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BEFORE THE ARIZONA CORPORATION COMMISSION

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Chairman

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Commissioner

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Commissioner

Arizona Corporation Commission
DOCKETED DOCUMENT CONTROL

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DOCKETED BY
CA

IN THE MATTER OF RULES TO
ADDRESS SLAMMING AND OTHER)
DECEPTIVE PRACTICES)
_____)

DOCKET NO. RT 0000J-99-0034

COMMENTS OF AT&T ON PROPOSED
SLAMMING AND CRAMMING RULES

I. Introduction

AT&T Communications of the Mountain States, Inc. ("AT&T") submits the following comments on the proposed rules entitled "Consumer Protections for Unauthorized Carrier Changes[/Charges]." A.A.C. R14-2-1901-1914 (slamming) and A.A.C. R14-2-2001-2012 (cramming). AT&T appreciates this opportunity to provide input, and thanks Staff for leading the industry through this rule-making.

The comments that follow fall into two categories. The vast majority of the comments are "fine-tuning" and suggest revisions to make the rules more consistent and workable. The second category of comments arise in response to (1) the Script Submission provision, (2) the Spanish/English language requirement; and (3) the required posting of the Notice of Subscriber Rights on the AT&T web site. The comments that follow quote the rule at issue, propose alternate language where necessary, and describe AT&T's concern with the rule as drafted.

II. Comments on A.A.C. R14-2-1901-1914

1. R14-2-1904(D) -- RULE AS DRAFTED

- (D) **An Executing Telecommunications Company shall execute such changes as promptly as reasonable business practices will permit, which shall not exceed 10 business days from the receipt of a change notice from a submitting Telecommunications Company. The Executing Telecommunications Company Carrier shall have no liability for processing an Unauthorized Change.**

COMMENT: The final sentence of 1904(D) absolves an Executing Telecommunications Carrier of liability even in instances where the Executing Telecommunications Carrier caused, through its own error, the unauthorized change. Such errors have occurred here locally. When they occur in the future, they should be remedied (or paid for) by the carrier executing the change. The FCC reached exactly this conclusion in the *Third Report and Order and Second Order on Reconsideration* (adopted July 21, 2000 and released August 15, 2000), para. 77:

1. Liability of an Executing Carrier

Several carriers ask the Commission to clarify that an executing carrier is liable for an unauthorized carrier change when the carrier improperly executes a carrier change request. Section 258 of the Act contemplates that the submitting carrier and/or the executing carrier could be liable for an unauthorized change in a subscriber's telecommunications service. In the *Section 258 Order*, we delineated the duties and obligations of submitting and executing carriers in order to minimize disputes over the source or cause of unauthorized carrier changes. Generally, we concluded that submitting carriers are responsible for submitting, without unreasonable delay, authorized and properly verified carrier change requests; while executing carriers are charged with executing promptly and without unreasonable delay changes that have been verified by the submitting carrier. We found that "where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier performs the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier; [but] where the submitting carrier submits a change request that conforms with our rules and the executing carrier *fails to perform* the change in conformance with the submission, ... the executing carrier is liable...." Thus, an executing

carrier that fails to execute promptly and without unreasonable delay a change request that has been properly submitted and verified is in violation of section 258 of the Act and section 64.1100(b) of our rules and may be subject to liability for damages.

CC Docket No. 94-129, paragraph 77. This approach strikes a reasonable balance by making the Submitting or the Executing carrier liable, depending on which company made the error. AT&T asks that the Commission remove the final sentence of 1904(D) in the proposed rules.

2. **R14-2-1905 -- RULE WITH PROPOSED REVISION**

. . .

