

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2207


1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2207

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 18, 1999

Tape Number	Side A	Side B	Meter #
1		x	1,725
Committee Clerk Signature 			

Minutes:

Senator Thompson introduced the bill. His testimony is included.

Illona Jeffcoat-Sacco testified in support of SB2207. Her testimony is included.

SENATOR MUTCH: If you don't require written statement then what is the protection for oral?

ILLONA JEFFCOAT-SACCO: The protection for oral is that you have a nice tight verification process. Part of that is in recording the entire conversation and not just the "yes".

Discussion took place.

SENATOR SAND: Is written verification the most black and white?

ILLONA JEFFCOAT-SACCO : Written is the most black and white. We think that this bill will be more efficient if it's standards are closer to those of the FCC.

SENATOR KLEIN: Won't the federal laws supersede this law?

ILLONA JEFFCOAT-SACCO: The federal law and the FCC rules will not supersede Intrastate problems.

Dave Hewey testified in support of SB2207. His testimony is attached.

SENATOR MUTCH: is there anyway that I could notify my carrier that I don't want to be switched?

ILLONA JEFFCOAT-SACCO: Yes, but there are carriers that don't have there own code and so then that little company can slam the big company but the original company will still be listed on the bill.

Dave Hewey went back to his testimony.

SENATOR KLEIN: So it would take the consumer an effort to switch rather than just immediately being switched.

DAVE HEWEY: That is correct.

Marilynn Foss, MCI World Com, testified in opposition to SB2207. Her testimony is included.

SENATOR THOMPSON: Your company uses third party notification?

MARILYNN FOSS: Yes, MCI uses an independent third party notification process.

SENATOR THOMPSON: Are they truly independent under FCC rules or under the company?

MARILYNN FOSS: They are independent under FCC rules.

Discussion took place.

Senator Mutch closed the hearing on SB2207.

Committee discussion took place on February 3.

Senator Mathern made a motion for a do pass on the amendments. Senator Heitkamp seconded her motion. The motion was successful with a unanimous vote.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2207

Hearing Date January 18, 1999

Senator Sand motioned for a do not pass on SB2207. He did not get a second.

Senator Mathern motioned for a do pass on SB2207. Senator Heitkamp seconded her motion.

The motion was successful with a 5-2-0 vote.

Senator Mathern will carry the bill.

FISCAL NOTE

(Return original and 13 copies)

Bill/Resolution No.: SB 2207

Amendment to:

Requested by Legislative Council

Date of Request: 1-12-99

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

Narrative: *This bill attacks the telecommunications slamming and cramming problem. The Public Service Commission does not anticipate the need to add staff to carry out the law. The Attorney General, however may anticipate a need for additional staff and should be consulted.*

2. 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:	N/A	N/A	N/A	N/A	N/A	N/A
Expenditures:	N/A	N/A	N/A	N/A	N/A	N/A

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

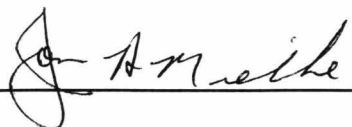
- a. For rest of 1997-99 biennium: N/A
- b. For the 1999-2001 biennium: N/A
- c. For the 2001-03 biennium: N/A

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

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

If additional space is needed, attach a supplemental sheet.

Date Prepared: *January 14, 1999*

Signed: 

Typed Name: Jon H. Mielke, Executive Secretary

Department: Public Service Commission

Phone Number: 328-2400

PROPOSED AMENDMENTS TO SB 2207

Page 1, line 2, after the semicolon insert “and”

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

Page 2, line 2, remove “and penalties”

Page 2, line 3, replace “A telecommunications service provider may not make a change in or direct another” with “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 or add a telecommunications intrastate service. A subscriber for whom an intrastate telecommunications service is added without compliance with title 47, Code of Federal Regulations, part 64, subpart K, is absolved of liability for charges imposed by the service provider during the first thirty days after the unauthorized addition. Upon being informed by the subscriber that an unauthorized addition has occurred, the telecommunications company providing the service shall cancel the service addition, inform the subscriber of the forty-five day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for any additional service provided prior to the cancellation if the company determines the service addition was properly authorized. The remedies provided in this section are in addition to any other remedies available at law.”

Page 2, remove lines 4 through 31

Page 3, remove lines 1 through 31

Re-number accordingly

Date: 2/3/99
 Roll Call Vote #: 2207 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2207

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

- Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken AMEND

Motion Made By MATHEW Seconded By NETLAMP

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 2/3/99
Roll Call Vote #: 2207

2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2207

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By SAND Seconded By _____

Senators	Yes	No	Senators	Yes	No
Senator Mutch					
Senator Sand					
Senator Klein					
Senator Krebsbach					
Senator Heitkamp					
Senator Mathern					
Senator Thompson					

WITHDRAWN

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

WITHDRAWN

Date: 2/3/99
 Roll Call Vote #: 2207 3

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

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By MATHERN Seconded By HEITKAMP

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X	X			
Senator Sand		X			
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	X				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 5 No 2

Absent 0

Floor Assignment MATHERN

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

REPORT OF STANDING COMMITTEE

SB 2207: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2207 was placed on the Sixth order on the calendar.

