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Company/Case Name VERIZON WIRELESS

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Docket Number (s) RT-00000J-99-0034

2001 AUG -6 P 4:07

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02 UTILITIES - REVISIONS/AMENDMENTS TO PENDING OR APPROVED MATTERS

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(Only notification of future action/no action necessary) |
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| <input type="checkbox"/> 48 REQUEST FOR HEARING | <input type="checkbox"/> 46 NOTICE OF LIMITED APPEARANCE |
| <input type="checkbox"/> 24 OPPOSITION | <input type="checkbox"/> 39 OTHER |
| <input type="checkbox"/> 50 COMPLIANCE ITEM FOR APPROVAL | <input type="checkbox"/> Specify _____ |
| <input type="checkbox"/> 32 TESTIMONY | |
| <input checked="" type="checkbox"/> 47 COMMENTS | |

8-6-01
Date

TODD C. WILEY
Print Name of Applicant/Company/Contact person/Respondent/Atty.
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BEFORE THE ARIZONA CORPORATION COMMISSION 4: 07
2001 AUG 8

1
2 WILLIAM A. MUNDELL
CHAIRMAN
3 JIM IRVIN
COMMISSIONER
4 MARC SPITZER
COMMISSIONER

Arizona Corporation Commission

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AZ CORP COMMISSION
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5 APPLICATION FOR EMERGENCY
6 RULEMAKING REGARDING SLAMMING AND
OTHER DECEPTIVE PRACTICES.

RT-00000J-99-0034

ADDITIONAL COMMENTS OF
VERIZON WIRELESS

7
8 As requested in the July 2, 2001 letter of the Utilities Division Director, Verizon
9 Wireless submits these additional comments on Staff's Second Draft of the Proposed Rules
10 on Slamming/Cramming ("Second Draft").

11 Background

12 In late May 2001, the Staff released a first draft of proposed rules pertaining to
13 unauthorized carrier changes ("slamming") and unauthorized carrier charges ("cramming").
14 Verizon Wireless submitted comments on the first draft noting that (1) the Commission lacks
15 statutory authority to apply such regulations to wireless carriers, and (2) there is no evidence
16 of any need for such rules in relation to the wireless industry. For convenience, a copy of the
June 7 Comments is attached.

17 On July 2, 2001, Staff released the Second Draft. In proposed section R14-2-1903
18 concerning slamming, Staff proposes to exempt wireless carriers, but only "until such time as
19 those telecommunications companies are mandated by law to provide equal access or local
20 number portability." Proposed section R14-2-2003 of the Second Draft concerning
21 cramming contains no exclusion for wireless carriers.

22 In these comments, Verizon Wireless again submits that the Commission does not

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1 have jurisdiction to impose its proposed rules on the wireless industry. Verizon Wireless
2 urges the Staff to amend the proposed regulations to provide an express exemption for
3 wireless carriers in both R14-2-1903 and R14-2-2003.

4 Argument

5 In 1999, the legislature passed A.R.S. § 44-1571 *et. seq.* (the “Amendment”). The
6 Amendment prohibits slamming and cramming practices by both long distance and local
7 telecommunications service providers and authorizes the Commission to adopt rules
8 governing subscriber decisions to switch between such providers. See A.R.S. §§ 44-1572.L
9 and 44-1573.K. Significantly, in defining the terms “long-distance” and “local”
10 telecommunications service provider, the Amendment expressly excluded “wireless, cellular,
11 personal communication or commercial radio services” from the requirements of these
12 articles. See A.R.S. §§ 44-1571.3 and 44-1571.4.

13 Nonetheless, the Staff in the Second Draft applies its proposed cramming regulations
14 to wireless carriers, and exempts wireless from its slamming rules only on a conditional
15 basis. In doing so, the Staff ignores the Amendment’s wireless exemptions and exceeds the
16 authority delegated to it by the legislature. Nothing in the proposal explains the Staff’s basis
17 for exerting jurisdiction over wireless carriers in this proceeding. The Staff should reverse
18 course and act in a manner consistent with its legislative mandate.

