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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

1 WILLIAM A. MUNDELL
2 Chairman
3 JIM IRVIN
4 Commissioner
5 MARC SPITZER
6 Commissioner

Arizona Corporation Commission

DOCKETED

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AZ CORP COMMISSION
DOCUMENT CONTROL

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6 IN THE MATTER OF THE RULES TO
7 ADDRESS SLAMMING AND OTHER
8 DECEPTIVE PRACTICES

DOCKET NO. RT-00000J-99-0034

STAFF'S REPLY COMMENTS

General Comments

Economic, Small Business and Consumer Impact Statement

11 Qwest objects to Staff's preliminary summary of this statement. Staff has prepared a more
12 detailed statement, which is attached as Exhibit A.

Conflict with FCC Rules

16 Qwest repeatedly insists that the Commission's rules are inconsistent with the federal rules, and
17 thus invalid. Qwest cites Arizona's statutory provisions concerning slamming. However, these
18 provisions allow the Commission to create rules "that are not inconsistent with federal law and
19 regulations". See A.R.S. § 44-1572(L). The proposed rules provide greater protection for
20 consumers. This is consistent with the purpose of the federal rules. While the proposed rules are
21 not the same as the federal rules, the proposed rules do not conflict with the federal rules. The
22 legislature could not have intended § 1572 to place the Commission in a straightjacket, with its
23 only option being to adopt a mirror image of the federal rules. If that were the legislature's
24 intention, it would have simply instructed the Commission to administer the federal rules.
25 Moreover, the Commission's authority over public service corporations is founded on Article XV
26 of the Arizona Constitution. Reading § 1572 in the manner Qwest suggests raises an issue with
27 respect to the constitutionality of such a provision. Because statutes should be read to avoid
28 constitutional difficulties, § 1572 should be construed to allow the Commission to add protections

1 for Arizona consumers above and beyond that of the federal rules. Lastly, Qwest cites the FCC's
2 First Order on Reconsideration in CC Docket No. 94-129 (rel. May 3, 2000) to support its
3 interpretation. But the FCC has more recently clarified its view of the preemptive effect of its
4 own rules, finding that its rules should not preempt more stringent state provisions. In the Third
5 Report and Order and Second Order on Reconsideration, the FCC noted that:

6 Although we recognize that it may be simpler for carriers to comply with one set
7 of verification rules, we will not interfere with the states' ability to adopt more
8 stringent regulations.... States have valuable insight into the slamming problems
9 experienced by consumers in their respective locales and can share their expertise
10 with [the FCC]. We will not thwart that effort.... The carriers challenging the
11 [FCC's] decision to refrain from preempting state regulations have failed to
12 identify a particular state law that should be preempted and how that state law
13 conflicts with federal law or obstructs federal objections.¹
14

15 The proposed rules do not conflict with federal law or obstruct federal objectives. They simply
16 impose more stringent standards, as expressly contemplated and permitted by the FCC.
17

18 **Jurisdiction over wireless**

19

20 The Arizona Wireless Carriers Group, in footnotes 6 and 7 of their comments, reply to Staff's
21 legal memorandum concerning wireless jurisdiction. A copy of Staff's legal memorandum is
22 attached as Exhibit B. Staff agrees that the rule in Pima County v. Heinfeld is a valid canon of
23 statutory construction. However, Staff believes that it is not appropriate to apply this canon in
24 these circumstances. As Staff explained in its prior memorandum, three other canons suggest
25 that the Commission does have jurisdiction to apply the proposed cramming rules to wireless
26 carriers. These three canons are (1) that implied repeals are disfavored (2) that statutes are to be
27

28 ¹ FCC Third Report and Order and Second Order on Reconsideration in CC Docket No.
94-129, FCC 00-255, Rel. Aug. 15, 2000, at ¶ 87.

1 “liberally construed to effect their objects and to promote justice” A.R.S. § 1-211.B, and (3) that
2 statutes should be read to avoid constitutional difficulties. These considerations outweigh the
3 canon cited by the wireless carriers.

4 Comments to Specific Rules

5 **R14-2-1901 (C) Definition of “Customer”**

6 Qwest recommends the Commission replace the proposed definition of “Customer” with the
7 FCC’s definition of “Subscriber” and use “Subscriber” throughout the rules.
8

9
10 Staff recommends against adoption of the Qwest Proposal. Customer and Subscriber are distinct
11 defined terms of the proposed rules. Using both terms in the rules clarifies a
12 Telecommunications Company’s obligations to a Customer, while allowing the company to
13 market and obtain authorization from the Subscriber, who is either the Customer, or its agent.
14

15 **R14-2-1901 (D) Definition of “Customer Account Freeze”**

16 Qwest recommends the Commission replace the proposed term with either “Preferred Carrier
17 Freeze” or “Subscriber Freeze.” Qwest recommends the alternative phrasing because a freeze
18 does not affect the entire account, and as such “Preferred Carrier Freeze” more accurately
19 reflects the action.
20

21 Qwest also asserts that an unlawful conflict between the Commission’s proposed Rule and the
22 FCC exists because the Arizona proposal allows a Subscriber to place a stay on any service,
23 whereas the FCC rule is limited to staying a change in provider.
24

25 Staff notes that proposed rule 1909.A limits a Customer Account Freeze to stopping “a change in
26 a Subscriber’s intraLATA and interLATA Telecommunications Company selection until the
27 Subscriber gives consent...” Because this term is more fully described in the text of Rule 1909.A,
28

1 Staff recommends that R14-2-1901 (D) be deleted. Staff notes that Qwest has filed a tariff to
2 implement a local service freeze. See Docket T-01051B-02-0073. Staff believes that the issues
3 concerning Qwest's local service freeze should be resolved in Docket T-01051B-02-0073.
4

5 **R14-2-1901 (F) Definition of "Letter of Agency"**

6 Qwest recommends the Commission remove Letter of Agency from the definitional section
7 because the definition fails to explain that a Letter of Agency is a written authorization by a
8 subscriber empowering another person or entity to act on the subscriber's behalf.
9

10 Staff believes that the proposed clarification is not necessary, because an executing carrier is
11 required to accept an Internet LOA from a submitting carrier under Proposed Rule 1905.D
12

13 **R14-2-1901 (G) Definition of "Subscriber"**

14 Cox Arizona Telecom, L.L.C. ("Cox") requests the Commission to revise the definition of
15 Subscriber to exclude business customers where service is provided under a written contract. Cox
16 believes the proposed rules may not be appropriate in the business services market where the
17 customer and provider have a contractual arrangement.
18

19 Staff recommends against adoption of the Cox proposal. The proposed rules require authorization
20 and verification to changes to a Customer's account. Contracted services to a business customer
21 are likely to already provide proper authorization.
22

23 **R14-2-1902 Purpose and Scope**

24 Qwest recommends elimination of this rule because according to Qwest it violates ARS § 41-
25 1001.17, which limits rules to statements that "interprets or prescribes law or policy, or describes
26 the procedure or practice requirements of an agency."
27
28

1 Staff disagrees with Qwest's legal analysis. A statement of purpose and scope gives guidance as
2 to how the subsequent rules are to be interpreted. In this respect, proposed rule 1902 is more like
3 a definition than the type of statement prohibited by § 41-1001.17. This could be clarified by
4 adding the phrase "shall be interpreted to" at the beginning of each sentence, after "rule". Thus,
5 the first sentence would read "These rules shall be interpreted to ensure that..."

