



0000083864

ORIGINAL

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

2002 JUN -7 P 1:32

AZ CORP COMMISSION
DOCUMENT CONTROL

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

Docket No. RT-00000J-99-0034

Arizona Corporation Commission
DOCKETED

JUN - 7 2002

**COMMENTS OF THE ARIZONA
WIRELESS CARRIERS GROUP**

DOCKETED BY
CAR

Alltel Communications, AT&T Wireless, Leap Wireless, Sprint PCS, Verizon Wireless, Voicestream, and Western Wireless (collectively the "AZ Wireless Carriers Group") submit these comments on the Notice of Proposed Rulemaking issued in the captioned proceeding.

BACKGROUND

In 1999, the Arizona Legislature enacted a series of provisions governing the provision of telecommunications in the state. A.R.S. §§ 44-1571, -1572, -1573, -1574. These amendments gave the Commission the authority to prohibit: (i) any change in an end-user's pre-subscribed telecommunications service without the consent of the customer, or "slamming," and (ii) unauthorized or unverified charges on customers' bills, or "cramming." A.R.S. §§ 44-1572(L), 44-1573(K). Significantly, the Legislature exempted wireless carriers from the scope of these requirements. A.R.S. §§ 44-1571(3), (4).

In May 2001, the Staff released a first draft of proposed rules related to slamming (Article 19) and cramming (Article 20). This first draft applied both the slamming and cramming provisions to each "telecommunications company" as that term is defined in A.A.C. R14-2-1102.15.

1 On July 2, 2001, Staff released a second draft of the proposed rules. In proposed slamming
2 rule section R14-2-1903, Staff recommended exempting wireless carriers, but only “until such time
3 as those telecommunications companies are mandated by law to provide equal access or local
4 number portability.” Proposed rule section R-14-2-2003 concerning cramming did not exclude
5 wireless carriers.¹

6 On May 8, 2002, Staff and the Commissioners proposed and adopted various amendments
7 to the proposed rules that in some respects impose additional requirements on wireless carriers.
8 Proposed section R14-2-1903 now exempts wireless carriers from the slamming rules until wireless
9 carriers are mandated to provide equal access, and the most recent amendments add several
10 overbroad and unnecessary cramming provisions that apply to wireless carriers.

11 DISCUSSION

12 As applied to wireless carriers, several of the proposed cramming rules would not serve to
13 effectively protect Arizona consumers against the unscrupulous practices that the rules seek to
14 prevent. At the same time, some of the proposed rules would be impractical to implement given
15 the way wireless carriers conduct business, while others are either unclear or superfluous. Many of
16 the proposed rules would be costly and burdensome for wireless carriers to implement without
17 added consumer benefit. Given these various infirmities, the Commission should modify the
18 proposed rules as set forth below.²

19 **I. REVISIONS TO PROPOSED RULES**

20 **A. R14-2-2001(A) – Definition of Authorized Carrier**

21 The Commission should delete the definition of “authorized carrier” from this section
22 because it is not relevant to Article 20 of the proposed rules. Article 20 is entitled “Consumer
23 Protections of Unauthorized Carrier Charges,” and it deals entirely with the prevention of
24

25 ¹ Staff issued a third draft of the proposed rules on August 22, 2001, and Staff hosted a workshop to
26 address these requirements on August 30, 2001. Parties had one other opportunity to comment in
November.

27 ² The AZ Wireless Carriers Group also submits a redline copy showing its requested changes to the
proposed rules as Exhibit A.

1 may charge in order to recover their universal service support contributions” Id. at 1747; *see*
2 *also*, Texas Office of Pub Util. Counsel, 183 F.3d 393, 432 (1999) (“A State Commission could
3 require a universal service contribution based on end-user revenues, but leave the carrier free to set
4 its rates as it pleases while not blocking new carriers from entering the market . . .”).

5 R14-2-2001 should exempt *all* surcharges that wireless carriers place on their bills from the
6 definition of an “unauthorized charge” or clarify that only surcharges prohibited by law should be
7 included within the definition of an “unauthorized charge.” Wireless carriers are permitted under
8 federal law, for example, to recover the costs of contributions to the federal universal service fund
9 from their customers, but wireless carriers may place other charges on their bills to recover
10 contributions to various other federal and state programs such as local number portability, E911,
11 and interconnection. Some of these surcharges are not explicitly required or specifically authorized
12 to be passed through to customers, but neither are they prohibited because wireless carriers are not
13 subject to rate regulation. This Commission does not have the authority to prohibit wireless
14 carriers from passing through charges to their customers, and as such it does not have authority to
15 treat any surcharge as unauthorized.