Page 1, line 2, after the semicolon insert "and"

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

Page 2, line 2, remove "**and penalties**"

Page 2, line 3, replace "A telecommunications service provider may not make a change in or direct another" with "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 or add a telecommunications intrastate service. A subscriber for whom an intrastate telecommunications service is added without compliance with title 47, Code of Federal Regulations, part 64, subpart k, is absolved of liability for charges imposed by the service provider during the first thirty days after the unauthorized addition. Upon being informed by the subscriber that an unauthorized addition has occurred, the telecommunications company providing the service shall cancel the service addition, inform the subscriber of the forty-five day absolution period, and refund any payments made by the subscriber for the service during the absolution period. The telecommunications company may rebill for any additional service provided before the cancellation if the company determines the service addition was properly authorized. The remedies provided in this section are in addition to any other remedies available at law."

Page 2, remove lines 4 through 31

Page 3, remove lines 1 through 31

Renumber accordingly

1999 HOUSE FINANCE AND TAXATION

SB 2207

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2207

House Finance and Taxation Committee

Conference Committee

Hearing Date March 2, 1999

Tape Number	Side A	Side B	Meter #
1		x	50.1 to Tape #2
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

SEN. VERN THOMPSON, DIST. 12, MINNEWAUKAN, Introduced the bill. See written testimony. Presented amendments which give Public Service Commission authority.

CHARLES JOHNSON, PUBLIC SERVICE COMMISSION, Testified in a neutral position.

See written testimony, also presented a copy of HB 1169 which relates to this bill, and also a copy of the FCC rules.

DAVID HUEY, ASSISTANT ATTORNEY GENERAL, Testified in a neutral position. Stated he echoed Mr. Johnson's testimony. They have been involved in this bill from the very beginning. Have worked with representatives from private industry and their concerns with the language. We did that in the context of HB 1169. Slamming and cramming has become major sources of consumer complaints, not only in North Dakota, but across the country. One factor

that is kind of driving it, is the area of deregulation of utilities. Obviously, telephone companies are leading in the deregulation, as a result of that, a lot of new developments. One of the new developments is the use of your local exchange carrier for billing. Now we are seeing some of the abuses that were anticipated by Truth and Lending as it relates to credit cards. Our concern is that, unless we move aggressively to prevent abuses in this area, all we are going to do is encourage more abuses as we see more products and services build through alternative means such as through your local telephone bill. What we are seeing now in telecommunications, I rather suspect, we will see, down the road with respect to electrical utilities when we see deregulation hit that area, when we see people buying power from all over the country and being billed.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 3-3-99, Tape #2, Side B, Meter #16.0

REP. KROEBER Made a motion to adopt the amendments which were presented in testimony.

REP. WARNER Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. GROSZ Made a motion for a DO NOT PASS AS AMENDED.

REP. GRANDE Second the motion. MOTION CARRIED

10 Yes 4 No 1 Absent

REP. GROSZ Was given the floor assignment.

Please type or use black pen to complete

Date 3-3-99
Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2207

House HOUSE FINANCE & TAX Committee

- Subcommittee on _____
 - Conference Committee
- } Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Not Pass as amended

Motion Made By Rep. Grosz Seconded By Rep Grande

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH		✓
RENNERFELDT	✓				
CLARK	✓				
FROELICH	A				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER		✓			
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT		✓			
WARNER		✓			
WIKENHEISER	✓				

Total 10 4
(Yes) (No)

Absent 1

Floor Assignment Rep. Grosz

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE

SB 2207, as engrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2207 was placed on the Sixth order on the calendar.

Page 2, line 6, after the underscored period insert "The commission shall enforce these provisions and this section."

Page 2, line 15, after the underscored period insert "A telecommunications company that violates this section is deemed to have committed an unlawful practice in violation of section 51-15-02 and is subject to the provisions, procedures, and penalties of chapter 51-15."

Renumber accordingly

1999 TESTIMONY

SB 2207

COMMON EXAMPLES OF TELEPHONE SLAMMING

1. Consumer signs up for a contest or other promotion, and find that their long distance carrier has been switched. The fine print usually contains the information about switching carrier, but is easily overlooked.
2. Telemarketing firms call up and use confusing language and bait and switch to get you to say “yes”. They take this “yes” as authorization to switch the carriers.
3. A consumer changes data on their phone account, and they find that the long distance carrier gets switched in the process.

SB 2207 ZERO TOLERANCE SOLUTION

1. All long distance carriers doing business will be informed on the Zero Tolerance policy.
2. Before a phone carrier can switch a consumer’s phone service, they must have written consent (in plain language and no small print).

6. Authorizes Attorney General to issue injunctions against slamming or cramming activities by telecommunications providers.

7. Companies violating “slamming or cramming” law face a civil penalty of up to \$15,000 per violation. Any violation occurring 90 days after the first reported infraction, the telecommunication company can/will lose their right to do business in North Dakota.

8. Attorney General will order providers to repay any money unlawful received from customers and to reimburse the state for investigation and prosecution costs.

9. Before a long distance carrier can switch service, they must obtain written consent from the consumer. The written consent will have to be in plain language and the use of small print is prohibited.

S.B. 2207

Presented by: Mel A. Kambeitz
U S WEST

Before: Industry, Business and Labor
Senator Duane Mutch, Chairman

Date: January 18, 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 SB 2207.

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.

Before SB 2207 was drafted, the Federal Communications Commission issued new regulations that deal with slamming of interstate telephone services by long distance companies.

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 SB 2207 be amended to specifically adopt the federal regulations for companies selling intrastate telecommunications services in North Dakota. Proposed amendments to SB 2207 that would adopt the federal rules.