6 7 **R14-2-1904 (C) Authorized Telecommunications Company Change Procedures**

8 Qwest asserts that the Commission's proposed rule conflicts with federal rules, and is prohibited
9 by Arizona statute. According to Qwest the FCC rule is clear that an executing carrier may not
10 "verify" a change, whereas under the proposed Arizona rule, the executing carrier is only
11 prohibited from "contacting" the Subscriber.

12
13 Staff recommends against adoption of the Qwest comment. Staff believes the proposed language
14 provides clarity to a reasonable reader by stating in part that the executing carrier "shall not
15 contact the Subscriber to verify the Subscriber's selection..." This clearly prohibits verification
16 by the executing carrier, the same practice prohibited by the FCC rules.

17 18 **R14-2-1904(D) Authorized Telecommunications Company Change Procedures**

19 AT&T requests the Commission amend this proposed rule by eliminating the last sentence of the
20 subsection which shields the executing carrier from liability when it executes a change.

21
22
23 Staff recommends against adopting this proposal. Shielding the executing carrier is essential to
24 the operation of the proposed rules, and is consistent with the FCC rules.

25
26 Under both the FCC rules and the proposed rules, it is the submitting carrier that carries liability
27 and must verify. Indeed, for this reason the executing carrier is prohibited from verifying
28 changes. Accordingly, it would be both inconsistent and unfair for the executing carrier to face

1 liability. AT&T appears concerned that if the executing carrier errors in processing a properly
2 submitted change, this sentence could shield the executing carrier from liability. However, this
3 sentence does not apply in this situation, because the liability limitation applies only when the
4 executing carrier is "processing an Unauthorized Change." Therefore, an executing carrier is not
5 immune if it improperly processes an authorized change submitted by a submitting carrier.
6

7 **R14-2-1904(E) Authorized Telecommunications Company Change Procedures**

8 The proposed rule allows a Telecommunications Company selling more than one type of service
9 to obtain subscriber authorization for all services during a single contact. According to Qwest,
10 the Commission has proposed an unlawful conflict between Arizona rules and FCC rules because
11 the proposed rule implies that "separate" authorizations are not required by a company offering
12 more than one type of service.
13

14 Staff notes that separate authorizations may be given during a single contact. For example,
15 Qwest's proposed requirement would require that a Subscriber go through multiple phone calls
16 in order to change multiple services. This is burdensome and unreasonable. The FCC has
17 clarified that its rule does not prohibit multiple authorizations in a single contact.² Accordingly,
18 the proposed rules are consistent with the federal rules.
19

20 **R14-2-1905(A)(1) Letters of Agency Verification of Orders for Telecommunications** 21 **Service** 22

23 Qwest recommends retaining the language in subsection A.1, regarding internet enabled
24 authorization and asserts that the language is redundant to subsection D.
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28 ² FCC Third Report and Order and Second Order on Reconsideration in CC Docket No.
94-129, FCC 00-255, Rel. Aug. 15, 2000, at ¶ 79.

1 Staff recommends against adoption of the Qwest proposal. The proposed rule was written to
2 ensure a reasonable reader understands that electronic authorization, including internet
3 authorizations, are acceptable forms of verification.

4 **R14-2-1905(C) Letters of Agency**

5 Allegiance Telecom of Arizona, Inc. ("Allegiance") comments that this rule should only be
6 applicable to residential customers, not business customers. According to Allegiance, requiring
7 production of proper documentation in English and Spanish will require a significant investment.

8
9 AT&T requests that the carriers have the option of using the language that carrier has chosen to
10 use in marketing to the customer. AT&T also requests that the Commission eliminate the
11 requirement that the notice be in any language used in the transaction.

12
13 Cox believes that the Commission should only require English and Spanish versions, and not any
14 "other language" that may be used.

15
16 Qwest objects to a requirement that notice be written in any language used in the sales
17 transaction. Qwest recommends that a Telecommunications Company should only be required
18 to provide notice in the subscriber's choice of language.

19
20 Staff recommends against adoption of any proposal to limit the publication of the notice to either
21 English, Spanish or any language used during the transaction. The proposed rule is written to
22 ensure that the Subscriber retains the opportunity to read the notice in the language which the
23 Subscriber is most comfortable.

24
25 **R14-2-1905 (D)**

26 Qwest recommends deleting section D as Qwest finds the section duplicative of Section A.1.
27
28

1 Staff recommends against adoption of this proposal for the reasons stated in its response to
2 1905.A.1.

3 **R14-2-1905 (F) (2)**

4 Qwest asserts that the proposed section conflicts with federal rules because the federal rules do
5 not allow an independent verifying entity to have a financial incentive to “confirm” a change.
6 According to Qwest, the Arizona rules prohibit any financial incentive to “verify” the
7 authorization. Qwest asserts that this rule might prohibit telecommunications companies from
8 paying independent third parties.

9
10 Staff recommends no change to the proposed rule. The proposed rule is not intended to be
11 substantively different than the federal rule. Proposed rule R14-2-1905.F.2 prohibits incentives
12 to “verify that... change orders are authorized.” This prohibits payments based on the third
13 party’s determination that an order is authorized. It does not prohibit payments that are natural
14 as to the determination made by the third party (for example, a flat rate of X dollars per
15 verification).

16
17
18 **R14-2-1906 Notice of Change**

19 Allegiance asserts that this rule should only be applicable to residential customers, not business
20 customers. In addition, according to Allegiance, requiring production of proper documentation
21 in English and Spanish will require a significant investment.

22
23 AT&T comments that the rule should be eliminated as Federal Truth in Billing requirements
24 provide the required information.

25
26 Cox proposes that the section be clarified to indicate that the notice be sent to the affected
27 Subscriber.