19 Sections 44-1572.L and 44-1573.K of the Amendment do not support the Staff’s
20 proposal. While both of these provisions state that, pursuant to the statute, the Commission
21 may generally adopt rules “not inconsistent with federal law and regulations,” this language
22 does not extend the Commission’s jurisdiction to the wireless industry. Consistent with the
rest of the Amendment, these provisions and their subsections apply only to long-distance
and local service providers, legislative classifications that, as described above, explicitly

1 exclude wireless providers.

2 Even if the Commission erroneously concludes that sections 44-1572.L and 44-
3 1573.K apply to the wireless industry, these provisions would still not provide it with the
4 authority to impose slamming requirements on wireless carriers. Such rules would
5 contravene the explicit terms of these provisions because they would be “inconsistent with
6 federal law and regulations.” The FCC has excluded wireless carriers from the obligation to
7 comply with its slamming rules, without any contingency such as whether they are mandated
8 to provide equal access or local number portability,¹ and the conditional exemption proposed
9 by the Commission is certainly contrary to that federal regulatory framework. In addition,
10 the Commission also should note that A.R.S. §§ 44-1572.L and 44-1573.K in no way address
11 the Commission’s authority to impose cramming rules, because they relate only to the
12 adoption of rules concerning subscriber choice of long-distance and local
13 telecommunications service provider, *i.e.*, slamming. Thus, for the Commission, these
14 provisions are another jurisdictional dead end.

15 Nor may the Commission rely on Article 15, § 3 of the Constitution to apply
16 slamming and cramming rules to wireless carriers. As the Commission is aware, that
17 constitutional provision addresses the Commission’s *ratemaking* authority. Such authority is
18 ineffectual in the wireless context, since Congress has expressly preempted state authority
19 over the rates of commercial mobile radio service providers such as Verizon Wireless.
20 Section 332(c)(3)(A) of the Communications Act states that “no state or local government
21 shall have any authority to regulate the entry of or the rates charged by any commercial

22 ¹ *Implementation of the Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers, Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-129, 14 FCC Rcd 1508, para. 86 (1998).

1 mobile service . . .” 47 U.S.C. § 332(c)(3)(A). In addition, the Court of Appeals held in
2 1999 that rules like those proposed here that pertain to customer service and billing
3 requirements do not “relate at all to ratemaking or classification.” U S WEST
4 Communications, Inc. v. Ariz. Corp. Comm’n., 197 Ariz. 16, 25, 3 P.3d 936, 945 (App.
5 1999). This decision further demonstrates that the Commission’s constitutional ratemaking
6 authority under Article 15, § 3 cannot serve as the jurisdictional basis for imposing the
7 proposed slamming and cramming rules on wireless carriers.

8 Recommendation

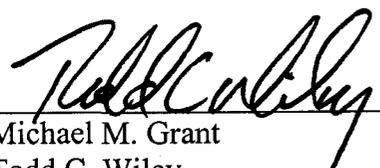
9 Verizon Wireless once again urges Staff to exempt wireless carriers for the reasons
10 stated herein. Without such an exemption, the Rules cannot be certified by the Attorney
11 General because they exceed the Commission’s authority.

12 Specifically, proposed section R14-2-1903 should be modified to delete “, until such
13 time as those telecommunications companies are mandated by law to provide equal access or
14 local number portability.” Proposed section R14-2-2003 should be modified to include the
15 following sentence: “These rules do not apply to providers of wireless, cellular, personal
16 communications services or commercial radio services.”

17 RESPECTFULLY SUBMITTED this 6 day of August, 2001.

18 GALLAGHER & KENNEDY, P.A.

19 By


Michael M. Grant
Todd C. Wiley

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22 Attorneys for Verizon Wireless

1 **Original** and ten copies filed this
2 10th day of August, 2001, with:

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4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

7 **Copy** of the foregoing mailed
8 this 10th day of August, 2001 to:

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BEFORE THE ARIZONA CORPORATION COMMISSION

2001 JUN -7 P 4: 56

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2 WILLIAM A. MUNDELL
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4 MARC SPITZER
COMMISSIONER
5

