



0000083895

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

WILLIAM A. MUNDELL  
Chairman

2001 AUG 10 P 4: 03

JIM IRVIN  
Commissioner

AZ CORP. COMMISSION  
DOCUMENT CONTROL

MARC SPITZER  
Commissioner

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

DOCKET NO. RT 00000J-99-0034

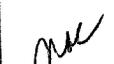
COMMENTS OF AT&T WIRELESS  
ON THE DRAFT SLAMMING AND CRAMMING RULES

I. INTRODUCTION

AT&T Wireless PSC, LLC ("AT&T Wireless") respectfully requests that the Arizona Corporation Commission ("Commission") accept these late filed comments on the Commission's Second Draft Proposed Rules on Slamming and Cramming. AT&T Wireless generally supports the comments filed by Verizon Wireless on July 7, 2001, and provides additional comments on the proposed rules herein. AT&T Wireless believes that due to the Legislature's express exemption of wireless carriers from the referenced statutes, the application of the proposed cramming rules, R14-2-2003, should be clarified to exclude wireless carriers and the application of the slamming rules, R14-2-1903, should be revised to permanently exclude wireless carriers

Arizona Corporation Commission  
DOCKETED

AUG 10 2001

DOCKETED BY 

## DISCUSSION

### **I. The Commission should clarify that the proposed rules do not apply to wireless providers.**

As stated in the press release issued on May 29, 2001, in conjunction with the first proposed rules, these rules are being promulgated consistent with the Arizona statutes regarding slamming and cramming.<sup>1</sup> The 1999 legislation referred to in the press release, however, specifically exempts wireless, cellular, personal communication or commercial mobile radio service (“CMRS”) from the definition of local and long-distance telecommunications service provider and thus also exempts them from the sections addressing authorization and verification requirements.<sup>2</sup> In addition, the press release specifically states that the proposed rules apply to any “local phone service provider operating in Arizona and those companies that provide in-state long distance service.” It would appear from the press release, therefore, that the Commission intended its rules to be consistent with the Arizona statutes and to only apply to local phone service and long distance providers – not wireless providers. Nevertheless, the Commission in the second proposed rules appears to apply the cramming rules to wireless providers now and the slamming rules to wireless providers as soon as they become local number portability (“LNP”) capable.

---

<sup>1</sup> “Slamming and Cramming, a form of consumer fraud and abuse, is about to get harder to perpetrate in Arizona...The Arizona State Legislature passed a law in 1999 granting the Arizona Corporation Commission authority to take action against telecommunications companies that engage in this form of consumer fraud.” See Press Release, May 29, 2001.

<sup>2</sup> See A.R.S. §§ 44-1571 to 44-1574.

**A. The Commission cannot apply the proposed slamming rules to wireless providers.**

The application section of the proposed slamming rules references 47 C.F.R. 64.1100 and 47 C.F.R. 64.1150. These are both encompassed in subpart K of the federal rules, which is titled "Changing Long Distance Service." Subpart K contains the federal parameters for the verification and authorization requirements for changing a customer's long distance service provider. The FCC has recognized that wireless carriers do not engage in slamming and has specifically exempted wireless carriers from the federal verification requirements. Specifically, the federal rules provide that CMRS providers "shall be excluded from the verification requirements of this part..."<sup>3</sup>

The FCC provided ample support for its conclusion that CMRS providers cannot engage in slamming. First, CMRS providers are exempt from equal access requirements under section 332(c)(8) of the Communications Act, as amended.<sup>4</sup> As a result, wireless carriers generally include long distance minutes as a component of the entire service package and customers do not select a separate long distance carrier. Second, it is very difficult to change a customer's wireless service without the customer's express approval and knowledge because typically the customer must physically reprogram the handset or purchase a new handset to initiate service with a new wireless carrier.<sup>5</sup>

Even setting aside the clear FCC exclusion for wireless carriers and the more practical problems associated with a wireless slam, it is unclear why the slamming rules

---

<sup>3</sup> 47 C.F.R. 64.1120(a)(3).

<sup>4</sup> Specifically this section states that a CMRS provider "shall not be required to provide equal access to common carriers for the provision of telephone toll services." 47 U.S.C. 332(c)(8).

<sup>5</sup> See *Implementation of Subscriber Carrier Selection Changes Provision of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, ("Slamming Order") Second Report and Order, CC Docket 94-129 (rel. Dec. 23, 1998).

are suspended only until wireless providers become LNP capable.<sup>6</sup> As described above, it is nearly impossible to change a customer's wireless phone service provider without the customer's knowledge and consent; that process will not require less customer participation when wireless carriers become LNP capable. Even when a wireless customer can keep his or her mobile phone number when switching to a new carrier, that customer will still generally have to purchase a new wireless handset or device to change service providers. Given these facts, it makes good sense for the Commission to exclude all wireless carriers from application of the proposed slamming rules.

AT&T Wireless, therefore, respectfully requests that the Commission completely exempt wireless carriers from the slamming rules by deleting that portion of R14-2-1903 that begins with "at such time" and concludes with "local number portability."