U S WEST ANTI-SLAMMING AND CRAMMING PROCESSES

Slamming

- When U S WEST receives a slamming complaint, U S WEST:
 - 1) changes the customer back to their previous long distance company;
 - 2) credits the customer any charges incurred for the switch;
 - 3) follows the dispute or resolution process that is provided in our contract with the long distance carrier;
 - 4) will add a PIC freeze to a customer's account if requested. The PIC freeze prevents long distance carrier changes without a customer's direct request to U S WEST.

- U S WEST is working on processes and contract changes that will negate all charges incurred by a customer that has been slammed and return all charges to the company guilty of slamming. U S WEST plans to implement these changes within 6 months.

- To encourage carriers to avoid the practice of slamming, U S WEST charges carriers for each slamming dispute handled. Carriers who subscribe to U S WEST Billing and Collections Services must choose one of two options for dispute handling; the PIC dispute process or the PIC resolution process.
 1. PIC Dispute Process If a carrier subscribes to U S WEST's PIC dispute service and a slamming complaint is received against that carrier:
 - U S WEST charges the carrier \$21.50;
 - U S WEST requests a copy of the customer's authorization to change long distance carriers, which the carrier should have as required by FCC rules;
 - U S WEST works with the customer and the carrier to investigate what happened and resolve the problem.

 2. PIC Resolution Process If a carrier subscribes to U S WEST's PIC resolution service and a slamming complaint is received against the carrier;
 - U S WEST charges the carrier \$10;
 - U S WEST changes the customer's long distance carrier back to the customer's previous choice;
 - No investigation is performed by U S WEST

Cramming

- When U S WEST receives a cramming complaint, U S WEST:
 - 1) removes crammed charges from the customer's bill;
 - 2) sends removed charges back to the enhanced service provider without the option to rebill the same charges;
 - 3) will add a billing block to a customer's account if requested. The billing block prevents charges for enhanced services without a direct customer request;
 - 4) mediates escalated complaints by informing the aggregator of the problem and instructing the aggregator to drop the service provider if necessary
- U S WEST has eliminated its 30-day dispute process. This process gave enhanced service providers 30 days to dispute charges with customer. U S WEST now removes cramming charges immediately for customers, returning those charges to the enhanced service provider. The service provider is not allowed to resubmit the returned charges to U S WEST for repeat billing.
- U S WEST requires all carriers we do business with to add billing block to the accounts of customers requesting it. Billing block is a feature available in carrier switches only, and prevents cramming on customer accounts. U S WEST has made enhancements to its own systems to capture customer requests for billing block and then forward them to carriers for entry in carrier's systems. U S WEST is the only RBOC currently providing this service for customers.
- U S WEST will terminate contracts with offending enhanced service providers. U S WEST provides Billing and Collections services to billing aggregators who contract directly with enhanced service providers. If excessive cramming complaints are received against a service provider, U S WEST requires that the aggregator drop the service provider and fines the billing aggregator \$5,000 plus \$.25 per billing message. If a billing aggregator has 3 service providers in non-compliance or has three offenses, U S WEST will terminate its relationship with that provider. U S WEST has dropped two billing aggregators in the past year, canceling hundreds of service provider contracts due to non-compliance with U S WEST's anti-cramming policy.
- U S WEST will only bill for telecommunications enhanced services. U S WEST has rejected billing contracts for products like insurance and children's audio tapes, videos, and books.
- U S WEST will soon provide separate billing services using a second envelope only. When this happens, enhanced services and 900 number billing will be moved to a separate envelope and bill.
- As of January 1998, U S WEST no longer bills for psychic 900 numbers.

Public Education

U S WEST has undertaken an extensive public education campaign, launched on March 11, 1998, to help our customers protect themselves from being slammed. Posters and brochures containing consumer information have been distributed through various community organizations. This education effort also involves outreach efforts to small businesses and other customers frequently targeted by slammers. These at risk populations include the elderly, customers with language barriers, and customers with limited understanding of today's complex telecommunications environment. I have enclosed a number of the brochures for your information.

Verification Procedures

U S WEST relies on the long distance carriers to retain the appropriate proof of verification as required under FCC rules. U S WEST does not retain the records but does require the long distance carrier to produce verification in any PIC dispute.

Again, thank you for the opportunity to provide U S WEST's position and procedures for cramming and slamming. As you can see, it is an issue we take very seriously. If you have any further questions or concerns, please do not hesitate to contact me. We look forward to working with you through this process.

SB 2207

Presented by: Illona Jeffcoat-Sacco
Public Service Commission

Before: Senate Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 18, 1999

TESTIMONY

Mr. Chairman and committee members, I am Illona Jeffcoat-Sacco, director of the Public Service Commission Public Utilities Division. I appear on behalf of the Commission to discuss SB 2207 and HB 1169, the slamming/cramming legislation proposed by the Commission.

It is our understanding that the purpose of SB 2207 is aimed at what has become two of the most prevalent and irritating problems facing the telecommunications industry—the problems known as **slamming** and **cramming**. Slamming occurs when a telecommunications company *changes* a customer's provider of telecommunications service *without authorization*. Cramming occurs when a provider *initiates* a service that is *neither authorized nor wanted* by the customer. The Public Service Commission agrees that both slamming and cramming should be addressed by the legislature in 1999, and that the legislature should take a strong and definite stand against these practices.

