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Deborah R. Scott, Utilities Director
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

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Re: Comments of Cox Arizona Telcom, L.L.C.
Proposed Slamming/Cramming Rules
Docket No. RT 00000J-99-0034

Dear Ms. Scott:

Cox Arizona Telcom, L.L.C. ("Cox" or "Company") hereby submits the following comments to the Proposed Slamming/Cramming Rules ("Proposed Rules") issued by the Arizona Corporation Commission ("Commission") Staff on May 22, 2001 and appreciates this opportunity to provide these comments. Cox applauds the Commission for being proactive in addressing consumer concerns regarding Slamming and Cramming. In doing so, however, the Commission should balance the relative need for many of the provisions of the Proposed Rules against the burdens that they will impose on consumers, as well as the potential operational and financial burdens that they will impose on Arizona "Telecommunications Companies."

A. Background

Cox is the primary CLEC facilities based carrier in Arizona serving residential customers over its cable plant. With over 70,000 access lines, Cox is the second largest provider of residential telephone service in Arizona. The Proposed Rules are fairly significant in that they impose many new operational requirements on Arizona certificated Telecommunications Companies, as well as contain "Compliance and Enforcement" provisions that could result in Commission penalties of up to \$7,500 for the first violation and up to \$15,000 for each subsequent violation. This notwithstanding, the Proposed Rules were issued on May 22, 2001 and Cox did not receive the Proposed Rules until May 29, 2001. As the Commission requested that comments be filed by June 7, 2001, Cox and other interested parties have had only nine days to review and evaluate the Proposed Rules and draft these comments. Therefore, Cox has had insufficient time to consider all of the operational and financial impacts of the Proposed Rules. It is, however, the Company's understanding (through discussions with Staff) that following the June 13, 2001 Workshop on the Proposed Rules, Cox will have at least one more opportunity to file comments before the Proposed Rules are submitted to the Commission for a formal rulemaking proceeding. Therefore, Cox does not consider these comments

to be exhaustive in nature nor have all of the operational and financial impacts been assessed. Cox reserves the right to raise any additional concerns with respect to the Proposed Rules regarding these impacts in subsequent proceedings on this matter.

B. Proposed Cramming Rules - Consumer Protections for Unauthorized Carrier Charges – A.A.C. R14-2-2001, et.seq.

General Comments – Unlike slamming that involves completely changing a customer's telecommunications carrier, cramming involves adding unwanted features to a customer's service that results in the customer paying additional charges. In the slamming instance, a customer is switched from one company to another without the knowledge or consent of the customer or the customer's preferred telecommunications carrier. Therefore, there needs to be protections for both the customer and the preferred carrier. In the cramming instance, it is the customer's preferred carrier that has allegedly engaged in the unauthorized conduct. Therefore, there is already in place under existing Commission Rules, various safeguards for the customer that obviates the need for some of the provisions in the Proposed Rules. If these provisions (which will be specifically discussed hereinbelow) are adopted, they will result in significant financial and operational burdens to the consumer and Cox. Moreover, they may also constitute a barrier to entry (or continued entry) in Arizona.

While Cox supports the intent of the Proposed Rules, it is unclear as to whether the instances of alleged cramming in Arizona are so widespread to necessitate Rules that will apply authorization and consent procedures to each and every transaction regarding feature changes. Rather than impose financial and operational hurdles on the customer and the Company in *each and every* instance of a duly authorized feature change (which Cox submits is the norm), the Proposed Rules should focus on remedies for those *few* instances where cramming actually occurs (which Cox submits is the exception). Unlike slamming, where the financial burden to the customer is potentially significant and has necessitated strong FCC intervention, cramming occurs less frequently and does not impose the same financial hardship upon the customer. Therefore, in the slamming context, additional safeguards that impose various burdens are somewhat necessary, where in the cramming context, the same level of up-front consent and authorization protections are not. Moreover, under Federal Truth in Billing requirements, any feature changes (or carrier) to the customer's account must be reflected in a clear and conspicuous manner on the customers' next bill. (*See*, the FCC 2000 Truth in Billing Order, CC No. 98-170.) Cox believes that the provisions of the Proposed Rules related to cramming that focus on customer remedies and recourse are appropriate, as opposed to the provisions that require burdensome steps to confirm consent and authorization where the problem is the exception and not the norm.