28

1 Staff concurs with the Cox comment to insert "to the subscriber" after "separate mailing" to
2 ensure a Telecommunications Company has a duty to communicate with its own customers.
3 Staff does not support any of the other proposed changes to this rule.

4 **R14-2-1907 Unauthorized Changes**

5 Qwest comments that the Commission's proposed rules conflict with the federal rules because
6 the proposed rules contain a longer absolution period than the federal rules. Qwest asserts that it
7 will not be able to "meet the mandates of both sets of rules"

8
9 Staff believes that Qwest is mistaken. Although the federal rules specify a shorter period,
10 nothing in the federal rules prohibits a longer absolution period.

11
12 **R14-2-1907 (B)**

13 Qwest recommends eliminating the five-business day response required for action to resolve an
14 unauthorized change. Qwest views the time frame as unrealistic.

15
16 Staff does not agree with Qwest. An Unauthorized Change is a fraud on the consumer that
17 requires an immediate response by a Telecommunications Carrier.

18
19 **R14-2-1907 (C)**

20 Qwest notes that the beginning of the rule uses the phrase "Telecommunications Company",
21 while the remainder of this rule uses the term "Unauthorized Carrier" to refer to the same
22 company.

23
24 Staff agrees that this provision should be changed so that it is consistent. Accordingly, Staff
25 recommends that the phrase "Telecommunications Company" be replaced with the term
26 "Unauthorized Carrier" in the part of proposed rule R14-2-1907.C before the beginning of R14-
27 2-1907.C.1.

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R14-2-1907 (C) (2)

Qwest comments that the Commission's proposal to absolve subscribers of all unpaid charges for ninety days will confuse subscribers.

Staff does not agree with Qwest, and believes consumers are better served with a 90-day absolution period as embodied in Arizona statutes and the Proposed Rule.

R14-2-1907 (C) (3)

Qwest comments that the proposed Arizona rule does not allow a carrier to rebill the subscriber as the Federal Rule does. Qwest asserts this rule will confuse Arizona subscribers.

Staff does not agree with Qwest, and believes consumers are better served with a 90-day absolution period, during which the carrier cannot rebill the customer, as embodied in the proposed rule.

R14-2-1907(C)(4)

AT&T comments that the Rule as currently drafted could allow the Original Telecommunications Company to apply the 150% credit towards charges incurred during the 90-day absolution period. AT&T urges an amendment to clarify that credit to charges is to occur after the 90 day absolution period.

Staff recommends against adoption of this proposal. Staff is concerned that on some occasions Subscribers may pay a bill before they discover a slam. If such instances occur during the 90-day period, the 150% credit should apply.

R14-2-1907 (D)

1 Qwest believes the Commission should not inject itself into credit reporting relationships, and
2 that the proposed rule conflicts the federal agencies charged with administration of the Fair
3 Credit Reporting Act.
4

5 Staff believes that it is imperative that Customers be protected from adverse credit reports until
6 disputed charges related to an alleged slam are resolved. Qwest has not cited any specific
7 provision that it claims conflicts with this requirement. Accordingly, Staff recommends that
8 Qwest's proposal be rejected.
9

R14-2-1907 (E)

10
11 AT&T urges the Commission to revise the proposed rule to state that customers remain liable for
12 charges verified pursuant to the rule.
13

14 Staff does not support adoption of AT&T's recommendation. The proposed rule states that
15 customers remain liable for undisputed portions of the bill. If the parties cannot resolve the
16 dispute, they may resort to the procedures of proposed rule 1910.
17

R14-2-1908 (B)(6)

18
19 AT&T comments that the proposed rule for Notice of Customer Rights is inconsistent with
20 certain sections of the current proposed rules.
21

22 Qwest comments that the proposed rule for Notice of Customer Rights is inconsistent with
23 certain sections of the current proposed rules.
24

25 Staff is aware that the current Notice of Customer Rights has become inconsistent with other
26 provisions of the proposed rules due to various changes to the proposed rules and accordingly
27 recommends that corresponding revisions are made to ensure that Customer Notices accurately
28

1 reflect the provisions of the remainder of proposed Article 19. Staff accordingly recommends
2 that AT&T's proposed revised language be adopted, except for the language AT&T proposes to
3 add to current proposed rule R14-2-1908.B.7.
4

5 **R14-2-1908 (B)(11)**

6 Cox requests the Commission clarify that Notice of Subscriber Rights applies only to intraLATA
7 and interLATA toll service provider freezes.
8

9 Staff does not recommend adoption of Cox proposal because it contains technical language.
10 Instead, Staff recommends that the proposed rule be amended by adding the phrase "long
11 distance" so that the rule reads "place a freeze on the Customer's long distance service account."
12

13 **R14-2-1908(C)(1)**

14 Cox requests the Commission clarify that the Notice of Subscriber Rights be provided by the
15 provider to its customers.
16

17 Staff does not share Cox concern as Section A.1 clearly states "shall provide to each of its
18 Subscribers..."
19

20 **R14-2-1908(C)(2)**

21 Qwest comments that requirements to publish the Notice of Customer Rights should include all
22 telecommunications companies or a requirement that each company contribute to the cost of a
23 generic notice.
24

25 Staff does not recommend adoption of Qwest comment. This proposal has already been rejected
26 on a number of occasions.
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R14-2-1908(C)(3)

AT&T asserts that providing Arizona specific notice information would be an onerous burden with limited value and requests the Commission to eliminate the requirement.

Staff does not recommend adoption of AT&T's comment because Staff believes that a notice advising Arizona subscribers of their Arizona-specific rights is appropriate.

R14-2-1908(C)(4)

AT&T requests the Commission allow the notice to be published in the language the carrier has chosen to use in marketing to the subscriber.

Staff recommends against adoption of any proposal to limit the publication of the notice to English, Spanish or the language chosen by the Telecommunications Company to market to the Customer.

R14-2-1909(D) Customer Account Freeze

Qwest comments that this section demonstrates conflict between the proposed rules and the FCC rules by Arizona requiring authorization to add a freeze and verification to lift a freeze.

Staff believes that these additional protections are necessary to protect consumers and accordingly should be adopted.

R14-2-1910 Informal Complaint Process.

AT&T suggests revising the proposed rule to correspond to an amendment approved by the Commission to proposed rule R14-2-2008.B.3. That rule was amended to add the phrase "of receipt of notice from the Commission" after the phrase "within 5 business days."

1 Cox objects to the proposed rule which in part includes that a failure to provide information
2 requested by Staff, or a good faith response within 15 business days will be deemed an
3 admission of a violation of the rules. Cox comments that the Commission's proposed rule is a
4 violation of its procedural due process rights. Cox comments that a more appropriate outcome
5 would be a rebuttable presumption that could be disproved at hearing.