The Public Service Commission has proposed HB 1169, another piece of legislation intended to combat both slamming and cramming. The Commission

believes that HB 1169, as it is proposed to be amended, is the better mechanism for reducing the slamming and cramming problem, while still balancing industry and consumer interests.

In the following testimony I will identify the differences between this bill and “the new” HB 1169. In so doing, I will be discussing HB 1169 as the Commission proposed to amend it during testimony on 14 January 1999. Generally, the Commission proposed to amend HB 1169 to conform the authorization process and consumer protection components to those recently promulgated by the Federal Communications Commission (FCC). This is important because every company will have to follow FCC standards for its interstate business, regardless of what the state enacts.

To help you understand the differences between SB 2207 and HB 1169, I have attached to my testimony today copies of HB 1169, the PSC proposed amendments, the FCC rules and a press release summarizing the FCC rules. As I go through my testimony, please keep in mind one caveat, and that is that the amendments we proposed on HB 1169 still need revision to do what we want them to do and to coordinate our interests with those of industry and other interested parties. Consequently, we are working on changes to those amendments as we speak. The concepts, however, remain the same.

Section 1 makes the enforcement provisions of the legislation applicable to all companies, including cooperatives and those with fewer than 8000 local subscribers. This section is consistent with HB 1169.

Section 2, subsection 1 prohibits changing a provider or adding a service without written authorization. This provision is stricter than what we proposed in HB 1169. SB 2207 allows only written authorization. As proposed to be amended, HB 1169 would allow verbal authorization if such verbal authorization was supported by independent verification or similar protections.

Section 2, subsection 2 identifies what form the letter of agency or written authorization must take. This is similar to the letter of agency provisions included in the proposed amendments to HB 1169.

Section 2, subsection 3 requires providers to notify customers of any change or addition in the first bill issued after the change or addition, or by separate notice within sixty days. These are a good consumer protection requirements and similar requirements are included in HB 1169. HB 1169 does not specify these protections as alternatives, but rather requires both, and requires the separate written notice within ten days after the change

Section 2, subsection 4 allows complaints to the Commission for violations, requires the Commission to create a bill stuffer summarizing the law, and requires companies to include the bill stuffer in bills as required by the Commission. This requirement can also help consumers become knowledgeable buyers. While HB 1169 allows complaints upon an allegation of violation, no requirement similar to the bill stuffer provision is included in HB 1169.

Section 2, subsection 5 provides a greater penalty for violation than would otherwise be applicable and includes other consequences for violation. As originally proposed, HB 1169 included a larger penalty as well. The Commission decided to propose a change to HB 1169 to reduce the penalty to the amount currently in law for all other violations enforced by the Commission. The current penalty is \$5000 per violation, found in N.D.C.C. Chapter 49-07. As proposed to be amended, HB 1169 also includes a 30-day period during which customers who are slammed or crammed are not liable at all for payment. We believe this is a very important component of the attack on slamming and cramming because it should motivate customers to review their bills carefully, and it should motivate companies to operate above board. It helps reduce the benefits to be gained by slamming or cramming.

Section 2, subsection 6 allows the Commission to order corrective action or prohibit a company from doing business for repeated violations. HB 1169 includes similar powers, except that HB 1169 authorizes the Commission to take immediate action to stop a company from marketing in violation of the law when an emergency exists and certain other conditions are met, while SB 2207 appears to allow such an order only after the resolution of a complaint proceeding. We believe the quicker action is needed if a company's marketing program is threatening to North Dakota consumers.

Section 2, subsection 7 requires the providers to send a copy of the letter of agency to the Commission within 20 days after receipt of a complaint

from the Commission. If no letter of agency is provided, a conclusive presumption arises that a violation has occurred. HB 1169 does not include a similar provision. Rather, HB 1169, as proposed to be amended, incorporates the processes envisioned by the FCC.

The Public Service Commission believes that the legislature should take strong and definite action against slamming and cramming. The Commission recognizes, however, that both industry and government will find it exceedingly difficult, and possibly nonproductive, to have to implement and enforce two different sets of standards for interstate and intrastate service. In proposing amendments to HB 1169, the Commission recognizes that our energies are best spent stopping slamming and cramming, rather than trying to figure out whether the federal or state laws apply to any particular charge or another. The Commission respectfully recommends passage of HB 1169 over SB 2207, or amendment of SB 2207 to conform to the proposals in HB 1169.

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

HOUSE BILL NO. 1169

Introduced by

Natural Resources Committee

(At the request of the Public Service Commission)

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

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 49-07 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Violation of prohibition against unauthorized initiation of or change in**
9 **telecommunications service - Penalties.** A telecommunications company that violates
10 section 2 of this Act, or any rule or order issued by the commission implementing section 2 of
11 this Act, is subject to a civil penalty to be imposed by the commission in an amount not less
12 than ten thousand dollars nor more than twenty thousand dollars for the first offense and not
13 less than twenty-five thousand dollars nor more than forty thousand dollars for a subsequent
14 offense. Each change or initiation of a telecommunication service constitutes a separate
15 offense. Imposition of a penalty under this section does not preclude imposition of a penalty
16 under chapter 51-15.

17 **SECTION 2.** A new section to chapter 49-21 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Unauthorized telecommunications service.**

20 1. Unauthorized service initiation and change prohibited. A telecommunications
21 company may not submit an order to initiate or change the provision of a
22 telecommunications service or change a customer's local or long-distance carrier
23 without express authorization from the customer.