The Proposed Rules do not make distinctions between residential and business customers. Therefore, the implication is that they apply to both equally. Because the relationship between most business customers and the Telecommunications Company is governed by a contract, Cox believes that to the extent not inconsistent with FCC

Regulations, the Proposed Rules should apply to residential customers and only to those business customers that do not have a contract with the Telecommunications Company. The contracts that govern these business relationships already specify the various services, rights, obligations and liabilities between the parties.

Cox also believes that the Proposed Rules should contain express language that allows a Telecommunications Company to request partial waivers from these Rules to the extent the Telecommunications Company can demonstrate that it has instituted alternatives to the Rules that satisfy the intent and spirit of the Rules or for other special circumstances.

Specific Comments

R14-2-2004.A. – The first sentence should make it clear that the “product or service” referenced are those *regulated by the Commission*. In the future, other unregulated products or service may be set forth in the bill such as cable or HSD and it is clearly not the intent that the Proposed Rules apply to those non-regulated products or services.

R14-2-2006 – It is this Rule over which Cox has the most concerns. The Proposed Rule requires that the Telecommunications Company obtain an authorization in one of three ways: 1) Written; 2) Electronic; and 3) Recorded. The Telecommunications Company would then have to keep a record of this feature purchase authorization for at least 24 months. Cox does not do this today nor is it set up to do this. Moreover, Cox is not required to do this because under the Truth in Billing Order, the customer is notified of the feature change on the next bill that is issued following the change.

Cox believes that in the context of cramming this provision is not necessary for several reasons. First, the way business is conducted today in practically every instance is that if a customer wants to add or change a feature they simply call the carrier, the service is then provisioned and the new or changed feature is reflected on the customer’s next bill. A.A.C. R14-2-505 currently provides that each carrier must issue a bill every month and break down the specific charges. The reason for this is so that customers can see each month what they are paying for and can immediately dispute any unauthorized charges. Cox provisions literally thousands of changes per month. In those few instances where there is either a misunderstanding or a misprovisioning, the remedies under Proposed Rule R14-2-2007 require that the customer be made whole. There is no reason for a carrier to have to confirm (in writing, electronically or on tape and kept for two years) the thousands of such requests where in these few instances, the customer already has the ability to quickly ascertain (through the monthly bill) and dispute the charge. Additionally, Cox automatically issues a Letter of Confirmation to the customer within 10 days after any change is made to the customers’ account. Therefore, the customer is given yet *another* opportunity to see that a change has been made to the account and contact the company if the change does not comport with the customer’s wishes.

Second, Cox does not have the systems in place to conduct the following authorizations required by the Proposed Rule that will impose financial and operational burdens on the consumer, as well as the Company:

1) Written – As discussed above, when a customer requests a feature change, it is conducted via telephone and the work order is generated immediately. Therefore, when a customer calls the Company for a feature change, the Company would have to then mail out a form that complies with the Proposed Rule. To protect the Company (and to ensure that there were no duplicate work orders), the Company would not provision the change until it received the written authorization back. This would result in a delay in the customer receiving the desired feature. The Company would either have to send a return pre-paid envelope or leave it to the customer to return the form. When it is returned, someone would have to receive these forms, put work orders on line at that point, and keep track of these thousands of written forms for two years so they could be retrieved when necessary or requested by the Commission. Clearly, this process is operationally and financially burdensome to the Company, burdensome to the customer, and delays the customer from expeditiously receiving the service that is being requested. Also, (as will be discussed in more detail below) to the extent a carrier is unable to use one of the automated alternatives because of incompatibility with its systems or because of financial constraints, it puts that company at a competitive disadvantage because a customer will go to a carrier that can implement the change immediately;

2) Electronic – Cox does not have this capability today. Cox has had insufficient time to assess the financial or operational impact of deploying such a system; or

3) Voice Recording – Cox does not have this capability today. Cox has had insufficient time to assess the financial or operational impact of deploying such a system for feature changes. It should be noted that although Cox utilized an outside third party vendor for recorded third party verifications for FCC slamming requirements, the charges for such service is approximately \$5.00 per call and in some instances, the cost is even higher.