16 **C. R14-2-2001(F) – Unsolicited Delivery of Wireless Phones**

17 This provision states that: “any charge related to a wireless phone delivered to a customer
18 without the charge being expressly authorized and verified in accordance with R14-2-2005 is an
19 Unauthorized Charge regardless of whether the charge is one-time or recurring.” This rule as
20 written is overbroad and might have the unintended consequence of denying wireless customers the
21 ability to take advantage of easy access to wireless service by purchasing “phone in a box” type
22 products that many carriers offer.

23 The AZ Wireless Carriers Group is aware of only a couple of wireless providers (both of
24 whom are not represented by these comments) that have delivered wireless handsets to customers
25 that have not requested their service, and that these customers have had difficulty stopping charges
26 associated with these handsets. This fraudulent practice is entirely distinct from the perfectly
27 legitimate distribution mechanism sometimes referred to as “phone in a box” products.

1 Unlike wireline customers, wireless customers generally must also purchase a wireless
2 phone when activating service with a new wireless service provider. "Phone in a box" products
3 permit customers to receive and activate wireless service without necessarily going to a retail store.
4 When a wireless customer calls a wireless carrier, visits an Internet web site, or shops at a retailer
5 that is an agent for a wireless carrier, often the customer will request to initiate service without
6 going directly to the wireless carrier's retail outlet. The wireless carrier either sends a handset by
7 mail or the customer will purchase the handset at the agent location.³ "Phone in a box" is a
8 convenient distribution mechanism for all Arizona customers, including those who live in the far-
9 reaches of the state or who for various reasons have a difficulty reaching a wireless carrier's retail
10 outlet.

11 To curtail unscrupulous practices without impacting legitimate "phone in a box" products,
12 the Commission should modify R14-2-2001(F) to apply only to "the *unsolicited* delivery of a
13 wireless phone without being expressly authorized and verified" in accordance with the rules.

14 **D. R14-2-2005 – Authorization Requirements**

15 The AZ Wireless Carriers Group has several suggestions on how to make the proposed
16 authorization rules less onerous. These requirements will be the primary mechanism by which
17 telecommunications companies ensure their compliance with these rules, and many telecommuni-
18 cations companies already have in place many procedures similar to those identified in the rules.
19 Even if a specific telecommunications company does not have procedures that align precisely with
20 those contained in the proposed rules (*i.e.*, notice, consent, verification), its practices may still be
21 fair and reasonable. To cause as little disruption to carrier operational systems and procedures as
22 necessary to achieve the Commission's objectives, these rules should be as flexible as possible.

23 _____
24 ³ For instance, one of the wireless carriers in the AZ Wireless Carriers Group offers the "phone in a
25 box" product in the following manner. When the customer opens the box, there will be a message on the
26 outside of the envelope instructing the recipient not to break the seal on the inner box unless he/she has read
27 all material in the envelope, which includes the Customer Agreement and other relevant material, and only
if he/she agrees with the terms and conditions of service set forth in the material. By breaking the seal on
the inner box (*i.e.*, tearing off the plastic shrink wrap that covers the box) and activating service, the
customer is deemed to have accepted the terms and conditions of service set forth in the material in the
envelope.

1 **1. R14-2-2005(A)(3) – Explicit Subscriber Acknowledgement**

2 Most telecommunications customers are sophisticated enough to understand that when they
3 purchase services, they will be expected to pay for the service. It should suffice for telecommuni-
4 cations companies to notify customers of this fact. This procedure is overbroad and unnecessary
5 given that a simple notification requirement would seem to serve purpose of the rule.

6 **2. R14-2-2005(B) – Communication of Subscriber Information**

7 R14-2-2005(B) requires telecommunications companies to communicate a host of informa-
8 tion to consumers when they request service. Many customers do not want to be inundated with
9 information when they sign up for a service, but they might find it useful to know that a
10 telecommunications company has an obligation to provide more detailed information if they
11 request it. The Commission can streamline this rule by requiring telecommunications companies to
12 notify customers that they have the right to have access to additional product and billing detail
13 while at the same time reducing the burden on telecommunications companies to provide the
14 information for every customer, regardless of the customer's desire to receive the information.
15 Telecommunications companies should only be required to offer the information to customers upon
16 request.