- 1 2. Authorization. Customer authorization for initiation or change of service or change
2 of carrier may be obtained only as provided in this section. An authorization is
3 invalid if the telecommunications company, its agent, or its verification company
4 used any fraudulent, deceptive, or unconscionable marketing or sales practice
5 including negative options, or otherwise failed to meet other telemarketing
6 standards or practices. Authorization may be obtained by:
- 7 a. Separate written agreement or letter of agency of the customer containing
8 customer-specific information. A written agreement or letter of agency
9 combined with a sweepstakes, drawing or contest entry, lottery ticket, coupon,
10 or other promotional material does not constitute a separate written
11 agreement or letter of agency. Endorsement of a check may constitute a
12 separate written agreement or letter of agency if both the face of the check
13 and the endorsement form clearly and conspicuously disclose that
14 endorsement of the check constitutes express written agreement to initiate or
15 change service or change service providers. A telecommunications company
16 that submits an order to initiate or change service or change a provider shall
17 retain the written agreement or letter of agency for two years.
- 18 b. Oral agreement of the customer if the customer initiates the call to obtain or
19 change service and the company provides notification under subsection 3.
- 20 c. Oral agreement of the customer if the telecommunications company or its
21 agent initiates the call to the customer and:
- 22 (1) The telecommunication company keeps an audiotape record of the
23 entire conversation for two years; and
- 24 (2) An independent third party verifies the authorization and keeps an
25 audiotape of the entire verification for two years.
- 26 3. Notice of new or changed service. A telecommunications company shall provide
27 specific, clear, written notification to the customer of each initiation of or change in
28 service within ten days of the authorization. The notice must include the terms and
29 conditions of the service, the rates and charges for the service, and a clear
30 statement advising the customer of the right and procedure to cancel the new
31 service or reverse the change in service or carrier.

- 1 4. Billing disclosures. The first bill for telecommunications services issued after the
2 effective date of an initiation of or change in service or provider must contain
3 conspicuous notice of the new or changed service or the change in provider, and
4 the effective date of each. The bill must also contain the name, address, and
5 toll-free telephone number of each carrier identified on the bill, with information on
6 how the customer can cancel the new service or reverse the change in service or
7 carrier if the customer believes the initiation or change was not authorized.
- 8 5. Automatic credit. A customer may notify the telecommunications company
9 providing the new or changed service or the company billing for the company
10 providing the new or changed service of an unauthorized initiation or change in
11 service or change of provider. If the customer gives this notice within sixty days
12 after issuance of the notice required in subsection 3 or the billing disclosure
13 required in subsection 4, whichever is earlier, the customer is entitled to full credit
14 for all charges related to the unauthorized service or change in provider from the
15 date of unauthorized initiation or change in service or provider to the date the
16 unauthorized service or provider change is stopped or reversed. The right of the
17 customer to full credit is not affected by any delay in billing. The customer is not
18 liable for any charges imposed to reverse the unauthorized initiation or change in
19 service or change in provider.
- 20 6. Competitor actions. A telecommunications company that violates this section shall
21 pay the previous service provider all recurring and nonrecurring costs and charges
22 incurred by the previous service provider, the value of any premiums or bonuses
23 restored to the customer that the customer would have earned from the previous
24 provider during the period of violation, plus the amount of revenue the previous
25 service provider would have received if the customer's service had been provided
26 by the previous service provider during the period of violation.
- 27 7. Reimbursement to local exchange company. A telecommunications company that
28 violates this section shall pay the customer's local exchange company for any
29 costs incurred to execute the unauthorized initiation or change in service or change
30 in provider, together with any costs incurred to investigate the unauthorized
31 initiation or change and reinstate the customer to the previous service or provider.

- 1 8. Cease and desist orders. If the commission finds an emergency exists that
2 requires ex parte action, the commission may issue a cease and desist order
3 without prior notice against a telecommunications company that the commission
4 has reason to believe is in violation of this section. The cease and desist order
5 must be:
- 6 a. Directed against the telecommunications company's marketing of
7 telecommunications service, not the company's provision of service to current
8 customers;
- 9 b. Accompanied by service on the telecommunications company of a
10 commission order opening an investigation or a formal complaint regarding
11 the company's compliance with this section; and
- 12 c. Accompanied by service on the telecommunications company of a notice of
13 opportunity to be heard on the cease and desist order within fifteen days of
14 issuance of the cease and desist order.
- 15 9. Consumer fraud violation. A telecommunications company that violates this
16 section is deemed to have committed an unlawful practice in violation of section
17 51-15-02 and is subject to all the provisions, procedures, and penalties of chapter
18 51-15.

19 **SECTION 3. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North
20 Dakota Century Code is amended and reenacted as follows:

21 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
22 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
23 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
24 any public utility owned and operated by the state or by any city, county, township, or other
25 political subdivision of the state or any public utility, that is not operated for profit, that is
26 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
27 telecommunications company having fewer than eight thousand local exchange subscribers.
28 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
29 telecommunications company or has fewer than eight thousand local exchange subscribers is
30 subject to sections 49-21-01.4 ~~and~~, 49-21-08, and sections 1 and 2 of this Act and is subject to
31 subsection 6 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07,

Fifty-sixth
Legislative Assembly

- 1 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or
- 2 connection between facilities and transfer of telecommunications between two or more
- 3 telecommunications companies. Nothing in this section limits the authority of the commission
- 4 under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

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

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.