Regardless of the method of authorization, this will, at the very least, unnecessarily increase the costs of carriers doing business in Arizona that inevitably will be passed on to customers. At most, it will create a barrier to entry for carriers coming into Arizona to the extent it creates an operational or financial burden to do business in this state. It also will give existing Telecommunications Companies reason to assess whether they can continue to do business in Arizona given this requirement. Cox believes that given the very nature of this alleged problem, the availability of remedies to the consumer and existing Commission regulations regarding notice to customers, this Rule should not be adopted.

R14-2-2008.2.f. – This Rule imposes an affirmative obligation on the customer to notify the Commission of an unauthorized charge. The customer should not have this obligation. There will be instances where the cram was a result of simple human error. In those instances, the customer will contact the Telecommunications Company to seek redress under these Rules. There is no reason for the Commission to be involved at this point. Given the Commission's limited resources, the Commission should be involved when there is a dispute that rises to the level of a complaint to the Commission.

3.b. – CLECs such as Cox do not have a telephone directory nor do we have the authority to require private directory companies to do what is being asked for in this Rule. Since these Rules will apply to all Telecommunications Companies, Cox suggests that Qwest (as the ILEC) be required to print the form of notice in its affiliate's phone book which will be applicable to all Telecommunications Companies.

R14-2-2009.F. – Cox believes that 5 business days is an insufficient amount of time to determine if an appeal is necessary. Cox suggests 10 business days.

R14-2-2010.B. and C. – Cox believes that these Rules should specifically state and require that any corrective action (such as the imposition of penalties and other sanctions) taken by the Commission be subject to the specific due process (such as notice and opportunity for hearing, findings of fact and conclusions of law) procedures before any assessments can be made.

C. Proposed Slamming Rules - Consumer Protections for Unauthorized Carrier Changes – A.A.C. R14-2-1901, et.seq.

General Comments – The FCC has already adopted rules that Telecommunications Companies must comply with to address this issue. Cox believes that the Commission should not adopt any Rules that will conflict with such FCC requirements or impose additional burdens on the Telecommunications Companies. Additionally, there are a few inconsistencies in the Proposed Rules with respect to terminology that Cox will attempt to identify herein.

R14-2-1902 – The reference should be to “local exchange, IntraLATA and InterLATA” to be consistent with other provisions of the Proposed Rules and the FCC.

R14-2-1904.E. – The word “prompt” causes concern because it sometimes takes days and weeks to get records from another carrier, which is beyond the control of the executing carrier. The FCC specifically rejected specifying a time frame to require executing changes, recognizing that industry standards deviate and will dictate the situation. (See, the FCC Third Report and Order on Slamming, CC No. 94-129.) Additionally, because of resource limitations, there is sometimes a backlog of changes that have to be provisioned which are generally provisioned on a first come, first serve basis. Therefore, Cox suggests utilizing a phrase such as an “executing carrier shall execute such changes as promptly as reasonable business practices will permit.”

Additionally, Cox objects to the use of the term "verified." An executing carrier would not have any way of knowing whether the submitting Telecommunications Company verified the change.

F. – The Company objects to the requirement of separate authorizations as overly burdensome to the customer and the Company and is inconsistent with FCC requirements. Currently, third party verifications ("TPVs") required by FCC regulations permit the verification to be on the same form or on the same call. Additionally, to confirm the Local, PIC and LPIC selections, would require the customer to hang up and call back three separate times and would require tracking of three separate authorizations, whether it be electronic or automated, voice or written. This makes changing carriers even more confusing and costly. Carriers are charged per TPV call so the current \$5.00 per call charge becomes \$15.00 per call. This is a cost that carriers will subsequently be required to pass on to the customer. Moreover, pursuant to the Federal Truth in Billing Order, customers receive notice of carrier change on their monthly bill and Cox also issues letters of confirmation for such changes. Therefore, Cox submits that a single authorization method, coupled with these other safeguards, should more than adequately protect the consumer.

R14-2-1905.A. - In this section, as well as in other sections of the Rules, the term "preferred" Telecommunications Company is used. This is confusing. At the very least, the term should be defined in the definitional section.

C. – This requires an electronic voice recording to be placed from the telephone number on which the change is being made. This is not reasonable for several reasons. First, it precludes an authorized customer from making a change from somewhere else, such as their office. Second, if it is a new service, there is no phone yet to call from. Third, how would the TPV provider know that the call is originating from that number? In some instances, the Caller ID function may be incompatible with the TPV vendor's system or because of the routing of the call, it may not be possible to read the full number. In any case, this is not a requirement of the FCC rules and is burdensome to the customer and the Company.