**B. The Commission should clarify that the cramming rules do not apply to wireless carriers.**

There is no evidence in the record to suggest that Arizona needs detailed rules to address cramming or unauthorized charges by wireless carriers. The absence of cramming evidence by wireless carriers in Arizona is completely consistent with findings of the FCC. In the course of preparing its Truth-In-Billing order, the FCC found little evidence of problems, customer confusion, or complaints with respect to CMRS billing practices and therefore applied only limited rules to wireless carriers.<sup>7</sup> Under the applicable FCC rules, telephone bills must be clearly organized and the name of the

---

<sup>6</sup> See R14-2-1903. These rules do not apply to providers of wireless, cellular, personal communications services or commercial radio services, until such time as those telecommunications companies are mandated by law to provide equal access or local number portability.

<sup>7</sup> See In the Matter of Truth-in-Billing Format, First Report and Order and Further Notice of Proposed Rulemaking, ("Truth-in-Billing Order"), CC Docket No. 98-170, FCC 99-72 (released May 11, 1999) at paragraph 16.

service provider associated with each charge must be clearly identified on the telephone bill.<sup>8</sup> Also, telephone bills must contain clear and conspicuous disclosure of information, and carriers must prominently display a toll-free number on each bill for customer inquiries.<sup>9</sup>

In addition to the lack of complaints to justify the application of the Commission's rules, vigorous competition in the wireless market already ensures that no single wireless provider could engage in unjust or unreasonable billing practices. In a competitive market, such as the current commercial mobile radio service ("CMRS") market, the risk to a provider of engaging in cramming is that consumers will soon discover these practices and simply switch to another CMRS provider. Currently ninety-one percent of the United State population has access to three or more wireless service providers and over seventy-five percent of the population lives in an area with five or more competing operators.<sup>10</sup> Several counties in Arizona have seven or more facilities based CMRS providers.<sup>11</sup> Unlike other segments of the telecommunications market, there is real facilities based competition in the wireless arena. Furthermore, it is very expensive for wireless providers to acquire a new customer. Carriers, therefore, have every incentive to keep the customer satisfied so that they will not switch to a competitor.

AT&T Wireless already provides its customers with fair notice and clear price information. Moreover, AT&T Wireless charges its customers only for those services the

---

<sup>8</sup> 47 C.F.R. 64.2001(a)(1).

<sup>9</sup> 47 C.F.R. 64.2001(d).

<sup>10</sup> See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Radio Services, Sixth Report, ("FCC's 6<sup>th</sup> Competition Report"), FCC 01-192 (released July 17, 2001), page 6.

<sup>11</sup> *Id.* at page 8.

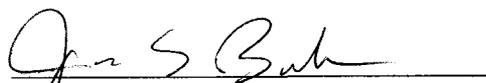
customer orders. There is simply no need to apply these rules to wireless carriers. Furthermore, wireless providers such as AT&T Wireless operate their business on a national basis. Promulgating unnecessary Arizona specific requirements will not provide additional benefit to wireless customers in Arizona, but will make it more expensive to provide service, which in a competitive environment usually results in increased cost to the customer.

### CONCLUSION

AT&T respectfully requests that the Commission clarify that the proposed rules exclude wireless providers for the reasons enumerated above.

Respectfully submitted this 10<sup>th</sup> day of August, 2001.

AT&T WIRELESS SERVICES, INC.



John S. Burke  
OSBORN MALEDON, P.A.  
2929 N. Central, Suite 2100  
Phoenix, AZ 85012  
Telephone: (602) 640-9356  
Facsimile: (602) 640-6074  
E-mail: jsburke@omlaw.com  
and

Cindy Manheim  
Regulatory Counsel  
AT&T Wireless  
7277- 164<sup>th</sup> Avenue NE  
Redmond, WA 98052  
Phone: 425-580-8112  
Fax: 425-580-8652

## CERTIFICATE OF SERVICE

I hereby certify that the original and 10 copies of the Comments of AT&T Wireless on the Draft Slamming and Cramming Rules, regarding Docket No. RT-00000J-00-0034, were hand delivered this 10th day of August, 2001, to:

Arizona Corporation Commission  
Docket Control – Utilities Division  
1200 West Washington Street  
Phoenix, AZ 85007

and that a copy of the foregoing was hand-delivered this 10th day of August, 2001 to the following:

Deborah Scott  
Director – Utilities Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

Chris Kempley  
Director of Legal Division  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, AZ 85007

and that a copy of the foregoing was sent via United States Mail, postage prepaid, on the 10th day of August, 2001 to the following:

Timothy Berg  
Fennemore Craig, P.C.  
3003 North Central Ave.  
Suite 2600  
Phoenix, AZ 85012  
Attorneys for Qwest

Jeffrey W. Crockett  
Thomas L. Mumaw  
Snell & Wilmer  
One Arizona Center  
Phoenix, AZ 85004-2202

Michael W. Patten  
Roshka Heyman & DeWulf  
400 North 5th Street  
Suite 1000  
Phoenix, AZ 85004  
Attorneys for Cox, e-spire, McLeod USA,  
Teligent, Z-Tel, MGC Communications

Thomas H. Campbell  
Lewis & Roca LLP  
40 N. Central Avenue  
Phoenix, AZ 85004  
Attorneys for Rhythms Links, Inc., Time Warner,  
WorldCom, Echelon Telecom, Allegiance

Albert Sterman  
Arizona Consumers Council  
P.O. Box 1288  
Phoenix, AZ 85001

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

Curt Huttzell, Ph.D.  
Director, State Government Affairs  
Citizens Communications  
4 Triad Center, Suite 200  
Salt Lake City, UT 84180

Bradley s. Carroll  
Cox Communications  
20401 N. 29th Avenue  
Phoenix, AZ 85027

---

379273 v1