating a service for customers telling them of the change. Another provision required telephone companies to add information on their bills regarding the address of the chosen long distance company so that people who have a difficult time getting through on the toll free number have an address so that they can write to the company about any concern.

The Committee directed our staff and the attorney general's staff to work with the companies to redraft this bill since all parties agreed that it needed to be closer to new federal rules. This was done, but because the companies did not like the disclosure portions of the bill, these were not included in the new version. There was a vote on these disclosure matters in the House Committee and they were removed from the bill.

Let me tell you what is happening with slamming legislation in South Dakota. Their Commission passed good slamming and cramming rules, and of course, their legislature was also interested in this matter. Governor Janklow proposed legislation that would require any company that slammed a customer in South Dakota to pay the customer \$1000. This is in addition to penalties that the

Commission can place on the telecommunications company that did the slamming.

Governor Janklow's proposal has passed both houses of the legislature and is on the governor's desk for his signature. They have many of the same telecommunications companies doing business in South Dakota that we have in North Dakota. I have attached a copy of the South Dakota legislation.

AN ACT

ENTITLED, An Act to authorize the Public Utilities Commission to regulate certain telecommunications services and to authorize the Bureau of Information and Telecommunications to assist local governmental associations.
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The telecommunications company of any subscriber may not be changed without the telecommunications service subscriber's authorization. The telecommunications service subscriber's authorization shall be evidenced either by a written authorization signed by the subscriber or by the use of an independent third-party verification company which complies with the provisions of sections 2 and 3 of this Act, or by any other means authorized by the commission. Products or services may not be listed on a subscriber's bill unless authorized by the subscriber. The commission may promulgate rules pursuant to chapter 1-26 concerning procedures, requirements, and standards for changing a subscriber's telecommunications company and for listing products and services on a subscriber's bill.

Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If an independent third-party verification company obtains a subscriber's oral confirmation regarding a change of a designated telecommunications company for interexchange or local exchange telecommunications service, the third-party verification shall include:

(1) A statement that the purpose of the call is to verify the subscriber's intent to change to the newly requested telecommunications company. The newly requested interexchange or local telecommunications company shall be clearly identified to the subscriber. Reference to use of another telecommunications company's network or facilities, if stated, shall be secondary in nature to the prominent identification of the telecommunications company which will be providing service and setting the rates for the subscriber's service;

(2) Confirmation that the person whose authorization for a telecommunications company change is being verified is the subscriber on the account or a person authorized by the subscriber to make decisions regarding the telecommunications account on behalf of the subscriber, whether that subscriber is an individual person or a business;

(3) Verification data unique to the subscriber such as the subscriber's date of birth; and

(4) The name and toll-free telephone number of the newly requested telecommunications company.

The third-party verification company shall electronically record the telephone call that confirms the subscriber's change of a designated telecommunications company. The electronic recording shall include the complete statement of the service being changed and the subscriber's complete response. The electronic recording shall be retained by the third-party verification company for two years.

Section 3. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

The third-party verification company shall meet each of the following criteria:

(1) Be independent of the telecommunications company that seeks to provide the subscriber's new service;

(2) Not be managed, controlled, or directed or owned wholly or in part, by the telecommunications company that seeks to provide the subscriber's new service;

(3) Operate from facilities physically separate from those of the telecommunications company that seeks to provide the subscriber's new service; and

(4) Not derive commissions or compensation based upon the number of sales confirmed.

Section 4. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

A telecommunications company selling more than one type of telecommunications service must obtain separate authorization to change a telecommunications company from the subscriber for each service sold, although the authorizations may be made within the same solicitation. At a minimum, separate authorizations must be obtained for local exchange service, intraLATA toll service, and interLATA toll service. Each authorization must be verified separately from any other authorizations obtained in the same solicitation.

Section 5. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

A subscriber is not liable for any charges imposed by a telecommunications company that initiates a telecommunications carrier change without authorization from the subscriber or for the billing of unauthorized products or services. In addition, the telecommunications company that initiates the unauthorized change or the billing of unauthorized products or services shall pay to the subscriber one thousand dollars.