17 **3. R14-2-2005(C) – English/Spanish Language Requirement**

18 R14-2-2005(C) requires telecommunications companies to obtain authorization and offer to
19 conduct all sales transactions in English and Spanish and comply the customer's choice. To
20 minimize the awkwardness that such a rule would impose, the Commission should modify this rule
21 to require telecommunications companies to communicate with customers in English or Spanish
22 upon request. The Commission should not apply this requirement to transactions that take place in
23 carrier's retail stores because although many telecommunications companies have Spanish
24 customer service departments, not every store may have Spanish-speaking sales personnel on duty
25 at all times. In addition, the Commission should clarify that carriers are not required to conduct
26 transactions in any language, but only in the languages that the carrier uses to solicit business.

27

1 **E. R14-2-2007 – Notice of Subscriber Rights**

2 The obligation to provide notice of subscriber rights contained in R14-2-2007 places a
3 substantial burden on telecommunications companies while accomplishing little in terms of
4 protecting customers from fraudulent business practices. For wireless telecommunications
5 companies such as the members of the AZ Wireless Carriers Group that offer service in multiple
6 states and produce printed material to give to customers, the requirement to separately identify
7 Arizona legal requirements in these materials would be extremely burdensome and costly.
8 Moreover, even if customers were to use the information that this notice must contain under the
9 proposed rules, there is no guarantee that this will assist in resolving customers' complaints.⁴

10 One of the subsections of R14-2-2007 is already required in large part by federal law and is
11 therefore superfluous. Under FCC rules, carriers must prominently display a toll-free number on
12 all bills for customer inquiries.⁵ The remaining requirements of R14-2-2007(C)(1) are more
13 detailed than the federal rule because they include the obligation to include name, address, and
14 telephone number of the telecommunications company. These added burdens are unnecessary in
15 light of this federal requirement.

16 In any event, under the proposed rules as written, it is questionable whether many
17 customers would even have the notice of subscriber rights at the time they had a complaint. Under
18 R14-2-2007(D), notice must be provided at the time service is initiated, and many customers do not
19 keep materials provided to them at the time service is initiated. R14-2-2007(D) also requires
20 carriers to provide notice upon request, which means that these customers will need to call the
21 carrier anyway, making the requirement to provide the notice duplicative at best. The Commission
22

23 ⁴ This is exemplified by a requirement recently adopted by Public Regulation Commission ("PRC")
24 in New Mexico, where many of the wireless telecommunications companies that comprise the AZ Wireless
25 Carriers Group also operate. The PRC imposed the obligation for wireless carriers to provide customers a
26 toll free number for the PRC on the wireless bill. Rather than calling carriers first to attempt to resolve
27 concerns, many customers have instead initially called the New Mexico PRC, which has no ability to assist
customers in understanding their bills or resolving their complaints without carrier involvement. This
ultimately delays resolution. The Commission should only impose requirements where they will expedite
rather than delay resolution to customers' concerns.

⁵ 47 C.F.R. § 64.2001(d).

1 can account for all of these concerns by permitting telecommunications companies to achieve
2 compliance with this rule by placing an abbreviated form of the notice of subscriber rights in
3 periodic bill messages. In this way, telecommunications companies can avoid the cost and burden
4 of producing Arizona-specific printed material for new customers while at the same time
5 increasing the likelihood that all customers will have information when they need it.

6 **F. R14-2-2008 – Informal Complaint Process**

7 The Commission can decrease the number of potential complaints that will be filed at the
8 Commission if it includes a requirement for customers to attempt to resolve complaints first with
9 the telecommunications company before resorting to the Commission's informal complaint
10 process. The Commission should also provide telecommunications companies with sufficient time
11 to research and resolve complaints once they are filed with the Commission. This is because
12 complaints might involve, for example, roaming charges that could require more research than
13 simply reviewing a customer's account. The AZ Wireless Carriers Group therefore proposes that
14 the Commission change the time frames set forth in R14-2-2008 as follows:

- 15 ♦ R14-2-2008(B)(3) – change “5” days to “10” days
- 16 ♦ R14-2-2008(B)(4) – change “within 10 business days of the initial
17 Staff” to “within 20 business days after receipt of the initial Staff”
- 18 ♦ R14-2-2008(B)(5) – change “within 10 business days of Staff’s” to
19 “within 20 business days of receipt of Staff’s”
- 20 ♦ R14-2-2008(B)(8) – change “within 15 business days shall be
21 deemed” to “within 25 business days from the initial request shall be
22 deemed”
- 23 ♦ R14-2-2008(C) – change “within 30 days” to “within 30 business
24 days”

25 **G. R14-2-2009 – Compliance and Enforcement**

26 Instead of applying generally to all customer requests for products and services, the
27 Commission should make this provision effective only when Staff is reviewing a specific
complaint. Otherwise this provision could be overbroad.