AZ CORP COMMISSION
DOCUMENT CONTROL

6 APPLICATION FOR EMERGENCY
7 RULEMAKING REGARDING SLAMMING AND
OTHER DECEPTIVE PRACTICES.

RT-00000J-99-0034

COMMENTS OF VERIZON
WIRELESS

8
9 Verizon Wireless hereby submits comments on the consumer protection standards
10 proposed by the Arizona Corporation Commission ("Commission") in the above-captioned
11 docket. These comments respond to Commission Staff's proposed slamming and cramming
12 rules as A.A.C. R14-2-2001 through R14-2-2010, and A.A.C. R14-2-1901 through R14-2-1911.
13 In this proceeding, the Commission seeks to implement certain 1999 statutory amendments
14 dealing with consumer fraud. Although these amendments exempt wireless carriers, the
15 Commission proposes to apply its slamming and cramming regulations to all
16 telecommunications companies in Arizona, apparently including wireless carriers. Given the
17 Arizona Legislature's express statutory exemption of wireless carriers, the Commission should
18 make clear that its proposed slamming and cramming rules do not apply to wireless carriers.
19 Even if the Commission had statutory authority to impose its proposed slamming and cramming
20 regulations on wireless telecommunications companies, there is no evidence that wireless
21 carriers in Arizona have engaged in such practices, and no showing that competitive forces in the
22 CMRS industry are not sufficient to prevent such conduct.

23 **BACKGROUND**

24 In 1999, the Arizona Legislature enacted a number of amendments to the laws

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1 governing telecommunications services in the state. Ariz. Rev. Stat. §§ 44-1571, 1572, 1573,
2 1574. These provisions grant the Commission authority to adopt rules to prevent: (i) any change
3 in an end-user customer's pre-subscribed telecommunications service without the appropriate
4 consent of that customer, or "slamming" and (ii) the inclusion of any unauthorized or unverified
5 charges on a customer's bill, or "cramming." Ariz. Rev. Stat. §§ 44-1572(L), 44-1573(K). The
6 Arizona Legislature applied these rules to "local telecommunications service providers" and
7 "long-distance telecommunications providers," the definitions of which **exclude** providers of
8 "wireless, cellular, personal communication or commercial radio services." Ariz. Rev. Stat. §§
9 44-1571(3), (4).

10 On May 29, 2001, the Commission released its informal request for comment on
11 the proposed consumer protection standards in this proceeding. The Commission proposes new
12 rules designed to prevent slamming and cramming. The detailed regulatory framework would
13 establish numerous obligations and restrictions, including customer-by-customer and transaction-
14 by-transaction notice, consent, verification, and record retention requirements. The
15 Commission's proposal also establishes a customer complaint process, as well as enforcement
16 procedures and various sanctions and penalties for violating carriers. The Commission indicates
17 that these proposed rules will apply to all telecommunications companies operating in Arizona.

18 DISCUSSION

19 I. THE COMMISSION SHOULD CLARIFY THAT ITS PROPOSED RULES DO 20 NOT APPLY TO WIRELESS CARRIERS

21 As indicated above, the Commission is implementing a number of 1999 statutory
22 amendments designed to prevent slamming and cramming. Ariz. Rev. Stat. §§ 44-1571, 1572,
23 1573, 1574. While these statutory provisions impose and call for agency adoption of various
24 restrictions on the business practices of long-distance and local telecommunications providers,

1 per month, depending upon the carrier. Such monthly rates translate into a yearly turnover of
2 25% to 50% of a wireless carrier's customer base. While churn is driven by many factors,
3 wireless telecommunications companies seize every opportunity to minimize customer problems
4 and retain their customer base.

5 Existing federal law renders slamming particularly unlikely in the wireless
6 marketplace. Slamming is premised on the concept of one long distance carrier unlawfully
7 directing a customer's local phone company to substitute it for that customer's existing long
8 distance service provider. Wireless telecommunications companies, however, are not subject to
9 equal access requirements,³ a fact that leaves them free to designate any toll carrier for their
10 subscribers. Wireless carriers thus generally do not offer customers the option of selecting a toll
11 carrier as part of their package of wireless services; instead, they often bundle long distance and
12 local services. With respect to cramming, wireless providers routinely add charges for services
13 ordered by the customer that relate to the underlying wireless services, and there is simply no
14 record of complaints in Arizona or elsewhere of cramming in the wireless industry. If applied to
15 such routine transactions, the Commission's highly prescriptive rules could dramatically reduce
16 the ease with which customers can make changes to their accounts, while doing nothing to
17 prevent the deceptive acts from which the Arizona legislature intended to protect consumers.