Section 6. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

Any person who violates this Act or any rules promulgated pursuant to this Act is subject to a civil penalty to be imposed by the commission, after notice and opportunity for hearing. The commission may impose a civil fine of not more than twenty thousand dollars for each offense. In determining the amount of the penalty upon finding a violation, or the amount of the compromise settlement, the commission shall consider the appropriateness of the penalty to the size of the business of the person charged, prior offenses and compliance history, the good faith of the person charged in attempting to achieve compliance, and such other matters as justice may require. All penalties collected pursuant to this section shall be deposited in the state treasury. In addition to assessing a civil penalty for a violation of this Act, the commission may revoke or suspend a telecommunications company's certificate of authority for repeated offenses.

Section 7. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If the commission receives more than two complaints within thirty days regarding violations of section 1 of this Act, the commission may require the telecommunications company responsible for the violations to provide the commission with a complete list of its current subscribers, including the subscribers' billing addresses. The list may be filed as confidential consistent with the commission's rules. The commission may contact each subscriber to determine whether any subscriber has been subject to an unauthorized change in a telecommunications company or billed for unauthorized products or services. If the commission finds, after notice and opportunity for hearing, that a telecommunications company has committed two separate violations of section 1 of this Act within one year, the commission may assess the costs of contacting subscribers to the telecommunications company.

Section 8. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

If the commission finds the company has committed a violation of this Act after holding a contested case proceeding or if allowed by section 7 of this Act, the commission may assess the actual costs of the contested case proceeding or contacting subscribers to the

SB 238

Page 2 of 2

telecommunications company. The assessment shall be limited to actual amounts expended by the commission for commission employee time, expert witnesses, court reporter fees, document and exhibit preparation, and other necessary and related expenses incurred by the commission. The telecommunications company may, within thirty days after the assessment is mailed, file written objections with the commission stating the grounds upon which it claims that the assessment is not reasonable. The commission shall within thirty days of receiving such objections hold a hearing and issue an order in accordance with its findings as to the proper amount to be assessed to the telecommunications company. The order may be appealed pursuant to chapter 1-26.

Section 9. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as follows:

For the purpose of this Act, the term, subscriber, means any person who contracts with a telecommunications company for telecommunications services.

Section 10. That § 37-30A-9 be repealed.

Section 11. That § 1-33-43 be amended to read as follows:

1-33-43. The Bureau of Information and Telecommunications shall perform functions to include, but not be limited to:

(1) Providing technical and management assistance to state agencies and institutions as to systems or methods to be used to meet information and communication requirements efficiently and effectively;

(2) Developing and proposing operational technical standards for the state information systems which will ensure the interconnection of computer networks and information of state agencies;

(3) Purchasing from, or contracting with, suppliers and communications common carriers for communications facilities or services;

(4) Cooperating with any federal, state, or local emergency management agency in providing for emergency communication and information services;

(5) Providing, where deemed feasible, a means whereby local governmental agencies, the association authorized by § 13-8-10.1, and the school administrators of South Dakota may utilize the state communication and information systems and service; and

(6) In cooperation with the appropriate state agencies, plan, design, and conduct experiments in information services, equipment, and technology, and to implement enhancements in the state information system.

An Act to authorize the Public Utilities Commission to regulate certain telecommunications services and to authorize the Bureau of Information and Telecommunications to assist local governmental associations.

<p>I certify that the attached Act originated in the SENATE as Bill No. 238</p> <p>_____ Secretary of the Senate</p> <p>_____ President of the Senate</p> <p>Attest: _____ Secretary of the Senate</p> <p>_____ Speaker of the House</p> <p>Attest: _____ Chief Clerk</p> <p>Senate Bill No. 238 File No. _____ Chapter No. _____</p>	<p>Received at this Executive Office this _____ day of _____, 19____ at _____ M.</p> <p>By _____ for the Governor</p> <hr/> <p>The attached Act is hereby approved this _____ day of _____, A.D., 19____</p> <p>_____ Governor</p> <hr/> <p>STATE OF SOUTH DAKOTA, ss.</p> <p>Office of the Secretary of State</p> <p>Filed _____, 19____ at _____ o'clock ____ M.</p> <p>_____ Secretary of State</p> <p>By _____ Ass. Secretary of State</p>
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Post-It® Fax Note	7671	Date	# of pages ▶ 2
To Susan Wefald		From Jim Durg	
Co./Dept.		Co. SD PUC	
Phone #		Phone # 605-773-3201	
Fax # 701-328-2410		Fax #	