1 **H. R14-2-2012 – Script Submission**

2 The obligation for all telecommunications companies to file a copy of all of their scripts is
3 highly burdensome and unnecessary. The Commission should therefore eliminate this require-
4 ment. If the Commission retains this rule, however, a better approach than the one currently
5 contained in the proposed rule would be to require telecommunications companies to produce a
6 copy of a script only if it relates to solicitation of business such as outbound telemarketing and only
7 if it is necessary to resolve a specific complaint. Telecommunications companies have scripts for a
8 variety of purposes such as how to operate features on a wireless handset that are completely
9 unrelated to the cramming concerns that are the subject of these proposed rules. Filing a copy of
10 all scripts with the Commission would be unnecessary and burdensome to both the carrier and the
11 Commission. This broad requirement would likely result in several filings a day perhaps by each
12 carrier, resulting in volumes of paper for the Commission to sort through. A streamlined approach
13 would be to only require outbound telemarketing scripts from a wireless carrier in conjunction with
14 a specific complaint. Furthermore some of the information contained in scripts used by competi-
15 tors in an extremely competitive marketplace, such as wireless carriers, is highly confidential and
16 proprietary. Carriers would thus be filing the majority of scripts under seal.

17 **II. APPLICABLE SCOPE OF PROPOSED RULES**

18 R14-2-2001(E) applies the cramming rules to telecommunications companies, which
19 includes all providers of wireless, cellular, personal communications services, or commercial
20 mobile radio services. R14-2-1903 exempts wireless carriers from the slamming rules unless they
21 are required by law to implement equal access. These proposed rules are contrary to the statutory
22 directives that are the basis for the rules.⁶ The AZ Wireless Carriers Group further disagrees with
23 the position taken by Staff on the Commission's ability to impose the slamming and cramming
24
25

26 ⁶ As set forth in the pleadings filed by Verizon Wireless in this proceeding, which the AZ Wireless
27 Carriers Group incorporates by reference, in this case the Commission's reference to the general language of
the Constitution cannot override the terms of the specific statute, A.R.S. § 44-1571 *et. seq.*, which exempts
wireless carriers from its requirements.

1 rules on wireless carriers.⁷ The AZ Wireless Carriers Group’s discussion of potential revisions to
2 the proposed rules is not a waiver of the jurisdictional challenge to the rules.

3 Notwithstanding the questions surrounding the legal basis for imposing cramming rules on
4 wireless carriers in Arizona, this proceeding has not produced any record that wireless carriers in
5 Arizona have engaged in such practices, and no showing that competitive forces in the CMRS
6 industry are insufficient to prevent such conduct. The AZ Wireless Carriers Group is aware that
7 the Commission has some concerns with the specific practices of at least one wireless carrier in
8 Arizona. The laws in Arizona are working in that the Attorney General has brought an action
9 against this carrier. The Arizona Commission, however, does not need to impose costly and
10 burdensome rules on all wireless carriers to correct the problem of one anomaly.

11 For example, in its Truth-in-Billing Order, the Federal Communications Commission
12 (“FCC”) found little evidence of complaints about wireless carrier billing practices that would have
13 given rise to a need to regulate them. The FCC used this lack of evidence as a reason to relieve
14 wireless carriers from most of its truth-in-billing requirements:

15 ...
16 ...
17 ...

18
19 ⁷ In a Staff Memorandum released late last year (Memorandum of Tim Sabo, Attorney, Legal
20 Division, to Chairman William A. Mundell, Commissioner Jim Irvin, and Commissioner Marc Spitzer
21 (December 10, 2001) (“Staff Memorandum”)), Staff explains that while these statutory provisions place
22 restrictions on long distance and local telecommunications providers, they explicitly state that they do not
23 apply to providers of “wireless, cellular, personal communications or commercial radio services.” A.R.S.
24 §§ 44-1571.1, -1571.2. [Staff Memorandum at 2] The Staff Memorandum concludes that although the
25 statute does not apply to wireless carriers, because the statute does not prohibit the Commission from
26 imposing cramming and slamming rules on wireless carriers, the Commission therefore retains jurisdiction
27 pursuant to its general authority over public service corporations to apply such rules to wireless carriers.
This is contrary to well-settled principles of law.