6 Qwest asserts that the section should be eliminated because they create due process concerns by
7 putting a burden of proof on the responding company.

8
9 Qwest also comments that Subsections B(6) and B(7) should be eliminated, as they are
10 redundant to Subsections C and D.

11
12 Staff recommends adoption of the AT&T proposal to make this provision of proposed rule R14-
13 2-1910 correspond to proposed rule R14-2-2008. Staff notes that in most cases notice will be
14 received on the same day because notice will often be sent by telephone or electronic mail. Staff
15 does not share the concerns of parties that believe due process rights are violated by a
16 requirement the public service company respond to a regulatory inquiry promptly.

17
18 **R14-2-1911 Compliance and Enforcement**

19 Qwest comments that this proposed section should be deleted as it restates the penalty statutes
20 contained in Arizona Revised Statutes.

21
22 Staff believes that it is appropriate to clarify the procedures for compliance and enforcement that
23 apply to this article.

24
25 **R14-2-1914 Script Submission**

26 Allegiance comments that the proposed rule should be applied only to scripts provided to third
27 party marketing agents. Allegiance requests the Commission to clarify that scripts need only be
28

1 submitted on an annual basis, or after substantial amendment. Allegiance also requests the
2 Commission to clarify that scripts are not required.

3 AT&T requests the Commission remove this rule. AT&T comments that the Commission's
4 proposed rule is unworkable as the scripts are proprietary and confidential. AT&T comments
5 that the rule is overbroad, but AT&T is willing to provide responsive scripts to the Commission
6 if needed in a complaint proceeding.

7
8 Cox comments that the Commission's language is vague and potentially overreaching. Cox
9 requests the proposed rule be clarified to limit submissions to scripts used to directly solicit new
10 services from individual consumers in Arizona.

11
12 WorldCom requests the Commission clarify that the Commission will review the submitted
13 scripts for the purpose of obtaining an overview of telecommunications marketing activities in
14 the state, not to mandate that a specific script is used.

15
16 WorldCom also requests that the Commission clarify that scripts be submitted on an annual
17 basis, except in the event a new set of scripts is created.

18
19 Qwest comments that the proposed rule allowing the Utilities Division Director to review the
20 company's scripts constitutes an unlawful, prior restraint upon speech, in violation the
21 Constitution and should therefore be eliminated.

22
23 Staff does not share the concerns expressed by the parties on the submission of scripts, but
24 recognizes certain logistical issues concerning the timing of submissions should be resolved to
25 ensure the Commission's goal is met.
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R14-2-2001 et. al.

Qwest comments that the Commission already has rules governing billing disputes and customer complaints. Qwest requests that the Commission delete the proposed Article 20 in its entirety.

Staff does not support Qwest's recommendation to delete the Commission's proposed Article 20. The consumers of this state should be protected against cramming. Moreover, Staff notes that Qwest has used the existence of this rulemaking proceeding in an attempt to dismiss the civil action filed by the Attorney General concerning cramming. Qwest asserted that because of this rulemaking proceeding, the court should dismiss the civil action on the doctrine of primary jurisdiction.³ Having made this argument, Qwest should be estopped from asserting that this Commission's proposed cramming rules are not necessary.

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R14-2-2001 (A)

The Arizona Wireless Carriers Group (Wireless Group) believe the Commission should delete the definition of "authorized carrier" from the Section because it is not used in Article 20.

Staff supports the Wireless Group's recommendation.

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R14-2-2001 (D)

Cox requests the Commission to revise the definition of Subscriber to exclude business customers where service is provided under a written contract. Cox believes the proposed rules may not be appropriate in the business services market where the customer and provider have a contractual arrangement.

Staff believes that all customers should be protected by the proposed rules.

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³ Motion to Dismiss First Amended Complaint and Memorandum in Support at P.19 in State of Arizona ex rel. Janet Napolitano, Attorney General v. Qwest Corp., et al. Superior Court of Arizona, Pima County, Case No. C20014779. This motion was denied by the court in a minute entry dated June 20, 2002.

1 **R14-2-2001 (F)**

2 The Wireless Group comments that the Commission should clarify “unauthorized charge” to
3 exempt all surcharges by wireless carriers, or clarify that only surcharges prohibited by law are
4 “unauthorized charges.”
5

6 Staff does not believe that a change is necessary. Since the Commission may not regulate the
7 rates of wireless carriers, any surcharge imposed by the wireless carrier would be authorized by
8 law, and thus would fall under the current wording of the exemption.
9

10 **R14-2-2001 (F) Unsolicited Delivery of Wireless Phones**

11 The Wireless Group comments that the proposed rule is overbroad and could deny customer the
12 opportunity to purchase “phone in a box.” The rule should be clarified to apply to “the
13 unsolicited delivery” of a wireless phone.
14

15 Staff agrees and recommends that the rule should be clarified to insert “unsolicited delivery”
16 before “wireless phone delivered.”
17

18 **R14-2-2002 Purpose and Scope**

19 Qwest recommends elimination of this rule because according to Qwest it violates ARS § 41-
20 1001.17
21

22 See Staff’s Comments to proposed rule R14-2-1902.
23

24 **R14-2-2005(A)(3) Explicit Subscriber Acknowledgement**

25 The Wireless Group comments that most telecommunications customers are sophisticated enough
26 to understand that when they purchase services, they will be required to pay for the service. The
27 Wireless Group believes the requirement is unnecessary.
28

1 Qwest recommends deleting any requirement for explicit customer acknowledgement that the
2 charges will be on the bill. Qwest believes it should be able to assume the subscriber expects to
3 see the charges on the bill.
4

5 Staff does not support eliminating a requirement for customer acknowledgement of proposed
6 charges because it is important that Subscribers are informed of the effect that a new product or
7 service will have on their bill. Staff notes that the explicit subscriber acknowledgement could be
8 a simple statement during a phone contact with the Telecommunications Company.
9

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11 **R14-2-2005(B) Communication of Subscriber Information**

12 The Wireless Group urges the Commission to revise the rule to require telecommunications
13 companies to provide customers information when the customer requests it.
14

15 Qwest comments that they should be obligated to only providing a clear, non-misleading
16 description of the product or service. Qwest also comments that a description should be required
17 only for those issues requested.
18

19 Qwest recommends the Commission delete the requirement that company representatives explain
20 how the charge will appear on the bill because the explanation will only add unnecessary time to
21 the call.
22

23 Staff understands that some parties are concerned that the rule might be interpreted to require a
24 company to explain all of its products and services, regardless of whether they are mentioned
25 during the contact with the Subscriber. Given the wording and context of the rule, it is clear that
26 the rule only applies to products and services offered during the course of the contact with the
27 Subscriber.
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R14-2-2005 (C) English – Spanish Language Requirement.