- (C) **A Letter of Agency may be combined with a marketing check. The Letter of Agency when combined with a marketing check shall have on its face and near the endorsement line a notice in bold-face type that the Subscriber authorizes a Telecommunications Company change by signing the check. The notice shall be easily readable, bold-face type and shall be written in both English and Spanish or in the language the carrier has chosen to use in marketing to the Subscriber. ~~as well as in any other language which was used at any point in the sales transaction.~~**

COMMENT: AT&T requests that carriers have the option of using “the language the carrier has chosen to use in marketing to the customer.” Rule 1905, as drafted would require, for example, a carrier to give Chinese-speaking customers LOA checks with endorsement line notices in Spanish and English. If a carrier wanted to provide the endorsement line in Chinese, the message in the small space near the endorsement line would have to appear in three languages. AT&T markets to customers in languages other than Spanish and English. Where a carrier is marketing to a consumer (or group of

consumers) in an intentionally selected language, the carrier should be authorized to tailor the check LOA, including the language, to the needs of the consumer.

Requiring multiple languages for all Subscribers (or potential Subscribers) will significantly increase costs. More paper, more ink, and more waste. These costs are ultimately borne by the consumer. These costs can be reduced if carriers are permitted to communicate with consumers in the language the carrier chooses to use in marketing to the consumer.

AT&T also asks that the Commission eliminate the Rule 1905 requirement that a carrier print the endorsement line notice in “any other language provide which was used at any point in the sales transaction.” AT&T is willing to provide the “in-language” check LOA to any customers to whom AT&T markets in a language other than English. However, AT&T cannot, cost effectively, prepare marketing materials in all languages used by all customers.

3. R14-2-1906 – RULE AS DRAFTED

When an Authorized Carrier changes a Subscriber’s service, the Authorized Carrier, or its billing and collection agent, shall clearly and conspicuously identify any change in service provider, including the name of the new Authorized Carrier and its telephone number on a bill, a bill insert, or a separate mailing. The notice of change shall be printed in both English and Spanish

COMMENT: The provision is confusing to carriers. The very first phrase “When an Authorized Carrier changes a Subscriber’s service” is problematic. The Authorized Carrier cannot “change a Subscriber’s service.” Only the Executing carrier can make that change. Today, notice to subscribers regarding their telephone service provider is governed by the federal Truth-in-Billing requirements. 47 C.F.R. 64.2400. Rule 1906

effectively requires the same “clear and conspicuous” notice already required by 47 C.F.R. 64.2400(d). This federal requirement applies to all telephone bills sent to customers and, as a result, new carrier information (including a toll free numbers) appears on all bills. Because the federal regulations are already in place, AT&T urges the Commission to eliminate 1906. As discussed above, the language is confusing and it is unclear what carrier is responsible for providing the notice.

If the rule is retained, AT&T asks that the rule be revised slightly to allow that the “notice of change be printed in both English and Spanish or in the language the carrier has chosen to use in marketing to the Subscriber.”

4. **R14-2-1907 -- RULE WITH PROPOSED REVISION:**

R14-2-1907 Unauthorized Change

The Telecommunications Company Shall:

...

- C(4) Refund to the original Telecommunications Company, 150% of any Unauthorized Carrier’s charges that a Subscriber paid to the Unauthorized Carrier. The original Telecommunications Company shall apply the credit of 150% to the Subscribers’ authorized charges occurring after the 90 day absolution period.**

COMMENT: As drafted, rule 1907(C)(4) could allow the original Telecommunications Company to apply the 150% credit toward charges incurred during the 90-day “absolution” period. In contrast, Rule 1907(C)(3) prohibits the original Telecommunications Company from billing for charges incurred during the absolution period. The revision described above makes clear that any refund from the Unauthorized Carrier is to be applied after the absolution period ends.

5. **R14-2-1907 RULE AS DRAFTED:**

R14-2-1907(E) The Customer shall remain obligated to pay any charges that are not disputed.

RULE WITH PROPOSED REVISION:

R14-2-1907(E) The Customer shall remain obligated to pay any charges resulting from a change verified pursuant to R14-2-1905.

COMMENT: As drafted, 1907(E) would allow a customer to persist in “disputing” a charge even after the Commission had determined that the provider change was properly verified under R14-2-1905. The customer’s obligation to pay should be enforceable (even if disputed by the customer), so long as the change is properly verified under Rule 1905.