24 For example, it is axiomatic that a general grant of authority cannot trump a particular provision that
25 deals with the “narrow, precise, and specific subject” in question. Radzanower v. Touche Ross & Co., 426
26 U.S. 148, 153 (1976). The U.S. Supreme Court has held that “[t]he reason and philosophy of the rule is that,
when the mind of the legislator has been turned to the details of a subject, and he has acted upon it,” a
27 general provision “shall not be considered as intended to affect the more particular or positive” provision.
Id., 426 U.S. at 153 (citing T. Sedgewick, The Interpretation and Construction of Statutory and
Constitutional Law 98 (2d ed. 1874)); see also Pima County v. Heinfeld, 134 Ariz. 133 (1982) (when two
statutes deal with the same subject, the more specific statute controls).

1 The record does not, however, reflect the same high volume of customer
2 complaints in the CMRS context, nor does the record indicate that CMRS
3 billing practices fail to provide consumers with clear and non-misleading
4 information they need to make informed choices.⁸

4 In the three years since the FCC made these findings, it is undisputed that the competi-
5 tiveness of the wireless marketplace has only increased,⁹ making it even less likely that any
6 wireless carrier could engage in fraudulent business practices and maintain its customer base when
7 there are multiple wireless carriers doing business in Arizona. Wireless customers have a variety
8 of service options and can address their dissatisfaction with one carrier by taking their business to
9 another provider. In fact, requiring all wireless providers in Arizona to comply with these highly
10 prescriptive regulations will discourage service differentiation and competition between carriers.
11 Customer relations and billing practices are an important basis for competition and consumer
12 choice, and carriers distinguish themselves from their competitors in the marketplace through their
13 conduct in this area.¹⁰

14 **III. CONCLUSION**

15 The AZ Wireless Carriers Group urges the Commission to modify its proposed slamming
16 and cramming rules. The Commission should eliminate these proposed rules entirely as they apply

17 ⁸ Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed
18 Rulemaking, Federal Communications Commission, CC Docket No. 98-170, FCC 99-72, ¶ 16 (1999).

19 ⁹ According to a recent FCC study, 91% of the U.S. population can choose from three or more
20 CMRS providers. Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993,
21 Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile
22 Services, Sixth Report, FCC No. 01-192 (rel. July 17, 2001).

23 ¹⁰ The willingness of customers to change carriers is reflected in industry churn rates. Nationally,
24 churn in the wireless industry averages from 2% to 4.2% per month, depending upon the carrier. These
25 monthly rates translate into a yearly turnover of 25% to 50% of a wireless carrier's customer base. While
26 churn is driven by many factors, wireless telecommunications companies seize every opportunity to
27 minimize customer problems and retain their customer base. Implementing the proposed cramming rules in
28 their present form would hamper all wireless carriers in their efforts to reduce churn, reduce costs, and
29 thereby provide better service to their customers.

25 Wireless providers routinely add charges for services requested by the customer that relate to the
26 underlying wireless services, and there is simply no record of complaints in Arizona or elsewhere of
27 cramming in the wireless industry. If applied to such routine transactions, the Commission's highly
28 prescriptive proposed rules could dramatically reduce the ease with which customers can make changes to
29 their accounts while doing nothing to prevent the deceptive acts from which the Arizona legislature intended
30 to protect consumers.

ROSHKA HEYMAN & DEWULF, PLC
ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 to wireless telecommunications companies, given the Arizona Legislature's clear direction that
2 these companies not be covered by the rules. In any event, the Commission should make the
3 changes recommended herein to make the rules workable and sufficient to prevent fraudulent
4 conduct, while eliminating the many overbroad and vague mandates that would not accomplish
5 benefits for Arizona consumers.

6
7 RESPECTFULLY SUBMITTED June 7, 2002.

