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CASE/COMPANY NAME:

IN THE MATTER OF THE APPLICATION FOR EMERGENCY RULEMAKING FOR RULES TO ADDRESS SLAMMING AND OTHER DECEPTIVE PRACTICES

DOCKET NO. RT

2001 AUG 16 10 43 20

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Arizona Corporation Commission

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X SECURITIES or MISCELLANEOUS FILINGS

- 04 AFFIDAVIT, 12 EXCEPTIONS, 18 REQUEST FOR INTERVENTION, 48 REQUEST FOR HEARING, 24 OPPOSITION, 50 COMPLIANCE ITEM FOR APPROVAL, 32 TESTIMONY, X 47 COMMENTS, 29 STIPULATION, 38 NOTICE OF INTENT (Only notification of future action/no action necessary), 43 PETITION, 46 NOTICE OF LIMITED APPEARANCE, 39 OTHER Specify

8-06-01 Date

Jeffrey W. Crockett Print Name of Applicant/Company/Contact person/Respondent/Atty. 602-382-6111

Phone

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Chairman

Arizona Corporation Commission

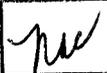
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JIM IRVIN
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IN THE MATTER OF THE APPLICATION FOR
EMERGENCY RULEMAKING FOR RULES TO
ADDRESS SLAMMING AND OTHER
DECEPTIVE PRACTICES

DOCKET NO. RT-00000J-99-0034

**COMMENTS ON SECOND DRAFT OF PROPOSED RULES ON
SLAMMING AND CRAMMING**

The following additional comments are submitted in the above-captioned proceeding on behalf of Accipiter Communications, Table Top Telephone Company, Valley Telephone Cooperative, Copper Valley Telephone, Arizona Telephone Company, Southwestern Telephone Company and OnePoint Communications-Colorado (collectively, the "Commenting Companies").

INTRODUCTION

On May 22, 2001, the Arizona Corporation Commission's Utilities Division Staff ("Staff") distributed proposed rules on slamming and cramming ("Slamming Rules" and "Cramming Rules") for review and comment. A workshop to discuss the proposed rules was held June 13, 2001. On July 2, 2001, Staff issued a second draft of the proposed Slamming Rules and Cramming Rules incorporating comments submitted in writing by the parties and at

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1 the June 13 workshop. Staff requested that additional comments on the proposed rules be filed
2 by Monday, August 6, 2001.

3 As a prefatory comment, the Commenting Companies believe that the revisions
4 incorporated by Staff in the second draft of the proposed Slamming Rules and Cramming Rules
5 significantly improve the rules, and Staff should be commended for listening to the concerns of
6 the various parties and attempting to address those concerns.

7
8 The Commenting Companies continue to urge the Commission to split off the Cramming
9 Rules into a separate docket to proceed at a later date, if necessary. However, in the event the
10 Commission proceeds with adoption of Cramming Rules, the rules should apply only to carriers
11 with 100,000 access lines or more, since any problems of cramming would likely be limited to
12 the metropolitan areas of the state where limited local competition currently exists.

13
14 **SLAMMING RULES**

15 **R14-2-1901. Definitions.**

16 The definition of "customer account freeze" in R14-2-1901(C) should include Internet
17 enabled authorization with electronic signature, electronic authorization and voice-recorded
18 authorization. As currently drafted, the definition only refers to "electronic" authorization.

19 Likewise, the definition of "letter of agency" in R14-2-1901(E) should specify Internet
20 enabled authorization with electronic signature, electronic authorization and voice-recorded
21 authorization. As currently drafted, the definition only refers to "Internet enabled with
22 electronic signature."
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1 The words "end use" before "customer" in the definition of "Slamming" in R14-2-
2 1901(F) appear to be superfluous and should be eliminated to avoid confusion.

3 R14-2-1902. Purpose and Scope.

4 It appears that Staff has omitted either a punctuation mark or an article in the second line
5 of R14-2-1902 between the words "customer's local" and "intraLATA." The words "long-
6 distance" are duplicated in the fourth line. Also, the word "company" in the fourth line should
7 be pluralized, and the words "by establishing" should replace the word "establish."

8 R14-2-1903. Application.

9
10 R14-2-1903 states that the Slamming Rules "apply to each telecommunications company
11 that is required to provide interLATA, intraLATA equal access." Since long-distance
12 companies are not required to provide equal access, this provision as drafted would limit the
13 applicability of the Slamming Rules to local exchange carriers, which we presume is not what
14 Staff intended. This provision should be revised to make clear that the Slamming Rules apply
15 to local and long distance companies. Using the same language as in R14-2-1902, as modified
16 above, would accomplish this.