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2 Allegiance comments that the rule should only be applicable to residential customers, not
3 business customers. According to Allegiance, requiring production of proper documentation in
4 English and Spanish will require a significant investment.

5
6 Cox believes that the Commission should only require English and Spanish versions, and not any
7 “other language” that may be used.

8
9 The Wireless Group proposes to make the proposed rule less onerous to the carrier by modifying
10 the rule to require the telecommunications carrier to communicate with customers in English or
11 Spanish upon request.

12
13 Qwest comments that they should provide notice in the language chosen by the subscriber.

14
15 Staff recommends no change in the proposed rule. Staff understands that the some companies are
16 concerned that they might be required to maintain multilingual personnel at all sales locations,
17 including retail outlets for wireless phones. Staff believes that this concern is unfounded because
18 the rule only applies to sales transactions – i.e. when a sale has been completed. If a Subscriber
19 were to contact the company employing some language not understood by the Company’s
20 representatives, the Company’s only obligation is to not complete the transaction since the
21 Company would not be able to comply with the notice and authorization requirements.

22
23 **R14-2-2005 (D)**

24 Cox comments that the Commission’s proposed rule to inform a Subscriber of the cost of “basic
25 local exchange service” during each potential transaction should be deleted. Cox asserts that the
26 requirement will create confusion by providing information the consumer did not request, use
27 terminology unknown to the consumer and increase the duration of the customer contact.

1 Cox provides that in the alternative, if the Commission wants to retain the requirement the rule
2 should be revised to expressly prohibit misleading descriptions of products and services and limit
3 the use of "basic" to "basic local exchange telephone service."

4 Staff does not support changing this provision. Providing the cost of basic service allows the
5 Subscriber to make an informed decision.
6

7 **R14-2-2006 Unauthorized Charges**

8 Qwest comments that any reference to credit reporting should be eliminated.
9

10 See Staff's comments to proposed rule R14-2-1907.D
11

12 **R14-2-2007(C)(1)**

13 Qwest comments that providing its address is burdensome, unnecessarily costly and should be
14 eliminated from the rule.
15

16 Staff does not believe that providing a mailing address is burdensome.
17

18 **R14-2-2007(D) Notice of Subscriber Rights**

19 Allegiance comments that the rule should only be applicable to residential customers, not
20 business customers. According to Allegiance requiring production of proper documentation in
21 English and Spanish will require a significant investment.
22

23 The Wireless Groups comments that the Commission's proposed rule place a substantial burden
24 on the affected companies and accomplishes little by requiring them to provide Arizona specific
25 notices. The Wireless Group comments that an abbreviated form of notice should meet the needs
26 of the Commission.
27
28

1 Staff believes that providing Arizona consumers information on their legal rights in Arizona is a
2 prudent cost for an Arizona public service company.

3
4 **R14-2-2008 Informal Complaint Process**

5 Cox objects to the proposed rule which in part includes a provision that a failure to provide
6 information requested by Staff, or a good faith response within 15 business days will be deemed
7 an admission of a violation of the rules. Cox comments that the Commission's proposed rule is a
8 violation of its procedural due process rights. Cox comments that a more appropriate outcome
9 would be a rebuttable presumption that could be disproved at hearing.

10
11 The Wireless Group comments that by revising the proposed rule to require the customer to
12 attempt to resolve complaints with the telecommunications company before using the
13 Commission's complaint process will reduce the number of potential complaints.

14
15 The Wireless Group also proposes extending all of the timeframes within the proposed rule.

16
17 Qwest asserts that the section should be eliminated because they create due process concerns by
18 putting a burden of proof on the responding company.

19
20 See Staff's comments to proposed rule R14-2-1910.

21
22 **R14-2-2009 Compliance and Enforcement**

23
24 The Wireless Group proposes the Commission revise the proposed rule to make the rule effective
25 only when Staff is reviewing a specific complaint.

26
27 Qwest comments that this proposed section should be deleted as it restates the penalty statutes
28 contained in Arizona Revised Statutes.

1 See Staff's comments to proposed rule R14-2-1911.
2

3 **R14-2-2012 Script Submission**
4

5 Allegiance comments that the rule should be applied only to scripts provided to third party
6 marketing agents. Allegiance requests the Commission to clarify that scripts must be submitted
7 only on an annual basis, or after substantial amendment. Allegiance also requests the
8 Commission to clarify that scripts are not required.

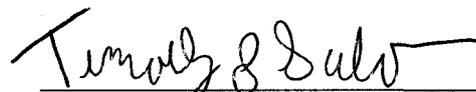
9 Cox comments that the Commission should clarify this section should to limit submissions to
10 scripts used to directly solicit new services from individual consumers in Arizona.
11

12 Wireless Group comments that the Commission's proposed Rule is highly burdensome and
13 should be eliminated, or limited to outbound telemarketing related to resolution of a specific
14 complaint. Scripts should also be filed confidentially.
15

16 Qwest comments that the proposed rule allowing the Utilities Division Director to review the
17 company's scripts constitutes an unlawful, prior restraint upon speech, in violation the
18 Constitution and should therefore be eliminated.
19

20 See Staff's comments to proposed rule R14-2-1914
21

22 RESPECTFULLY SUBMITTED this 26th day of June, 2002
23

24 

25 Timothy J. Sabo
26 Attorney, Legal Division
27 Arizona Corporation Commission
28 1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

1 The original and ten (10) copies of the foregoing
2 were filed this 26 day of June, 2002
3 with:

4 Docket Control
5 Arizona Corporation Commission
6 1200 West Washington Street
7 Phoenix, Arizona 85007

8 A copy of the foregoing was placed on the Commission's web site and
9 copies of the foregoing were mailed/hand-delivered
10 this 26 day of June, 2002 to:

11 Thomas H. Campbell
12 Lewis and Roca
13 40 N. Central Avenue
14 Phoenix, AZ 85004

15 Thomas F. Dixon
16 WorldCom
17 707 17th Street
18 Suite 3900
19 Denver, Colorado 80202

20 Theresa Tan
21 WorldCom, Inc.
22 201 Spear Street
23 Department 9976
24 San Francisco, CA 94105

25 Jeffrey W. Crockett
26 Thomas L. Mumaw
27 Snell & Wilmer, LLP
28 One Arizona Center
Phoenix, AZ 85004-2202

Daniel Pozefsky
RUCO
2828 N. Central Avenue
Suite 1200
Phoenix, AZ 85004

Joan S. Burke
Osborn Maledon, P.A.
2929 N. Central Avenue
Suite 1200
Phoenix, AZ 85012