8 **ROSHKA HEYMAN & DEWULF, PLC**

9
10 By 

11 Michael W. Patten
12 One Arizona Center
13 400 East Van Buren Street, Suite 800
14 Phoenix, Arizona 85004
15 (602) 256-6100

16 Attorneys for Arizona Wireless Carriers Group

17 **ORIGINAL** and **10 COPIES** of the
18 foregoing filed June 7, 2002, with

19 Docket Control
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, Arizona 85007

23 **COPIES** of the foregoing hand-delivered
24 June 7, 2002, to:

25 Teena I. Wolfe, Esq.
26 ALJ, Hearing Division
27 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1 Christopher C. Kempley, Esq.
2 Timothy Sabo, Esq,
3 Legal Division
4 ARIZONA CORPORATION COMMISSION
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Ernest G. Johnson
8 Mark A. DiNunzio
9 Utilities Division
10 ARIZONA CORPORATION COMMISSION
11 1200 West Washington Street
12 Phoenix, Arizona 85007

13 **COPIES** of the foregoing mailed
14 June 7, 2002, to:

15 Thomas H. Campbell, Esq.
16 LEWIS AND ROCA LLP
17 40 North Central Avenue
18 Phoenix, Arizona 85007

19 Thomas F. Dixon
20 WORLD COM
21 707 17th Street, Suite 3900
22 Denver, Colorado 80202

23 Teresa Tan
24 WorldCom, Inc.
25 201 Spear Street, Dept 9976
26 San Francisco, California 94105

27 Mary B. Tribby
Richard S. Wolters
AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202

Joan S. Burke, Esq.
OSBORN MALEDON, P.A.
2929 North Central Avenue, Suite 2100
Phoenix, Arizona 85012-2794

Cindy Manheim, Esq.
AT&T WIRELESS
7277 164th Avenue N.E.
Redmond, Washington 98052

ROSHKA HEYMAN & DEWULF, PLC

ONE ARIZONA CENTER
400 EAST VAN BUREN STREET - SUITE 800
PHOENIX, ARIZONA 85004
TELEPHONE NO 602-256-6100
FACSIMILE 602-256-6800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Eric S. Heath, Esq.
SPRINT COMMUNICATIONS COMPANY L.P.
100 Spear Street, Suite 930
San Francisco, California 94105

Timothy Berg, Esq.
Theresa Dwyer, Esq.
FENNEMORE CRAIG, PC
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Daniel Pozefsky, Esq.
Residential Utility Consumer Office
2828 North Central Avenue, Suite 1200
Phoenix, Arizona 85004



EXHIBIT A

ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES

R14-2-2001. Definitions

R14-2-2002. Purpose and Scope

R14-2-2003. Application

R14-2-2004. Requirements for Submitting Authorized Charges

R14-2-2005. Authorization Requirements

R14-2-2006. Unauthorized Charges

R14-2-2007. Notice of Subscriber Rights

R14-2-2008. Informal Complaint Process

R14-2-2009. Compliance and Enforcement

R14-2-2010. Waivers

R14-2-2011. Severability

R14-2-2012. Script Submission

R14-2-2001. Definitions

- A. ~~"Authorized Carrier" means any Telecommunications Company that submits, on behalf of a Customer, a change in the Customer's selection of a provider of telecommunications service, with the Subscriber's authorization verified in accordance with the procedures specified in this Article.~~
- B. "Commission" means the Arizona Corporation Commission.
- C. "Customer" means the person or entity in whose name service is rendered, as evidenced by the signature on the application or contract for service, or by the receipt or payment of bills regularly issued in their name regardless of the identity of the actual user of service.
- D. "Subscriber" means the Customer identified in the account records of a Telecommunications Company; any person authorized by such Customer to change telecommunications services or to charge services to the account; or any person contractually or otherwise lawfully authorized to represent such Customer.
- E. "Telecommunications Company" means a public service corporation, as defined in the Arizona Constitution, Article 15, § 2, that provides telecommunications services within the state of Arizona and over which the Commission has jurisdiction. The phrase "Telecommunications Company" includes all providers of wireless, cellular, personal communications services, or commercial mobile radio services.
- F. "Unauthorized Charge" ("cramming") means any recurring charge on a Customer's telephone bill that was not authorized or verified in compliance with R14-2-2004. This does not include one-time pay-per-use charges or taxes and other surcharges ~~that have been authorized by law to be passed through to the Customer.~~ However, any charge related to the unsolicited delivery of a wireless phone delivered to a customer without the charge being expressly authorized and verified in accordance with R14-2-2005 is an Unauthorized Charge regardless of whether the charge is one-time or recurring.

R14-2-2002. Purpose and Scope

The provisions of this Article are intended to ensure all Customers in this state are protected from Unauthorized Charges on their bill from a Telecommunications Company.

R14-2-2003. Application

This Article applies to each Telecommunications Company.