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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-

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SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
DUANE MUTCH, CHAIRMAN
JANUARY 18, 1999

TESTIMONY BY
DAVE HUEY
ASSISTANT ATTORNEY GENERAL
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2207

Mr. Chairman and members of the Senate Industry, Business and Labor Committee. I am Dave Huey, an Assistant Attorney General with the Attorney General's Office. The Attorney General supports Senate Bill No. 2207, with such amendments as may be appropriate.

The House Natural Resources Committee, at the request of the Public Service Commission (hereinafter "PSC" or "commission"), introduced House Bill No. 1169 regarding these same telecommunications issues. The commission and the Attorney General jointly prepared House Bill No. 1169 for referral to and introduction by this Legislative Assembly. A hearing on that bill was held before the House Natural Resources Committee on January 14, 1999.

After the preparation of House Bill No. 1169, the Federal Communication Commission (hereinafter "FCC") promulgated rules regarding "slamming." After review of the FCC rules and discussion of the rules with industry representatives, the PSC, joined by the Attorney General, at the first opportunity, offered some amendments to House Bill No. 1169 at the committee hearing. The industry also offered some similar amendments. For the purpose of consistency for the telecommunications companies in the various jurisdictions including North Dakota, the amendments offered by both the public and private sectors essentially incorporate the FCC's rules in lieu of separate North Dakota standards. The amendments primarily differ between the industry and the PSC and Attorney General in regard to billing notice and separate notice for changes in or the initiation of services and the handling of cramming, which are not at this time included in the FCC rules. The industry appears opposed to billing and separate notices and, as I understand, the local consensus of industry has not taken a definite position on "cramming." The discussions and cooperative efforts between the industry and the government will continue and we should be able to reach accord on the "cramming," if not on the notice requirements. That committee has not yet voted on House Bill No. 1169 partly due to pending discussions between industry representatives and the PSC and Attorney General, including the possibility of additional amendments and/or additional testimony.

The Attorney General and PSC staff have also considered issues of consistency, notice, etc. in order to continue to cooperate and try and reach some consensus with the industry representatives. Therefore, we have worked with and discussed

these issues and concerns with the FCC staff. The Attorney General strongly supports the intent of and need for legislation as provided in Senate Bill No. 2207. Therefore, in light of all of the mutual interests and cooperative efforts it would be most efficient, beneficial and appropriate to ensure that Senate Bill No. 2207 is consistent with what has already occurred or been agreed to.

The Attorney General and the commission have worked closely on these telecommunications issues because of 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 company 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 from 39 slamming complaints in 1997 to 110 slamming complaints in 1998 or approximately an **182 %** increase 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 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 and quite understandably, the last thing any businesses, including telephone companies, probably want is more regulation. While new legislation in this increasing area of consumer complaints appear proactive, we also are being reactive to what could be a serious backlash or reaction by North Dakota consumers that are frustrated, bewildered and outraged by slamming and cramming. In addition to the formal consumer complaints, we receive telephone calls daily from consumers expressing their irritation and frustration. Some merely wish to report the incidents to our office even if they have already handled the complaint themselves. 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 immediately aware of any other consumer or consumer fraud problem that has increased by over 182 % in North Dakota.** The gravity and nature of the problems suggest that legislation is required to address the problems, unless we are going to leave the consumers, without any defenses, to their own methods or devices of addressing the problems without any real remedy, protection or enforcement.

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, we can tell you, based on our considerable consumer fraud experience 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 regulatory or law enforcement agencies to quickly address and remedy citizens' problems under state law. This legislation, with the possible amendments as proposed by the PSC and Attorney General and industry in House Bill No. 1169, will allow this state

enforcement of consistent laws, with limited additions to or deviation from the FCC rules. Of course, laws for additional enforcement also require additional work and resources on already limited resources. However, that is not a reason to not implement legislation and enforcement. The Attorney General does not intend to request additional staff but we will have to carefully determine our priorities for the most egregious violations that require an investigation or legal action. In some cases, letter notifications or warnings, etc may be sufficient action deterrent for some violations and deterrence for others.

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, boldly 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 from 8 cramming complaints in 1997 to 91 cramming complaints in 1998 or an approximate **1037 %** increase in the complaints filed from 1997 to 1998. Something must be done now to deter or prevent this practice. So much of the recent focus or attention has been on slamming. However, it is cramming that is actually becoming more of a problem. It often is so blatant or fraudulent. In some cases it is merely another form of theft, but one without a priority of being addressed by local law enforcement. Usually, whether the services are available or not after being added to the customer, they were never requested or used, and may not exist, except for billing purposes. Even if these crammers refund substantial amounts when caught by the consumers, they still are dollars ahead of the game for the instances in which they are not caught, or some period in which a consumer can file a claim has

expired. There must be some enforcement, consequences and penalties. Otherwise, it is merely consumers and the legitimate local telephone companies cleaning up the messes and bearing the costs and responsibilities for doing so. Verification procedures, etc., as provided in the FCC rules for slamming, will provide some important protection and enforcement in cramming as well. This legislation in this bill, with appropriate amendments, will provide relief for consumers and legitimate telephone companies, as well as deterrence for violations and enforcement by appropriate state authorities, such as the PSC or Attorney General.