6. **R14-2-1908(B) RULE AS DRAFTED:**

R14-2-1908(B) (Notice of Subscriber Rights)

. . .

B.3 An Unauthorized Telecommunications Carrier changing telecommunications service without the Subscriber’s permission is required to remove all Unauthorized Charges from the Subscriber’s account;

. . .

B.5 An Unauthorized Carrier shall absolve a Subscriber of all unpaid charges which were incurred during the first 90 days of service provided by the Unauthorized Carrier.

. . .

B.6 If a Subscriber incurred charges for service provided during the first 90 days of service with the Unauthorized Carrier, the Unauthorized Carrier shall forward the relevant billing information to the original Telecommunications Company. The original Telecommunications Company may bill the Customer for those services at the original Telecommunications Company’s rates.

B.7 If a Subscriber has paid charges to the Unauthorized Carrier, the Unauthorized Carrier must pay 150% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the 150% as credit to the Customer's authorized charges;

COMMENT: The Notice of Subscriber Rights is of utmost importance. These are the words consumers will read – and rely upon. Consumers will be confused if their “rights” are illusory (because the rules say otherwise) or incomplete (because the rules require more). As currently drafted, the Notice of Subscriber Rights provides that: the Unauthorized Carrier must remove all charges (a requirement nowhere in Rule 1907); the Unauthorized Carrier must absolve the customer for the first 90 days (this is consistent with Rule 1907); and the original Telecommunications Company may bill the Customer for the charges (under Rule 1907 the original Telecommunication Company cannot bill for the services provided by the Unauthorized Carrier in the first 90 days). These inconsistencies are serious. Consumers will believe that an unauthorized carrier must remove all charges (not so) and that the original Telecommunications Company can bill for all the unauthorized charges (also not true). These two inconsistencies could be easily remedied, thereby avoiding future consumer confusion on these issues. The following revised paragraphs would resolve these problems:

R14-2-1908(B) RULE WITH PROPOSED REVISION:

R14-2-1908(B) (Notice of Subscriber Rights)

. . .

~~**B.3. An Unauthorized Telecommunications Carrier changing telecommunications service without the Subscriber's permission is required to remove all Unauthorized Charges from the Subscriber's account;**~~

. . .

B.54 An Unauthorized Carrier shall absolve a Subscriber of all unpaid charges which were incurred during the first 90 days of service provided by the Unauthorized Carrier.

. . .

B.65 If a Subscriber incurred charges for service provided during the first 90 days of service with the Unauthorized Carrier, the Unauthorized Carrier shall forward the relevant billing information to the original Telecommunications Company. ~~The original Telecommunications Company may bill the Customer for those services at the original Telecommunications Company's rates.~~

B.76 If a Subscriber has paid charges to the Unauthorized Carrier, the Unauthorized Carrier must pay 150% of the charges to the original Telecommunications Company and the original Telecommunications Company shall apply the 150% as credit to the Customer's authorized charges incurred after the 90 day absolution period;

7. R14-2-1908(C) RULE AS DRAFTED:

R14-2-1908(C)

C. Distribution, language and timing of notice

. . .

3. A Telecommunications Company with a web site shall display the notice described in this Section on the company's web site.

COMMENTS: Long distance companies today reach and serve all corners of the globe.

The AT&T web site (www.ATT.com) is used by customers through out the world and supplies information that is generally applicable to all customers. Information that is applicable only to the residents of a specific state, province, or territory is not typically maintained on the web site, and for good reason. The cost of keeping information accurate and current -- with many pieces of information from multiple jurisdictions -- is staggering. This would be an onerous burden and would have limited value given that

the information at issue here can be made generally available to Arizona consumers from numerous other sources.

As the proposed rules provide, Arizona consumers will receive the Notice of Subscriber Rights upon choosing AT&T, at any time from AT&T upon request, from their telephone directory, and (we would suggest) from the Arizona Corporation Commission web site. It would be completely appropriate to have Arizona specific information on the Arizona Corporation Commission web site. The rights outlined in the Notice apply to intra-state calls made by Arizona consumers. These sources are the most cost-effective and direct method for notifying Arizona consumers.