R14-2-2004. Requirements for Submitting Authorized Charges

- A. A Telecommunications Company shall provide its billing agent with its name, telephone number, and a list with detailed descriptions of the products and services it intends to charge on a Customer's bill so that the billing agent may accurately identify the product or service on the Customer's bill.
- B. A Telecommunications Company or its billing agent shall specify the product or service being billed and all associated charges.
- C. A Telecommunications Company or its billing agent shall provide the Subscriber with a toll-free telephone number the Subscriber may call for billing inquiries.

R14-2-2005. Authorization Requirements

- A. A Telecommunications Company shall record the date of a service request and shall obtain from the Subscriber requesting a product or service the following:
 - 1. The name and telephone number of the Customer,
 - 2. Verification that Subscriber is authorized to order the product or service on the account, and
 - ~~3. Explicit Subscriber acknowledgement that the charges will be assessed on the Customer's bill.~~ A Telecommunications Company shall notify the subscriber that the charge will be assessed on the Customer's bill.
- B. A Telecommunications Company shall make available ~~communicate~~ the following information to a Subscriber upon ~~requesting a product or service~~:
 - 1. An explanation of each product or service offered,
 - 2. An explanation of all applicable charges,
 - 3. A description of how the charge will appear on the Customer's bill,
 - 4. An explanation of how a product or service can be cancelled, and
 - 5. A toll-free telephone number for Subscriber inquiries.
- C. The authorization required by R14-2-2005.A and the communications required by R14-2-2005.B shall be given in ~~all~~ any languages used to solicit at any point in the sales transaction. At the beginning of any sales transaction, the Telecommunications Company must ~~offer to~~ upon request, conduct the transaction in English or Spanish and must comply with the Customer's choice. This rules does not apply to in-store transactions.
- 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 telephone service.
- E. The individual Subscriber authorization record shall be maintained by the Telecommunications Company for 24 months.

R14-2-2006. Unauthorized Charges

- A. Upon discovery of an Unauthorized Charge, or upon notification by a Subscriber of an Unauthorized Charge, the billing Telecommunications Company shall:
 - 1. Immediately cease charging the Customer for the unauthorized product or service;
 - 2. Remove the Unauthorized Charge from the Customer's bill within 45 days;

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;
 4. Provide the Subscriber all billing records under the control of the Telecommunications Company related to any Unauthorized Charge. The billing records shall be provided within 15 business days of the Subscriber's notification;
 5. Maintain a record of each Unauthorized Charge of every Customer who has experienced any Unauthorized Charge for 24 months. The record shall include:
 - a. The name of the Telecommunications Company,
 - b. Each affected telephone number,
 - c. The date the Subscriber requested the Unauthorized Charge be removed from the Customer's bill, and
 - d. The date the Customer was refunded or credited the amount that the Customer paid for any Unauthorized Charge.
- B.** After a charge is removed from the Customer's bill, the Telecommunications Company shall not rebill the charge unless one of the following occurs:
1. The Subscriber and the Telecommunications Company agree the customer was accurately billed.
 2. The Telecommunications Company certifies with supporting documentation to the Subscriber that the charge was authorized pursuant to R14-2-2005.
 3. A determination is made pursuant to R14-2-2008 that the charge was authorized.
- 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; or
 2. File an unfavorable credit report against a Customer who has not paid charges that the Subscriber has alleged were unauthorized.
- D.** The Customer shall remain obligated to pay any charges that are not disputed.
- E.** Each occurrence of cramming an individual account shall constitute a separate violation of this Article, subject to individual enforcement actions and penalties as prescribed herein.

R14-2-2007. Notice of Subscriber Rights

- A.** A Telecommunications Company shall provide to each of its Subscribers a notice of the Subscriber's rights regarding Unauthorized Charges.
- B.** The notice may be combined with the notice required by R14-2-1908.
- C.** The notice shall include the following:
 1. The name, address and telephone number where a Subscriber can contact the Telecommunications Company;
 2. A statement that a Telecommunications Company is prohibited from adding products and services to a Customer's account without the Subscriber's authorization;
 3. A statement that the Telecommunications Company is required to return the service to its original service provisions if an Unauthorized Charge is added to a Customer's account;
 4. A statement that the Telecommunications Company shall not charge for returning the Customer to their original service provisions;

5. A statement 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 will permit, but no later than 15 days from the Subscriber's notification;
 6. A statement that a Customer who has been crammed can report the Unauthorized Charge to the Arizona Corporation Commission;
 7. The name, address, web site, and toll-free consumer services telephone number of the Arizona Corporation Commission.
- D.** Distribution, language and timing of notice.
1. A Telecommunications Company shall provide the notice described in this Section to new Customers at the time service is initiated, ~~and~~ upon Subscriber's request, or via a periodic bill message.
 2. A Telecommunications Company that publishes a telephone directory or contracts for publication of a telephone directory, shall arrange for the notice to appear in the white pages of its annual *telephone directory*.
 3. A Telecommunications Company with a web site may shall display the notice described in this Section on the company's web site.
 4. The notice of subscriber rights described in this section shall be written in both English and Spanish.