17 R14-2-1904. Authorized telecommunications company change procedures.

18
19 Sections A and B of R14-2-1904 are redundant, and subpart B should be eliminated.
20 Also, the Commenting Companies reiterate their prior comment that the two-year record
21 keeping period set forth in R14-2-1904(C) is too long, and conflicts with the requirements of
22 the Federal Communications Commission. A more appropriate time period is six months,
23 which would be consistent with the period set forth in R14-2-2005(B) of the Cramming Rules.
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1 In R14-2-1904(D) and (E), the words “telecommunications company executing a
2 change” should be replaced with “Executing Telecommunications Carrier,” which is the
3 defined term. Also, “unauthorized change” should be defined in R14-2-1901, and the
4
5 Commenting Companies recommend the following definition:

6 An “Unauthorized Change” is a change in a telecommunications company
7 submitted on behalf of a customer which change was not authorized by the
8 customer and/or not verified in accordance with R14-2-1905.

8 R14-2-1905. Verification of orders for telecommunications service.

9 R14-2-1905(B)(6) states that an electronically signed letter of agency is a form of written
10 authorization. Thus, R14-2-1905(A)(1) should be revised to add the words “including Internet
11 enabled authorization with electronic signature” after the words “written authorization.” Then,
12 R14-2-1905(A)(2) should be revised by replacing the words “Internet enabled authorization
13 with electronic signature” with the words “electronic or voice-recorded authorization.” This
14 will clarify that the various types of permitted customer authorizations are (i) written (including
15 Internet enabled with electronic signature), (ii) electronic (where the customer pushes buttons
16 on the telephone keypad) or voice-recorded (where the customer’s oral responses to
17 authorization questions are recorded over the telephone), and (iii) third party verified.
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20 R14-2-1905(B)(3) permits authorization by a “qualified representative.” The Slamming
21 Rules should define “qualified representative” as a parent or legal guardian of a customer of
22 record who is a minor, a spouse, the holder of a general or limited power of attorney, or in the
23 case of a business, any person having actual or apparent authority to handle the
24 telecommunications needs of the business.
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1 The language proposed in R14-2-1905(B)(4) is unnecessarily restrictive. There is no
2 legitimate reason to limit the type of inducement to a check. If a telecommunications company
3 elects to offer a free calling card, a baseball cap or some other form of inducement, the
4 company should be permitted to do so. Further, a telecommunications company should be
5 permitted to include a letter of agency with the promotional materials that are sent to a
6 customer. Otherwise, the telecommunications company must send two mailings to customers.
7

8 Regarding Rule R14-2-1905(B)(5), an authorization submitted to an executing
9 telecommunications carrier in a foreign language should be accompanied with an English
10 translation unless the executing telecommunications carrier has agreed to accept such
11 authorizations in the foreign language.
12

13 R14-2-1905(D) should make clear that a telecommunications company is only required
14 to establish a toll free number if it elects to use recorded telephonic confirmation. Also,
15 subparts D and E should be combined into a single provision and included under subpart C for
16 clarity. The Commenting Companies recommend the following revised subpart C:
17

18 C. A telecommunications company that obtains a customer's electronic
19 voice recorded authorization shall confirm the customer identification and
20 service change information. If a telecommunications company elects to confirm
21 sales by electronic voice recorded authorization, it shall establish one or more
22 toll-free telephone numbers exclusively for that purpose. A call to the toll-free
23 number shall connect a customer to a recording mechanism that shall record the
24 required information regarding the telecommunications company change,
25 including automatically recording the originating automatic number
26 identification information, if that information is available.

R14-2-1905(G) should be combined under subpart F, as it deals with independent third
party verification.

1 R14-2-1906. Notice of change.

2 R14-2-1906 requires that a change in service provider be “clearly and conspicuously
3 identified” for the customer, “including the name of the new telecommunications company,
4 their [sic] address and telephone number.” This rule, however, presents significant problems
5 for the Commenting Companies. First, the billing systems and software used by certain
6 incumbent local exchange carriers (“ILECs”) generally do not permit the executing
7 telecommunications company to include a one-time message identifying the “new”
8 telecommunications company on the bill, or to include the address and telephone number of the
9 new telecommunications company (the executing telecommunications company may have an
10 address and telephone number for the new telecommunications company, but they may not be
11 correct for customer contacts). The problem is further complicated where a customer selects
12 different intraLATA and interLATA long distance carriers. Today, many customers voluntarily
13 and frequently switch their long-distance carriers in order to get better and better deals on
14 service. The upgrade or purchase of new billing systems and software to allow ILECs to
15 identify changes in long-distance service and then to provide the required customer notice
16 would impose significant new costs on the executing telecommunications companies—costs
17 which are not reimbursed or even addressed under the proposed Slamming Rules.
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21 Another problem exists with this rule, which is illustrated by the following example. An
22 ILEC bills for AT&T but not for Sprint. When a customer switches from AT&T to Sprint, the
23 AT&T billing information drops off of the ILEC’s bill to the customer, but the ILEC would not
24 know that the new provider is Sprint, and would not be able to place such information on the
25
26

1 bill. Presumably, the ILEC would not be required to notify the customer of the change under
2 these circumstances.