18 **B. Application of the Proposed Rules to CMRS Providers Will**
19 **Impose Significant Costs and Provide Few Benefits.**

20 Compliance with the Commission's proposed slamming and cramming rules
21 would impose a substantial burden on wireless providers. The various rules on notice, consent,
22 record retention, and other practices would require the evaluation and likely modification of
23 many providers' operational systems and procedures. Providers such as Verizon Wireless would

24 ³ 47 U.S.C. § 332(c)(8).

1 be forced to expend significant dollars for capital investments, employee training, systems
2 enhancements, and other materials. As discussed further below, these expenditures will yield no
3 benefit for Arizona's wireless consumers. In addition, many wireless carriers already have in
4 place many procedures like those identified in the rules, and even if any specific wireless
5 telecommunications company does not have procedures that align precisely with those contained
6 in the proposed rules (i.e., notice, consent, verification), their practices must be fair and
7 reasonable in a competitive marketplace or they will lose customers to other carriers. There is
8 simply no need to impose regulatory requirements when there is no evidence that such
9 misleading or deceptive practices occur in the wireless marketplace.

10 C. **The Commission Should Look to the FCC's Treatment of the Wireless Industry as a**
11 **Guide in This Proceeding.**

12 Before imposing burdensome slamming and cramming regulations on wireless
13 telecommunications companies, the Commission should consider the FCC's approach to these
14 issues in the wireless context. In recent years, the FCC has carried out two lengthy proceedings
15 in which it has studied the issues of slamming and cramming in the telecommunications industry
16 as a whole and accumulated an extensive public record on these harmful practices. In both
17 proceedings, the FCC has recognized that the business and operational practices of wireless
18 providers differ from those of local exchange and long distance providers, and it has taken these
19 distinctions into account in its formulation of new regulation.

20 In the slamming context, the FCC has rightfully concluded that the record of few
21 complaints against wireless providers supported its decision to exclude the wireless industry
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23
24

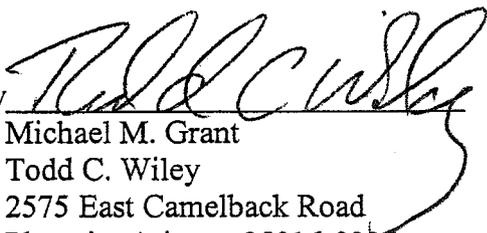
1 from its slamming rules.⁴ With respect to cramming, the FCC in its Truth-in-Billing docket
2 again noted the absence of a record of complaints against wireless providers, and has not
3 extended cramming regulations to wireless carriers. Instead, the FCC has chosen to apply only
4 two very broad principles relating to information provided on customers' bills to CMRS
5 providers. In doing so, it has struck the appropriate balance between continued consumer
6 protection and the avoidance of unnecessary and burdensome regulation of the wireless industry.
7 Since Arizona wireless providers must already comply with these federal requirements, there is
8 no basis for imposing additional requirements at the state level.

9 **CONCLUSION**

10 Verizon Wireless urges the Commission to make clear that wireless
11 telecommunications companies are exempt from its proposed slamming and cramming rules
12 based on the intent of the Arizona legislature. Such rules are also unnecessary because market
13 forces in the wireless industry are sufficient to prevent such conduct.

14 DATED this 7 day of June, 2001.

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16
17 By 
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19 Todd C. Wiley
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21
22 _____
23 ⁴ In carving out the wireless exemption, the Commission stated that “[c]ommercial mobile radio services
24 (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).” As noted above, wireless carriers are not required to provide equal access.

1 **Original** and ten copies filed this
2 7th day of June, 2001 with:

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6 Phoenix, Arizona 85007

7 **Copy** of the foregoing mailed
8 this 7th day of June, 2001 to:

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