R14-2-2008. Informal Complaint Process

- A.** After attempting first to resolve the complaint directly with the telephone company, the Subscriber may file an informal complaint within 90 days of receiving notice of an Unauthorized Charge, or, thereafter, upon a showing of good cause. The complaint shall be submitted to the Commission Staff in writing, telephonically or via electronic transmission, and shall include:
1. Complainant's name, address, telephone number;
 2. The name of the Telecommunications Company that submitted the alleged Unauthorized Charge;
 3. The approximate date of the alleged Unauthorized Charge;
 4. A statement of facts, and documentation, to support the complainant's allegation;
 5. The amount of any disputed charges including the amount already paid; and
 6. The specific relief sought.
- B.** The Commission Staff shall:
1. Assist the parties in resolving the complaint;
 2. Notify the Telecommunications Company of the alleged Unauthorized Charge;
 3. Require the Telecommunications Company to provide an initial response within 10 ~~5~~ business days of receipt of notice from the Commission;
 4. Require the Telecommunications Company to provide documentation of the Subscriber's new service or product request. If such information is not provided to the Staff within 20 ~~40~~ business days after receipt of the initial Staff notification, Staff shall presume that an Unauthorized Charge occurred;
 5. Advise the Telecommunications Company that it shall provide Staff any additional information requested within 20 ~~40~~ business days of receipt Staff's request;
 6. Conduct a review of the complaint and related materials to determine if an Unauthorized Charge occurred; and
 7. Inform the Subscriber and the Telecommunications Company of Staff's findings upon conclusion of its review.
 8. Inform the Telecommunications Company that failure to provide the requested information or a good faith response to Commission Staff within 25 ~~45~~ business

days from the initial request shall be deemed an admission to the allegations contained within the request and the Telecommunications Company shall be deemed in violation of the applicable provisions of this Article.

- C. If the parties do not resolve the matter, the Staff will conduct a review of the informal complaint and related materials to determine if an Unauthorized Charge has occurred, which review shall be completed within 30 business days of the Staff's receipt of the informal complaint.
- D. Upon conclusion of its review, Staff shall render a written summary of its findings and recommendation to all parties. Staff's written summary is not binding on any party. Any party shall have the right to file a formal complaint with the Commission under A.R.S. § 40-246.

R14-2-2009. Compliance and Enforcement Related to a Specific Complaint

- A. In conjunction with a specific complaint, Commission Staff may request the a A Telecommunications Company shall to provide a copy of records related to a Subscriber's request for services or products, to Commission Staff upon request.
- B. If the Commission finds that a Telecommunications Company is in violation of this Article, the Commission shall order the company to take corrective action as necessary, and the company may be subject to such penalties as are authorized by law. The Commission may sanction a Telecommunications Company in violation of this Article by prohibiting further solicitation of new customers for a specified period, or by revocation of its Certificate of Convenience and Necessity. The Commission may take any other enforcement actions authorized by law.
- C. The Commission Staff shall coordinate its enforcement efforts regarding the prosecution of fraudulent, misleading, deceptive, and anti-competitive business practices with the Arizona Attorney General.

R14-2-2010. Waivers

- A. The Commission may waive compliance with any provision of this Article upon a finding that such a waiver is in the public interest.
- B. A Telecommunications Company may petition the Commission for a waiver of any provision of this Article by filing an application for waiver setting forth with specificity the waiver being sought and the circumstances showing that a waiver is in the public interest.

R14-2-2011. Severability

If any provision of this Article is found to be invalid, it shall be deemed severable from the remainder of this Article and the remaining provisions of this Article shall remain in full force and effect.

R14-2-2012. Script Submission

~~Each Telecommunications 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.~~ In conjunction with a specific complaint, the Director of the Utilities Division may initiate a formal complaint under R14-3-101 through R14-3-113 to review any outbound telemarketing 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.