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 or otherwise notifies you of any changes. However, you receive your next monthly statement and it probably looks like your previous statement, except somewhere you may or may not notice that you are now being billed by a different credit card company and you are being billed at 18 per cent interest. Are you surprised? You bet! Is this much different that what already is occurring with slamming and cramming? Absolutely not! The Consumer Protection Division already is receiving complaints about unauthorized charges on telephone bills for Internet advertising web sites that were not ordered by the consumers. If certain conduct or practices are not specifically illegal or in violation of the law, they can be difficult to prevent or stop. Where does it end? The start of the end is this legislation!

This is a difficult area and problem. 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 and a valuable enforcement mechanism now. The FCC rules already apply equally to the RBOCs and the telephone cooperatives. It now appears more a matter of providing North Dakota enforcement and protection for consumers, and not deferring only to the federal government, by incorporating the FCC rules in state law now with some possible changes or deviations regarding notice requirements, when a customer's service has been changed or a new service initiated.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General, I respectfully urge this committee to give Senate Bill No. 2207, with appropriate amendments, a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.

TESTIMONY

MARILYN FOSS

FOR MCI WORLDCOM

to the Senate Industry Business and Labor Committee

North Dakota Legislature

January 18, 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 every 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 Rulemaking order and regulation 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 are 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.

While the FCC rules recognize letters of agency as one method of verifying a change in service providers that is not the only method of verification which is permitted. The reason is simple, the LOAs are largely unworkable. For this reason, the FCC rules require independent verification procedures which 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 measures to assure accurate sales and satisfied customer interaction in our telemarketing sales. We have created the "gold standard" of perfecting independent third party verification processes (TPV) for all sales. This FCC approved method provides consumers, state and federal regulators and MCI WorldCom taped verification of customers' intentions and directions.

TPV has proven that it reduces unintentional slams by insuring that the customer understands 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. With TPV the agency issue and

notice of change issues which appear to be the focus of SB 2207 are addressed.

For these reasons, we believe that SB 2207, while well intentioned before the issuance of the FCC rules is both inconsistent and duplicative, unnecessary, costly and punitive regulation in light of the federal regulations which have not been implemented. For that reason we urge you to recommend a Do Not Pass for the bill. We also note that the House is considering HB 1169. That bill, too, seeks to impose state regulation to regulate "slamming and cramming." In hearings held before the House Natural Resources Committee last week MCI took the same position as it is here - that the new FCC rules comprehensively covers slamming protections and remedies. and should be the standard which is followed.

Thank you.

SB 2207 Testimony

Mr. Chairman and members of the House Finance & Tax Committee:

For the record I'm Sen. Vern Thompson of Minnewaukan. I represent the 12th Legislative District.

Slamming and cramming are two of the most troublesome consumer issues in the state of North Dakota. Slamming is the term used when the consumer has their long distance telephone service changed without their knowledge. Let me give you some examples:

1. A consumer signs up for a contest or other promotion, and find that their long distance carrier has been switched. The fine print usually contains the information about switching carrier, but is easily overlooked.
2. Telemarketing firms call up and use confusing language and bait and switch to get you to say "yes" as authorization to switch the carriers.
3. A consumer changes data on their phone account, and they find that the long distance carrier gets switched in the process.

The term cramming is when a company adds services to your monthly bill without your knowledge or approval. I had a local consumer who was charged \$40 a month for a 1-800 number, \$30 a month for access to the number, and \$32 a month for a service agreement for the number. That's a total of over \$100 a month for something the consumer never asked for. I've heard complaints from people who were charged an Internet fee that didn't have a computer. Consumers have told me of many other monthly services that have been charged to their phone bill without their knowledge. A real estate agent in Minot told me of \$600 a month assessed charges on her business phone bill. She paid it for awhile not realizing they were for services she was unaware of.

These examples are of serious concern for consumers across the state. North Dakota needs to make a strong stand on this issue and I believe it needs to be done this session. After the Senate passed SB 2207 there was some concern of clarification of intent of the recently approved Federal Communications Commission rules. That is why I offer

amendments to give the PSC clear authority to enforce provisions of the bill. The second part of the amendments clarify the provisions, procedures, and penalties of chapter 51-15.

There is another bill very similar to this in the Senate. It is HB 1169. I respectfully request that you give favorable consideration on SB 2207 until we see where that bill goes. Legal council from the PSC can explain the differences on the bills to date.

Thank you,

A handwritten signature in black ink, appearing to read "Vern", written in a cursive style.

Sen. Vern Thompson

ENGROSSED SB 2207

Presented by: Charles E. Johnson
Public Service Commission

Before: Finance and Taxation Committee
Representative Wesley R. Belter, Chairman

Date: March 2, 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 to discuss Engrossed SB 2207 and Engrossed HB 1169, the slamming/cramming legislation proposed by the Commission.

It is our understanding that Engrossed SB 2207 is aimed at what has become two of the most prevalent and irritating problems facing the telecommunications industry—the problems known as **slamming** and **cramming**. Slamming occurs when a telecommunications company *changes* a customer's provider of telecommunications service *without authorization*. Cramming occurs when a provider *initiates* a service that is *neither authorized nor wanted* by the customer. The Public Service Commission agrees that both slamming and cramming should be addressed by the legislature in 1999, and that the legislature should take a strong and definite stand against these practices.

The Public Service Commission has proposed Engrossed HB 1169, another piece of legislation intended to combat both slamming and cramming. The Commission believes that Engrossed HB 1169 is the better mechanism for reducing the slamming and cramming problem, while still balancing industry and consumer interests.