3. Notice of new or changed service. A telecommunications company shall provide specific, clear, written notification to the customer of each initiation of or change in service within ten days of the authorization. The notice must include the terms and conditions of the service, the rates and charges for the service, and a clear statement advising the customer of the right and procedure to cancel the new service or reverse the change in service or carrier.

4. Billing disclosures. The first bill for telecommunications services issued after the effective date of an initiation of or change in service or provider must contain conspicuous notice of the new or changed service or the change in provider, and the effective date of each. The bill must also contain the name, address, and toll-free telephone number of each carrier identified on the bill, with information on how the customer can cancel the new service or reverse the change in service or carrier if the customer believes the initiation or change was not authorized.

In November 1997, my long distance service was switched to USBI business Discount Plan. I have attached a timeline of events along with supporting documentation. After many conversations and a year later, USBI agreed to pay the balance due. See Fax dated 10/08/98. In that fax, Mr. Goodale agreed to a credit in total of \$511.60. To date, I have received two credits: one in June 1998 for \$199.76 and one in December 1998 for \$91.23 for a total of \$200.99. According to my records the amount outstanding is \$224.32 plus late charges of \$37.90 for a total of \$262.22. See itemized list.

My complaint is that USBI switched my long distance service under false pretenses. After notification to switch my account back to my original long distance service, USBI delayed and charges continued to mount. I did request a copy of the tape or a transcript of my conversation with the salesperson from USBI authorizing the switch; neither was provided. A year later, I received a fax from Mr. Goodale stating that a credit would be applied to my account. I am still waiting for the credit and the account continues to accrue late payment fees.

USBI did not have authorization to switch my long distance service and has taken too long to remedy the problem. I am requesting that I receive a credit of \$262.22 which is to be applied to my US West Communication Bill.

Action

November	Received a phone call sometime in November from an USBI-Business Discount Plan Business marketer. The sales person misrepresented the company. When I asked if the marketer represented AT&T, the marketer said yes. The switch to USBI was made under false pretenses.
12/30/97	Faxed letter to revoke authorization and to disconnect the USBI Service plan. Faxed notice to USBI and sent copy of letter to AT & T.
01/08/98	Faxed Business Discount Plan copies of the last two phone bills from USBI and my last AT&T bill.
03/10/98	I received a phone call from Patricia.
06/22/98	Faxed letter to Business Discount requesting that the full amount due USBI \$647.60 be credited to my account because the long distance service was changed under false pretenses. I was promised a credit of \$244.00 and the credit was never received.
✓ 6/25/98	Returned calls to Patricia – USBI. I could not reach her by phone and left a memo.
June 98	Received credits of \$199.76 from USBI on phone bill.
07/24/98	Sent Letter to Robert Guzman and spoke with Robert. Discussed the credit promised of \$315.55 and the transcript of the original phone conversation. Both items were promised to be sent.
07/29/98	Faxed Robert Guzman a notice that I forwarded copies of my statements via regular mail. Requested that the tape of my conversation with sales rep to be saved and not be destroyed. Mailed the copies of phone statements to Guzman.
7/30/98	Letter sent to Guzman explaining that we still haven't received the credit, fax confirmation, or transcript, as promised.
July 98	An additional \$2.95 was charged to my account by USBI.
9/25/98	Faxed Warren Goodale, USBI, copies of USBI charges and past phone bills.
10/08/98	Warren Goodale, USBI faxed a memo that stated a credit amount promised would be in total for \$511.60
Dec 98	Received a credit from USBI for \$91.23 on my phone bill.
Dec 98	Discovered interest has been charged for the unpaid USBI balance. The late payments total is \$37.90. The unpaid USBI charges are \$224.32. Total due is \$262.22.