3 The Commenting Companies propose that the new telecommunications company be
4 required to notify a new customer of the change of service, and not the executing
5 telecommunications company.
6

7 R14-2-1907. Unauthorized charges.

8 The title "Unauthorized charges" should be revised to read "Unauthorized changes."

9 R14-2-1907(A) and (B) should require a customer to notify the telecommunications
10 company that submitted the unauthorized change, and not the executing telecommunications
11 company. Also, the words "from the date of the customer's notification" should be added
12 after the words "five business days" in R14-2-1907(B)(1).
13

14 In R14-2-1907(C), that portion of the sentence beginning with the words "pay all
15 charges associated with returning the customer" should be split into a separate subsection "1,"
16 and the remaining subsections 3, 4, and 5 in subpart C should be renumbered. In addition, the
17 words "a slam" should be replaced with "Slamming" which is a defined term. Also, the words
18 "from the date of such determination" should be added after the words "30 business days" in
19 subpart C.
20

21 In R14-2-1907(D), the clause "Unless a dispute regarding unauthorized charges is
22 ultimately resolved against a customer," should be inserted before "A billing
23 telecommunications company shall not:", and each of the clauses following the commas in R14-
24 2-1907(D)(1) and (2) should be deleted.
25
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1 R14-2-1908. Notice of customer rights.

2 R14-2-1908(A) should make clear that a telecommunications company can provide a
3 single notice covering both slamming and cramming. The same clarification should appear in
4 R14-2-2007(A) of the Cramming Rules.
5

6 R14-2-1908(B)(8) permits a customer to contact the original carrier and request that
7 service be changed back to the original carrier in accordance with R14-2-1905. However, the
8 original carrier should not be required to offer a service that has been discontinued since the
9 customer was slammed. In addition, the original carrier should not be required to restore
10 service where the customer had a delinquent unpaid account balance before the customer was
11 slammed. Also, how is the original carrier compensated for the cost of restoring the customer?
12 Can the original carrier assess a PIC change charge to the customer?
13

14 R14-2-1908(B)(11) should be supplemented to state that the telecommunications
15 company providing the notice does not guarantee that a customer account freeze will eliminate
16 the risk of slamming, and that the telecommunications company providing the notice does not
17 assume any liability for an unauthorized lifting of a customer account freeze where the notifying
18 telecommunications company was not at fault. This limitation on liability is necessary because
19 the executing telecommunications company must rely on the written, electronic, or third-party
20 verifications of an account freeze which are submitted to it, and these are likely subject to fraud
21 or mistake to the same degree as authorizations to change service.
22

23 R14-2-1908(C) does not exist. The subparts of R14-2-1908 should be renumbered
24 accordingly.
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26

1 R14-2-1908(F) should only be applicable to telecommunications companies which have a
2 web site. Further, this requirement should not apply to telecommunications companies which
3 do not have an Arizona-specific web site. For example, certain of the Commenting Companies
4 do not maintain an Arizona-specific web site. This rule should not require the creation of a
5 web site where one does not exist. The same comments apply to R14-2-2007(C)(3) of the
6 Cramming Rules.
7

8 R14-2-1909. Customer account freeze.

9 R14-2-1909(C) should include "local service" which was apparently left out by mistake.
10 Also, in R14-2-1090(H), the word "intrastate" should be changed to "interLATA."

11 R14-2-1910. Complaint process.

12 The five business day time period set forth in R14-2-1910(B)(3) may be too short to
13 formulate an initial response. A more appropriate time period would be ten business days.
14 Also, the rule should specify what constitutes an initial response. Is this more than an
15 acknowledgement by the telecommunications company that it has received notice of the alleged
16 Slamming, and that an investigation of the complaint is proceeding?
17

18 R14-2-1910(D) should be modified to remove the inference that a telecommunications
19 company is some how bound by the Staff arbitrator's resolution. This could be accomplished
20 by adding the words "or if the telecommunications company declines to follow Staff's or the
21 Staff arbitrator's resolution" after the word "section."
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1 repeat their request that the Commission split the Cramming Rules into a separate docket to
2 proceed at a later date, only after it becomes apparent that such rules are necessary.