To help you understand the differences between the bills, I have attached to my testimony today copies of Engrossed HB 1169, the FCC rules and a press release summarizing the FCC rules.

Section 1 of Engrossed SB 2207 makes the legislation applicable to all companies, including cooperatives and those with fewer than 8000 local subscribers. This section is important and is consistent with Engrossed HB 1169.

Section 2 makes the FCC rules applicable to all companies that change or initiate a telecommunications service. However, unlike Engrossed HB 1169, this section does not give the Commission enforcement authority regarding these federal provisions. Further, this section attempts to make the FCC rules applicable to cramming, but since those rules were not written with cramming in mind, they do not work well in that regard. On the other hand, the cramming provisions of Engrossed HB 1169 were written specifically to address cramming. We believe Engrossed HB 1169 contains the better provisions.

Additionally, Engrossed SB 2207 does not include the provisions found in subsections 3 and 4 of Section 1 of Engrossed HB 1169. These include the provisions allowing the Commission to issue a cease and desist order against violators in an emergency situation, and those making slamming and cramming also violations of North Dakota's consumer fraud protections. We believe these are very important provisions that should be included in any slamming and cramming bill.

The Public Service Commission believes that the legislature should take strong and definite action against slamming and cramming. The Commission respectfully suggests that Engrossed SB 2207 be amended to incorporate those provisions discussed above and request some time in which to work out the wording of the amendments with the sponsors of Engrossed SB 2207 if such amendments were acceptable to the sponsors.

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

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1169

Introduced by

Natural Resources Committee

(At the request of the Public Service Commission)

1 A BILL for an Act to create and enact a new section to chapter 49-21 of the North Dakota
2 Century Code, relating to unauthorized telecommunications service; to amend and reenact
3 section 49-02-01.1 of the North Dakota Century Code, relating to jurisdiction of the public
4 service commission; to provide a penalty; and to declare an emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** A new section to chapter 49-21 of the North Dakota Century Code is
7 created and enacted as follows:

8 **Unauthorized telecommunications service.**

- 9 1. A telecommunications company shall comply with the provision of title 47, Code of
10 Federal Regulations, part 64, subpart k, regarding changes in a subscriber's
11 selection of a provider of telecommunications service. The commission shall
12 enforce the provisions of title 47, Code of Federal Regulations, part 64, subpart k.
- 13 2. A telecommunications company may not initiate an intrastate telecommunications
14 service to a subscriber without authorization. A subscriber for whom an intrastate
15 telecommunications service is initiated without authorization is absolved from
16 liability for charges imposed by the service provider if the subscriber notifies the
17 service provider within thirty days after the first billing for the unauthorized service.
18 Upon being informed by the subscriber that an unauthorized initiation of service
19 has occurred, the telecommunications company providing the service shall cancel
20 the service, inform the subscriber of the thirty-day absolution period, and refund
21 any payments made by the subscriber for the service during the absolution period.
22 The telecommunications company may rebill for the service provided before
23 cancellation if the company determines the service initiation was authorized. The

1 remedies provided in this section are in addition to any other remedies available at
2 law.

3 3. If the commission finds an emergency exists that requires ex parte action, the
4 commission may issue a cease and desist order without prior notice against a
5 telecommunications company that the commission has reason to believe is in
6 violation of this section or title 47, Code of Federal Regulations, part 64, subpart k.

7 The cease and desist order must be:

8 a. Directed against the telecommunications company's marketing of
9 telecommunications service, not the company's provision of service to current
10 customers;

11 b. Accompanied by service on the telecommunications company of a
12 commission order opening an investigation or a formal complaint regarding
13 the company's compliance with this section; and

14 c. Accompanied by service on the telecommunications company of a notice of
15 opportunity to be heard on the cease and desist order within fifteen days of
16 issuance of the cease and desist order.

17 4. A telecommunications company that violates this section is deemed to have
18 committed an unlawful practice in violation of section 51-15-02 and is subject to all
19 the provisions, procedures, and penalties of chapter 51-15.

20 **SECTION 2. AMENDMENT.** Section 49-02-01.1 of the 1997 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **49-02-01.1. Jurisdiction of commission limited as to certain utilities.** Nothing in
23 this chapter or in chapter 49-21 authorizes the commission to make any order affecting rates,
24 contracts, services rendered, adequacy, or sufficiency of facilities, or the rules or regulations of
25 any public utility owned and operated by the state or by any city, county, township, or other
26 political subdivision of the state or any public utility, that is not operated for profit, that is
27 operated as a nonprofit, cooperative, or mutual telecommunications company or is a
28 telecommunications company having fewer than eight thousand local exchange subscribers.
29 However, any telecommunications utility that is operated as a nonprofit, cooperative, or mutual
30 telecommunications company or has fewer than eight thousand local exchange subscribers is
31 subject to sections 49-21-01.4 ~~and~~, 49-21-08, and section 1 of this Act and is subject to

1 subsection 6 of section 49-02-02 and sections 49-21-01.2, 49-21-01.3, 49-21-06, 49-21-07,
2 49-21-09, and 49-21-10, regarding rates, terms, and conditions of access services or
3 connection between facilities and transfer of telecommunications between two or more
4 telecommunications companies. Nothing in this section limits the authority of the commission
5 under chapter 49-03.1 or sections 49-04-05 and 49-04-06.

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