CONSUMER COMPLAINT
 OFFICE OF ATTORNEY GENERAL - CONSUMER PROTECTION DIVISION
 SFN 7418 (Rev. 10-98)

Name of Person or Firm Complained Against <i>Business Discount Planners</i>		
Address <i>780 Kelroy Airport Way Ste 200</i>		
City <i>Long Beach</i>	State <i>CA</i>	Zip Code <i>90806</i>
Telephone No. (Include Area Code) <i>800-680-1120</i>		

Your Name [REDACTED]		
Address <i>P.O. Box [REDACTED]</i>		
City <i>Fargo</i>	State <i>ND</i>	Zip Code <i>58108</i>
Home Telephone No. <i>701-[REDACTED]</i>		Business Telephone No. <i>[REDACTED]</i>
Please complete these three items which are used for statistical purposes only	Age	Sex <i>M</i>
		Race <i>CAU</i>

PLEASE TYPE OR PRINT WITH BLACK INK: When filling out this form, please keep in mind that a copy of this complaint form may be forwarded to the party or firm complained against.

Date of Transaction <i>November 1997</i>	Product or Service Involved <i>Discount Telephone Service</i>
Amount of money you have already paid: \$ <i>135.23</i>	Amount of money person or firm says you still owe: \$ <i>262.22</i>

How would you like to have your complaint resolved?
The balance of \$262.22 be credited to my US West phone bill by USBE for late charges and unpaid balance. See itemized list

FIRST CONTACT BETWEEN YOU AND PERSON OR FIRM (CHECK THE MOST APPROPRIATE ANSWER)	WHERE DID THE TRANSACTION TAKE PLACE? (CHECK THE MOST APPROPRIATE ANSWER)
<input type="checkbox"/> I contacted or went to the firm's regular place of business. <input type="checkbox"/> The firm contacted me in person at my home or place of work. <input type="checkbox"/> I contacted or went to the firm's temporary place of business. <input checked="" type="checkbox"/> I received a telephone call from the firm. <input type="checkbox"/> I responded to a radio/TV ad. <input type="checkbox"/> I responded to a written advertisement. <input type="checkbox"/> I received information in the mail from the firm. <input type="checkbox"/> Yellow pages of telephone book.	<input type="checkbox"/> At the firm's place of business. <input type="checkbox"/> At my home. <input type="checkbox"/> Away from the firm's place of business (for example, at your place of employment, etc.). <input checked="" type="checkbox"/> Over the telephone. <input type="checkbox"/> By mail. <input type="checkbox"/> There was no transaction.

Did you sign a contract or written agreement? NO YES -- If "YES" attach a copy

Did you receive a contract or a receipt? NO YES -- If "YES" attach a copy

Name of person(s) with whom you dealt, if any.
Patricia 1800-680-1120 Warren Goodale
Robert Gynman-800-877-8707 FAX

Have you contacted a private attorney or another agency? NO YES -- If "YES", identify below.

Is court action pending or completed? NO YES -- If "YES", what was the result?

[REDACTED]

[REDACTED]

Nov-97	168.03	0.00
Dec-97	174.50	64.54
Jan-98	166.75	167.64
Feb-98	194.82	203.53
Mar-98	296.52	146.57
Apr-98	351.08	65.32
May-98	329.80	0.00
Jun-98	351.42	-199.76 USBI CREDIT
Jul-98	360.34	2.95
Aug-98	315.81	
Sep-98	320.16	
Oct-98	445.79	
Nov-98	320.16	-135.24 [REDACTED] PAID
Dec-98	382.50	-91.23 USBI CREDIT
Jan-98	261.44	
TOTAL	<u>\$1,681.50</u>	<u>\$224.32</u>

Late Payments

Billing Date	Late Payment Charge
07/16/98	6.76
08/16/98	6.76
09/16/98	11.56
10/16/98	4.73
11/16/98	4.73
12/16/98	3.36
Total Late Char	<u>37.90</u>

LATE CHARGES	37.90
UNPAID USBI CHARGES	<u>224.32</u>
TOTAL DUE FROM USBI	<u>\$262.22</u>