Cindy Manheim
Regulatory Counsel
AT&T Wireless
7277-164TH Avenue NE
Redmond, WA 98052

Mary B. Tribby
Richard S. Wolters
AT&T Communications of the Mountain
States, Inc.
1875 Lawrence Street
Suite 1575
Denver, CO 80202

Eric S. Heath
Sprint Communications Company
100 Spear Street
Suite 930
San Francisco, CA 94105

Steven J. Duffy
Ridge & Isaacson, PC
3101 N. Central Avenue
Suite 1090
Phoenix, AZ 85012

Timothy Berg
Theresa Dwyer
Fennemore Craig, PC
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85004

Qwest Corporation
1801 California Street, #5100
Denver, Colorado 80202

1	Andrew O. Isar TRI 4310 92nd Avenue, N.W. Gig Harbor, Washington 98335	Maureen Arnold U S WEST Communications, Inc. 3033 N. Third Street, Room 1010 Phoenix, AZ 85012
2		
3	Bradley Carroll Cox Arizona Telcom, L.L.C. 20401 N. 29th Avenue Suite 100 Phoenix, AZ 85027	Michael M. Grant Gallagher & Kennedy 2575 East Camelback Road Phoenix, AZ 85016-9225
4		
5		
6	Richard M. Rindler Morton J. Posner Swider & Berlin 3000 K Street, N.W. Suite 300 Washington, DC 20007	Mark Kioguardi Tiffany and Bosco PA 500 Dial Tower 1850 N. Central Avenue Phoenix, AZ 85004
7		
8		
9	Charles Kallenbach American Communications Services, Inc. 131 National Business Parkway Annapolis Junction, Maryland 20701	Nigel Bates Electric Lightwave, Inc. 4400 NE 77th Avenue Vancouver, Washington 98662
10		
11		
12	Karen L. Clauson Thomas F. Dixon MCI Telecommunications Corp. 707 17th Street, #3900 Denver, Colorado 80202	Darren S. Weingard Stephen H. Kukta Sprint Communications Co. L.P. 1850 Gateway Drive, 7th Floor San Mateo, CA 94404-2467
13		
14		
15	Joyce Hundley United States Department of Justice Antitrust Division 1401 H Street NW Suite 8000 Washington, DC 20530	Mark P. Trincherro Davis Wright Tremaine LLP 1300 S.W. Fifth Avenue Suite 2300 Portland, Oregon 97201
16		
17		
18	Scott S. Wakefield RUCO 2828 N. Central Avenue Suite 1200 Phoenix, AZ 85004	Jon Loehman Managing Director-Regulatory SBC Telecom, Inc. 5800 Northwest Parkway Suite 135, Room 1.S.40 San Antonio, TX 78249
19		
20		
21		
22	Gregory Hoffman 795 Folsom Street, Room 2159 San Francisco, CA 94107-1243	Daniel Waggoner Davis Wright Tremaine 2600 Century Square 1501 Fourth Avenue Seattle, Washington 98101-1688
23		
24		
25	Douglas Hsiao Jim Scheltema Blumenfeld & Cohen 1625 Massachusetts Ave. N.W. Suite 300 Washington, DC 20036	M. Andrew Andrade 5261 S. Quebec Street Suite 150 Greenwood Village, Colorado 80111
26		
27		
28		

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24
25
26
27
28

Raymond S. Heyman
Randall H. Warner
Roshka Heyman & DeWulf
400 E. Van Buren
Suite 800
Phoenix, AZ 85004

Diane Bacon
Legislative Director
Communications Workers of America
5818 N. 7th Street
Suite 206
Phoenix, AZ 85014-5811

Mark N. Rogers
Excell Agent Services, L.L.C.
2175 W. 14th Street
Tempe, AZ 85281

Robert S. Tanner
3311 3rd Street N
Arlington, Virginia 22201-1711

Michael Bagley
Verizon Wireless
15505 Sand Canyon Avenue
Irvine CA 92618

Todd C. Wiley
Gallagher & Kennedy
2575 E. Camelback Road
Phoenix, AZ 85016-9225

Laura Izon
Covad Communications Co.
4250 Burton Street
Santa Clara, California 95054

Al Sterman
Arizona Consumers Council
2849 E. 8th Street
Tucson, AZ 85716

Brian Thomas
Time Warner Telecom, Inc.
520 S.W. 6th Avenue
Suite 300
Portland, Oregon 97204

Wendy Wheeler
Alltel Communications
11333 N. Scottsdale Road, Ste. 200
Scottsdale, AZ 85254


Deborah Amaral
Assistant to Timothy J. Sabo

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

A. Economic, small business and consumer impact summary

1. Proposed rulemaking.

The proposed rules provide a framework for consumer protections against unauthorized carrier changes and charges commonly referred to as "slamming" and "cramming." Slamming is changing a customer account from the authorized carrier to an unauthorized carrier. Cramming is adding charges for services on a customer's bill without proper authorization.

2. Brief summary of the economic impact statement.

The proposed rulemaking on slamming and cramming will affect consumers of telecommunications services and companies providing those services.

Costs of the proposed rulemaking include costs related to new tasks at the Commission such as responding to and reviewing informal complaints, reviewing company scripts and records, reviewing requests for waivers, and compliance and enforcement.

Costs to telecommunications companies would include paying penalties or having sanctions imposed for slamming and cramming, obtaining subscriber authorization and verification, notifying subscribers of rights, submitting scripts and records to the Commission, and applying for waivers.

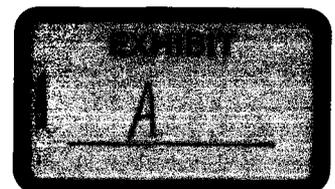
Benefits of the proposed rulemaking may include a decrease in slamming and cramming and an increase in telecommunications competition in the State of Arizona.

The proposed rulemaking is deemed to be the least intrusive and least costly alternative of achieving the whole purpose of the proposed rulemaking.

Because adequate data are not available, the probable impacts are explained in qualitative terms.

3. Name and address of agency employees to contact regarding this statement.

Marta Kalleberg and Timothy J. Sabo, Esq. at the Arizona Corporation Commission, 1200 West Washington, Phoenix, Arizona 85007.