AT&T is not attempting, through its position on web site use, to avoid the issue of slamming. To the contrary, AT&T takes inquiries regarding slamming very seriously and offers extensive guidance through its web site to customers who have been slammed, and to those with general questions about slamming. The web site encourages customers needing help to call the AT&T Slamming Resolution Center (1-800-538-5345) and raise any questions they might have about service concerns. While generally applicable information is easily and effectively presented on a web-site, this is not a good place to post information that is inapplicable to the vast majority of the web site users. AT&T asks that the Commission eliminate the Rule 1908(C)(3) web posting requirement and rely instead on the methods identified above for conveying the Notice of Subscriber Rights to consumers in Arizona.

8. **R14-2-1908(C)(4) RULE AS DRAFTED**

4. **The notice of subscriber rights described in this section shall be written in both English and Spanish.**

AT&T asks that, consistent with the discussion regarding 1905(C) above, the Commission allow the notice of Subscriber rights to be written in both English and Spanish or “in the language the carrier has chosen to use in marketing to the Subscriber.”

R-14-2-1908(C)(4) WITH PROPOSED REVISION

4. **The notice of subscriber rights described in this section shall be written in both English and Spanish or in the language the carrier has chosen to use in marketing to the Subscriber.**

9. **R14-2-1910(B) RULE WITH PROPOSED REVISION:**

R14-2-1910(B)

...

- (3) **Require the alleged Unauthorized Carrier to provide an initial response within 5 business days of receipt of notice from the Commission.**

Rule 1910(B) is almost identical to Rule 2008(B)(3). In the most recent round of rule revisions, Rule 2008(B)(3) was revised slightly to define precisely when the clock begins ticking on the 5-day response period. AT&T suggests adding to Rule 1910(B)(3) “of receipt of notice from the Commission,” thereby giving a clear beginning point for the 5-day limit.

10. **R14-2-1914 RULE AS DRAFTED:**

R14-2-1914 Script Submission

Each Telecommunication Company shall file under seal in a docket designated by the Director of the Utilities Division a copy of all scripts used by its (or its agent's) sales or customer service workers. The Director of the Utilities Division may request further information or clarification on any script, and the

Telecommunications Company shall respond to the Director's request within 10 days. The Director of the Utilities Division may initiate a formal complaint under R14-2-101 through R14-2-113 to review any script. The failure to file such a complaint or request further information or clarification does not constitute approval of the script, and the fact that the script is on file with the Commission may not be used as evidence that the script is just, reasonable, or not fraudulent.

COMMENTS: Rule 1914 is unworkable. First, the AT&T scripts requested by this rule are proprietary and confidential. If the Commission has no complaint against a carrier (and no pending investigation) that carrier should not be obliged to turn over all scripts. Filing the scripts "under seal" does not resolve this problem, as the carrier is still obliged to release from its control valuable internal information.

Second, the rule as written – "all scripts used by its (or its agent's) sale or customer service workers" – is overbroad. This rule would encompass scripts that have nothing to do with marketing, telemarketing, and could not possibly lead to an unauthorized switch in service. Under the proposed rule, a script used by a customer service agent who fielded only repair calls would need to be filed. The scripts used in telecommunications are voluminous and change frequently. If all carriers submit all scripts, under seal, the Commission will have logistical problems associated with storing, maintaining and keeping secure the various filings.

AT&T is willing to provide responsive proprietary scripts to the Commission if needed in a complaint proceeding. Rule 1914, unfortunately, goes much, much farther. AT&T asks that the Commission eliminate this rule which requires all scripts, from all carriers, with no clear purpose for requiring submission of the scripts.

III. Cramming Rule Comments

1. R14-2-2005 RULE AS DRAFTED:

R14-2-2005(D)

D During each contact during which the Telecommunications Company offers to sell a product or service or during which a subscriber requests to buy a product or service, the Telecommunications Company shall inform the subscriber of the cost of "basic local exchange telephone service" as defined in R14-2-1201(6), if provided. A Telecommunications Company shall not use any misleading language in describing any product or service. The term "basic" may only be used for a plan that includes only basic local exchange service.