3 R14-2-2001. Definitions.

4 The definition of "Cramming" should exclude changes in tariffed rates that are approved
5 by the Commission for services that are subscribed to by the customer. Also, the Cramming
6 Rules should only apply to charges for regulated services within the jurisdiction of the
7 Commission. These limitations should be incorporated in the definition of Cramming.
8

9 R14-2-2002. Purpose and Scope.

10 R14-2-2002 should be revised by adding the words "for services regulated by the
11 Commission" after the word "charges."

12 R14-2-2003. Applicability.

13 The applicability of the Cramming Rules should be consistent with the applicability of
14 the Slamming Rules as set forth in R14-2-1903. Thus, R14-2-2003 should be modified in the
15 same was as R14-2-1903, thereby excluding wireless, cellular, personal communications
16 service, or commercial mobile radio service providers.
17

18 R14-2-2004. Requirements for Billing Authorized Charges.

19 In R14-2-2004(A), the word "submitting" should be replaced with the word "billing,"
20 and the word "billed" should be deleted. R14-2-2004(A)(3) is confusing as drafted, and should
21 be revised. What is the difference between the "serving telecommunications company" and the
22 "billing service provider?"
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1 R14-2-2005. Authorization Requirements.

2 The words “and/or” in R14-2-2005(A) should be replaced with the word “or.”

3 R14-2-2006. Unauthorized Charges.

4 R14-2-2006(A)(5) establishes a two-year records retention requirement for unauthorized
5 charges. This time period is inconsistent with the requirements of the Federal Communications
6 Commission, and should be shortened to one year.
7

8 In R14-2-2006(B), the phrase “it shall not be re-billed on the telephone bill for past or
9 future periods” should be revised to read “it shall not be submitted for rebilling for past or
10 future periods.”

11 R14-2-2006(C) should be revised so that it is consistent with R14-2-1907(D) of the
12 Slamming Rules (as modified by the Commenting Companies comments above). See the
13 comments under R14-2-1907(D) above.
14

15 In R14-2-2006(E), the words “or submitting” should be added after the word “placing.”
16 Also, the two-year records retention requirement in R14-2-2006(E)(2) should be shortened to
17 one year so that it is consistent with FCC rules.
18

19 R14-2-2007. Notice of Customer Rights.

20 R14-2-2007(A) should make clear that a telecommunications company can provide a
21 single notice covering both cramming and slamming. The same clarification should appear in
22 R14-2-1908(A) of the Slamming Rules.
23

24 R14-2-2007(C)(3) should only apply to telecommunications companies which have a
25 web site. Further, the requirement should not apply to telecommunications companies which
26

1 do not have an Arizona-specific web site. For example, certain of the Commenting Companies
2 do not maintain an Arizona-specific web site. This rule should not require the creation of a
3 web site where one does not exist. The same comments apply to R14-2-1908(F) of the
4 Slamming Rules.
5

6 R14-2-2008. Complaint Process.

7 The five business day time period set forth in R14-2-2008(B)(3) may be too short to
8 formulate an initial response. A more appropriate time period would be ten business days.

9 R14-2-2008(G) should be modified to remove the inference that a telecommunications
10 company is some how bound by the Staff arbitrator's resolution. This could be accomplished
11 by inserting the words "or if the telecommunications company declines to follow Staff's or the
12 Staff arbitrator's resolution" after the word "section."
13

14 R14-2-2009. Compliance and Enforcement.

15 Regarding R14-2-2009(B), the Commission may impose fines up to \$15,000 per
16 violation after notice and "Commission deliberation." However, the Commission may not
17 impose a fine for cramming unless the alleged violator has also had a hearing. This provision
18 should be amended to required both notice and a hearing.
19

20 Finally, the Cramming Rules do not include a provision which expressly permits the
21 Commission to waive the Cramming Rules or any portion thereof upon a finding that the waiver
22 is in the public interest. The Commission included a waiver provision at R14-2-806 of its
23 affiliate interest rules, and a similar provision is appropriate for inclusion in the Cramming
24 Rules.
25
26

1 The Commenting Companies appreciate this opportunity to submit these comments, and
2 look forward to participating in the workshop scheduled for August 30, 2001.

3 RESPECTFULLY SUBMITTED this 6th day of August, 2001.

4 SNELL & WILMER

5 

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this 6th day of August, 2001, with:

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