B. Economic, small business and consumer impact statement.

1. Identification of the proposed rulemaking.

The proposed rules provide a framework for consumer protections against unauthorized carrier changes and charges commonly referred to as "slamming" and "cramming." Slamming is changing a customer account from the authorized carrier to an unauthorized carrier. Cramming is adding charges for services on a customer's bill without proper authorization.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

- a. Consumers of telecommunications services throughout the State of Arizona
- b. Telecommunications companies in the State of Arizona over which the Commission has jurisdiction and that are public service corporations
 - i. Interexchange carriers
 - ii. Local exchange carriers
 - iii. Wireless providers
 - iv. Cellular providers
 - v. Personal communications services providers
 - vi. Commercial mobile radio services providers

3. Cost-benefit analysis.

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking.

Costs of the proposed rulemaking include costs related to new tasks at the Commission. For example, the Commission will need to: 1) respond to and review informal complaints by consumers notifying the Commission of unauthorized changes or charges, 2) make recommendations related to informal complaints, 3) review company scripts, 4) review company records related to subscriber's request for services or products, 5) review company records related to subscriber verification and unauthorized changes, 6) monitor compliance, 7) enforce penalties or sanctions, 8) coordinate enforcement efforts with Arizona Attorney General, and 9) review company requests for waivers.

Benefits of the proposed rulemaking may include a decrease in slamming and cramming consumer complaints being received at the Commission. Due to the imposition of penalties for slamming and cramming, less slamming and cramming may occur which would result in a decrease in complaints related to these issues being received at the Commission.

Benefits of the proposed rulemaking to the Arizona Attorney General are an increased level of coordination of efforts aimed at prosecution of fraudulent, misleading, deceptive, and anti-competitive business practices.

b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

Implementation of the proposed rules should result in no increased costs to political subdivisions. However, to the extent that these political subdivisions contain consumers of telecommunications services, they may benefit by less slamming and cramming and an increase in competition in the area.

c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditure of employers who are subject to the proposed rulemaking.

Costs to telecommunications companies would include: 1) obtaining subscriber authorization for changes and charges, 2) obtaining verification of that authorization, 3) maintaining and preserving records of verification, 4) notifying subscribers of rights, 5) paying for costs to subscriber of unauthorized changes and charges 6) resolving slamming and cramming complaints, 7) submitting scripts to the Commission, 8) submitting of company records upon request of the Commission, and 9) applying for waivers.

Telecommunications companies can derive additional revenue from slamming and cramming practices. To the extent that these rules discourage this practice, these companies may refrain from slamming and cramming which would result in a decrease in revenue. Telecommunications companies can be assessed penalties for slamming or cramming. This would result in a decrease in income.

Sanctions can also be imposed under the proposed rulemaking, including: 1) revocation of the Certificate of Convenience and Necessity 2) prohibition from further solicitation of new customers for specified period of time; and 3) other penalties allowed by law, including monetary penalties.

Companies may need to hire additional staff to comply with the requirements of the proposed rulemaking. This would increase payroll expenditures. However, to the extent that these rules discourage slamming and cramming, employees hired to slam and cram subscribers, may be

relieved of their positions, which may result in a decrease in payroll expenditures.

4. Probable impacts on private and public employment in business, agencies, and political subdivision of this state directly affected by the proposed rulemaking.

Employment could be enhanced since the reduction of slamming and cramming would bring about a more competitive telecommunications marketplace, which may increase employment in the telecommunications industry.

5. Probable impact of the proposed rulemaking on small business.

a. Identification of the small businesses subject to the proposed rulemaking.

Businesses subject to the proposed rulemaking are small, intermediate, and large telecommunications providers. However, few telecommunications providers subject to this rule are small businesses as defined by A.R.S. § 41-1001.19.

b. Administrative and other costs required for compliance with this proposed rulemaking.

Costs of the proposed rulemaking include costs related to new tasks at the Commission. For example, the Commission will need to: 1) respond to and review informal complaints by consumers notifying the Commission of unauthorized changes or charges, 2) make recommendations related to informal complaints, 3) review company scripts, 4) review company records related to subscriber's request for services or products, 5) review company records related to subscriber verification and unauthorized changes, 6) monitor compliance, 7) enforce penalties or sanctions, and 8) review company requests for waivers.

Costs to telecommunications companies would include: 1) obtaining subscriber authorization for changes and charges, 2) obtaining verification of that authorization, 3) maintaining and preserving records of verification, 4) notifying subscribers of rights, 5) resolving slamming and cramming complaints, 6) submitting scripts to the Commission, 7) submitting of company records upon request of the Commission, and 8) applying for waivers.

c. A description of the methods that the agency may use to reduce the impact on small businesses.

The agency has tried to reduce the impact on small business by creating proposed rules that are a product of the collective efforts of the telecommunications industry to establish acceptable slamming and cramming rules. The rules also provide that the rules may be waived if in the public interest.

d. The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Consumers of telecommunications services would not experience a specific dollar cost related to the proposed rulemaking. However, the proposed rulemaking may increase the time that consumers spend to change carriers or add telecommunications services.

Benefits to consumers would include a reduction in slamming and cramming and potentially more cooperative telecommunications companies when slamming and cramming do occur.

Benefits may also include an increase in employment opportunities in the telecommunications industry due to a more competitive telecommunications marketplace.

Consumers may also benefit from increased fair competition by providers of telecommunications services.

6. A statement of the probable effect on state revenues.

The proposed rulemaking may result in an increase in state revenues if penalties are imposed on telecommunications companies for slamming and cramming.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

One less intrusive and possibly less costly alternative method of achieving the purpose of the proposed rulemaking is to review consumer complaints of slamming and cramming on a case by case basis under the Commission's current authority. However, this method may be more costly since it does not contain the efficiencies of the proposed rulemaking. Also, the result may not be as effective since the Commission and consumers may not have access to the same level of information as they would under the proposed rulemaking.

Therefore, alternative methods of achieving the purpose of the proposed rulemaking may be less intrusive and costly, but may not adequately achieve the purpose of the proposed rulemaking. The proposed rulemaking is deemed

to be the least intrusive and least costly alternative of achieving the whole purpose of the proposed rulemaking.

- 8. If for any reason adequate data are not reasonably available to comply with the requirements of subsection B of this section, the agency shall explain the limitations of the data and the methods that were employed in the attempt to obtain the data and shall characterize the probable impacts in qualitative terms.**

Adequate data are not available to comply with the requirements of subsection B. Therefore, the probable impacts are explained in qualitative terms.

MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

FROM: Tim Sabo
Attorney, Legal Division

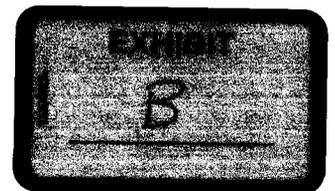
THRU: Christopher C. Kempley
Chief Counsel

DATE: December 10, 2001

RE: Commission Jurisdiction over wireless slamming and cramming
Docket RT-00000J-99-0034

I. Summary

The Commission's proposed slamming rules, A.A.C. R14-2-1901 *et seq.*, apply to wireless carriers only when federal law requires wireless carriers to provide equal access. See Proposed A.A.C. R14-2-1903. However, the Commission's proposed cramming rules, A.A.C. R14-2-2001 *et seq.*, are fully applicable to wireless carriers. See Proposed A.A.C. R14-2-2003. On November 20, 2001, Verizon Wireless filed a letter in this docket restating its claim that the Commission does not have jurisdiction to apply the proposed slamming and cramming rules to wireless carriers. Verizon asserts that the Commission does not have jurisdiction because Arizona's slamming and cramming statute, A.R.S. § 44-1571 *et seq.*, does not apply to wireless carriers. The Commission should reject this interpretation of Arizona's slamming and cramming statute because (1) the statute does not prohibit the Commission from applying slamming and cramming rules to wireless carriers, and the Commission already has the power to apply slamming and cramming rules to wireless carriers under the Commission's existing powers under



Title 40; (2) the statute should not be read as an implied repeal of the Commission's existing powers under Title 40; and (3) if the statute is read in the manner suggested by Verizon Wireless, it would raise a substantial question about the constitutionality of the statute, and statutes should be read to avoid constitutional problems. This memorandum will also address the scope of federal preemption of the Commission's jurisdiction over wireless carriers.

II. Federal law does not preempt Commission jurisdiction over wireless slamming and cramming.

Federal law provides that states are preempted from regulating wireless rates or market entry. 47 U.S.C. § 332 (c)(3). In areas that are not rates or market entry, states remain free to regulate wireless carriers. See Cellular Telecommunications Industry Assoc. v. Federal Communications Comm'n, 168 F.3d 1332, 1336 (D.C. Cir. 1999).

Indeed, consumer protection is one of the areas that Congress expressly did not want to preempt. Id. Because consumer protection measures, including slamming and cramming rules, are not rates or market entry, the Commission's authority over slamming and cramming is not preempted.

III. The canons of statutory construction suggest that the Commission should reject the interpretation suggested by Verizon Wireless.

A. Arizona's slamming and cramming statute does not prohibit the Commission from applying slamming and cramming rules against wireless carriers.

Arizona's slamming and cramming statute does not apply to wireless carriers. A.R.S. § 44-1571(3), (4). However, this statute does not prohibit the Commission from applying slamming and cramming rules to wireless carriers. As Verizon Wireless points out, the provisions in Title 44 do not contain a grant of authority to the Commission over

wireless slamming and cramming. Wireless carriers provide “public... telephone service” and are thus public service corporations. Ariz. Const. art. XV § 2. Therefore, the Commission already had the power to enact slamming and cramming rules before the legislature added the new provisions to Title 44. See A.R.S. §§ 40-202 (power to “supervise and regulate every public service corporation”); 40-203 (power to prohibit unjust “practices or contracts”); 40-321 (service quality); 40-322 (power to determine and require just and reasonable service). Because the Commission already had the power to apply slamming and cramming rules against public service corporations, including wireless carriers, the Commission did not need additional authorization in Title 44; and because Title 44 does not contain a prohibition, the Commission is free to require wireless carriers to follow the proposed slamming and cramming rules.

B. Arizona’s slamming and cramming statute should not be read as an implied repeal of the Commission’s existing authority.

As already noted, Arizona’s slamming and cramming statute does not apply to wireless carriers, but the Commission has the power to enact the proposed rules under its Title 40 authority. The law strongly disfavors construing a statute as repealing an earlier one by implication; rather, whenever possible, the Arizona courts interpret two apparently conflicting statutes in a way that harmonizes them and gives rational meaning to both. See State v. Tarango, 185 Ariz. 208, 210; 914 P.2d 1300, 1302 (1996); Walters v. Maricopa County, 195 Ariz. 476, 481; 990 P. 2d 677, 682 (App. 1999). An implied repeal will only be found if the language of the newer statute clearly shows that the legislature intended the newer statute to override the older statute. Curtis v. Morris, 184 Ariz. 393, 397; 909 P.2d 460, 464 (App. 1995) decision approved 186 Ariz. 534, 535, 925 P.2d 259 (1996). There is nothing in the language of Arizona’s slamming and

cramming statute indicating legislative intent to repeal the Commission's authority over public service corporations, including wireless carriers. Instead, Arizona's slamming and cramming statute should be read as a prompt for the Commission to act under its existing authority. In this way, the statutes can be read so that they harmonize with each other. Because the statutes can be read consistently, the Commission should reject a reading of Arizona's slamming and cramming statute that would amount to an implied repeal of the Commission's authority under Title 40.

Moreover, the legislature intended to protect consumers from unjust practices in telecommunications services. Statutes should be "liberally construed to effect their objects and to promote justice." A.R.S. § 1-211.B. Because applying the proposed slamming and cramming rules to wireless furthers the goal of the statute, the Commission should not adopt a reading of the statute that thwarts the ultimate goal of the statute, protection of consumers.

C. Interpreting Arizona's slamming and cramming statute in the manner suggested by Verizon Wireless would raise a substantial Constitutional question, and the Commission should therefore avoid such a construction.

The Arizona Supreme Court has found that the Commission's powers under Article 15 § 3 are limited to ratemaking. Corp. Comm'n v. Pacific Greyhound Lines, 54 Ariz. 159, 94 P.2d 443 (1939). However, the Arizona Constitution vests in the Commission the power to "make and enforce reasonable rules, regulations, and orders for the convenience [and] comfort" of the customers of public service corporations. Ariz. Const. Art. 15 § 3. Recognizing the tension between this language and Pacific Greyhound, the Arizona Supreme Court has noted that Pacific Greyhound "undercut the framers' vision of the Commission's role as set forth in the text of the constitution, as

described by the framers, and in earlier case law.” Arizona Corp. Comm’n v. State ex rel. Woods, 171 Ariz. 286, 293, 830 P.2d 807, 814 (1992). This language calls into doubt Pacific Greyhound and indicates that there are still substantial unresolved questions regarding the scope of the Commission’s § 3 authority. Legislation should be read, if at all possible, in a way that is consistent with the constitution. Arizona Corp. Comm’n v. Superior Court, 105 Ariz. 56, 62, 459 P. 2d 489, 495 (1969); Stillman v. Marston, 107 Ariz. 208, 209, 484 P.2d 628 (1971). Because reading Arizona’s slamming and cramming statute as a prohibition on Commission regulation of wireless carriers would raise a significant question of whether the statute, so construed, conflicts with § 3, the Commission should not read the statute as a prohibition.