COMMENT: AT&T urges the Commission to eliminate the first sentence of Rule 2005(D). Mandating that customers listen to information they've not requested will frustrate customers, particularly when this rule, as drafted could require a customer to hear the message again and again for as long as this rule is in effect.

If the Commission retains this rule, AT&T asks that business customers be exempt. In Arizona, cramming has not been a problem in the business community. Generally, business service contracts are tailored very specifically to customer needs and, during the order verification process, each component of the service is verified. A mandated message giving the cost of local service, would be very expensive for carriers to implement and frustrating for business customers who have no interest in that information.

2. **R14-2-2006 RULE AS DRAFTED:**

R14-2-2006

(A) Upon discovery of an Unauthorized Charge, or upon notification by a Subscriber of an Unauthorized Charge, the billing Telecommunications Company shall:

...

3. Refund or credit to the Customer all money paid by the Customer at the Customer's option for any Unauthorized charge. If any Unauthorized Charge is not refunded or credited within 2 billing cycles, the Telecommunications Company shall pay interest on the amount of any Unauthorized Charges at an annual rate established by the Commission until the Unauthorized Charge is refunded or credited.

COMMENT: Rule 2006(A)(3) works as drafted. However, Rule 2007(C)(5), in the Notice of Subscriber Rights, is inconsistent with Rule 2006(A)(3). Rule 2007(C)(5) provides that "the Telecommunications Company must refund or credit, at the Customer's option, to the Customer any amount paid for Unauthorized Charges as promptly as reasonable business practices permit, but no later than 15 days from the Subscriber's notice." While the rule states that a company has two billing cycles to refund or credit an unauthorized charge, the Notice of Subscriber Rights provides only 15 days. AT&T urges the Commission to revise the Notice of Subscriber Rights to conform to the rule. This would mean replacing "than 15 days" with "2 billing cycles" in Rule 1907. This makes practical sense, as 15 days is not sufficient to investigate a complaint, communicate with necessary witnesses, obtain resolution and provide a refund or credit to the customer.

3. R14-2-2006(C) RULE WITH PROPOSED REVISION:

R14-2-2006(C)

Until a charge is reinstated pursuant to subsection B, a Telecommunications Company shall not:

- 1. Suspend, disconnect, or terminate telecommunications service to a Subscriber who disputes any billing charge pursuant to this Article or for nonpayment of an alleged Unauthorized Charge unless requested by the Subscriber; or . . .**

COMMENT: Rule 2006(C) is very similar to Rule 1907(D)(1). In the most recent round of rule revisions, Rule 1907(D)(1) was revised slightly to allow a Telecommunications Company to disconnect service if “requested by the Subscriber.” This is a reasonable change here as well, and will allow a Telecommunications Company to suspend, disconnect or terminate service Immediately if so desired by the Subscriber.

4. R14-2-2007 (D)(3) RULE AS DRAFTED:

R14-2-2007(D)(3) A Telecommunications Company with a web site shall display the notice described in this Section on the company’s web site.

COMMENT: AT&T opposes this requirement. Please see discussion above in response to Rule 1908(C)(3).

5. R14-2-2012 RULE AS DRAFTED:

R14-2-2012 Script Submission.

COMMENT: AT&T opposes this requirement. Please see discussion above in response to Rule 1914.

IV. CONCLUSION

AT&T respectfully requests that the Commission incorporate the relatively narrow revisions proposed above. AT&T would be willing to appear at the July 8, 2002 public hearing to answer any questions regarding these proposed revisions.

Respectfully submitted this ^{7th} 6th day of June, 2002.

AT&T COMMUNICATIONS OF THE
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CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of Comments Of AT&T On Proposed Slamming and Cramming Rules, were hand delivered on this 7th day of June, 2002, to:

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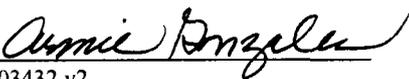
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