E. This requirement is unnecessary and in many instances may not be possible. First, the recording mechanism may not have this capability. Second, the number may be blocked and to unblock the number, the customer would have to call back and start all over again. Finally, the Caller ID function may not be able to read the number based upon the routing of the call. In any case, this is not a requirement of the FCC Rules and is burdensome to the customer and the Company.

K. Cox believes that this requirement contradicts FCC Rules that allow someone other than the person whose name is on the account who is authorized to make changes. Additionally, Cox suggests that the requirement to confirm state that the company shall "use reasonable efforts to" confirm... .

R14-2-1907.A.1. The word "business" is missing.

A.2. - This provision is inconsistent with industry practice requirements that only mandate the paying of charges to the original carrier if a complaint is filed. Industry participants recognize that such a process is required in interpreting the FCC Order. Additionally, Cox objects to the 5-business day turnaround for compensation. Since this payment is to the original carrier, 30 days would be more reasonable and appropriate given the time a large company requires to cut and send checks.

R14-2-1908.A. - Cox does not believe that the annual notice is necessary. Cox believes that notice should be provided when the customer initiates service (consistent with the Proposed Cramming Rules) and is already proposed in Section D. Additionally, Section E already requires the notice to be placed in the white pages of the telephone book.

C.2. - Cox objects to the use of the term "guilty." This has a criminal connotation even when there are situations where the slamming was as a result of human error. Cox suggests that the phrase "is guilty of slamming" just be eliminated or replaced.

C.9. - The request for a freeze implies that the carrier has the capability to offer a freeze. Currently, Cox does not generally offer this service, although it may offer this service in the future. Therefore, this provision should be clarified to state that customer can request freezes of those carriers that offer such service.

E. - CLECs such as Cox do not have a telephone directory nor do we have the authority to require private directory companies to do what is being asked for in this Rule. Since these Rules will apply to all Telecommunications Companies, Cox suggests that Qwest (as the ILEC) be required to print the form of notice in its affiliate's phone book which will be applicable to all Telecommunications Companies.

R14-2-1909.D. - Cox objects to the requirement for separate authorizations for freezes. As discussed earlier, there is no reason why these can't be done on one form or in one call to avoid confusion and to better track the authorizations. Separate authorizations are unnecessarily burdensome for the customer and the Company and would be very costly.

F. - It is unclear what is meant by the word "verified" and what the requirements would be for the local exchange company under this section.

G. - Because only written authorizations are discussed, it is unclear as to whether other forms of authorization (such as verbal, electronic or recorded) would be permitted. Cox believes that they should be permitted.

I. - The Company objects to this provision and believes that a carrier should be permitted a one time charge to cover the cost of provisioning this service.

H.1. – This is missing an “or” at the end of the sentence.

R14-2-1910.B.3. – This provision requires that carriers provide Staff with documentation within 5 business days. Because the Proposed Rules require the use of independent TPV providers, it is not always possible to get TPV tapes that quickly. Cox suggests changing this to 10 business days. Cox would then suggest that the presumption of slamming be made 20 business days later and be set forth in the Rules as a “rebuttable” presumption.

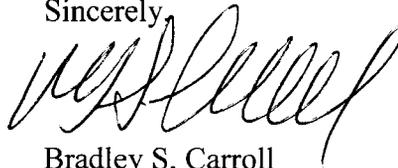
C. Cox believes that 5 business days is insufficient time to determine if an appeal is necessary. Cox suggests 10 business days.

R14-2-1911.B. and C. - Cox believes that these Rules should specifically state and require that any corrective action (such as the imposition of penalties and other sanctions) taken by the Commission be subject to the specific due process (such as notice and opportunity for hearing, findings of fact and conclusions of law) procedures before any assessments can be made.

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Cox looks forward to discussing these comments with the Staff and other interested parties at the workshop to be held at the Commission on June 13th. In the meantime, if you have any questions or would like to discuss this further, please do not hesitate to contact me. Thank you again for this opportunity to provide these comments.

Sincerely,



Bradley S, Carroll
Manager of Regulatory Affairs

Cc: Docket Control (Original plus 10 copies)