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EXCEPTION ORIGINAL

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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER

Arizona Corporation Commission
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AZ CORP COMMISSION
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IN THE MATTER OF RULES TO ADDRESS
SLAMMING AND OTHER DECEPTIVE
PRACTICES

Docket No. RT-00000J-99-0034

**EXCEPTIONS OF THE ARIZONA
WIRELESS CARRIERS GROUP**

Alltel Communications, AT&T Wireless, Leap Wireless/Cricket Communications, Nextel Communications, Sprint PCS, Verizon Wireless, Voicestream, and Western Wireless (collectively the "AZ Wireless Carriers Group") submit the following exceptions to the Recommended Opinion and Order ("ROO") and the appendices thereto.

I. REVISIONS TO PROPOSED RULES

In enacting the proposed rules on Consumer Protections for Unauthorized Carrier Charges, A.A.C. R14-2-2001 *et seq.* (the "Rules"), the Commission must balance effective consumer protection against undue regulatory burden and cost on providers. As applied to wireless carriers, the Rules fail to achieve that balance. The wireless industry is committed to treating its customers well and offering a broad range of products and services to meet customers' needs. Customer Care is one area in which carriers compete against each other in the marketplace, and carriers already have in place internal procedures to ensure that Arizona consumers are protected from "unauthorized charges." Moreover, several of the proposed Rules fail to effectively protect Arizona consumers against the unscrupulous practices that the Rules seek to prevent. At the same time, the proposed Rules will be impractical and extremely costly for the wireless carriers to

1 implement without added consumer benefit. Given these infirmities, the Commission should
2 modify the proposed rules as set forth below.

3 **A. R14-2-2005 – Authorization Requirements**

4 This Rule is the primary mechanism by which telecommunications companies ensure their
5 compliance with the Rules, and many telecommunications companies already have in place many
6 procedures to ensure prompt resolution of any complaints by their respective customers. These
7 Rules should be as flexible as possible to cause as little disruption to carrier operational systems
8 and procedures as necessary to achieve the Commission’s objectives.

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

10 R14-2-2005(A)(3) requires telecommunications companies to obtain “explicit subscriber
11 acknowledgement” that charges will be assessed on the bill. This subsection should be deleted.
12 Requiring “explicit subscriber acknowledgement” is overbroad and unnecessary. Most
13 telecommunications customers are sophisticated enough to understand that when they purchase
14 services, they will be expected to pay for the service. They should not have to explicitly
15 acknowledge that fact. It should suffice for carriers to notify customers that they will be charged.
16 Moreover, the Commission is unnecessarily vague by failing to provide a clear definition of
17 “explicit . . . acknowledgement.” Finally, the wireless carriers may have to modify their methods
18 of offering services to customers in Arizona in order to comply with these requirements. This Rule
19 places an unnecessary burden on wireless carriers and offers little or no benefit to the Arizona
20 consumer.

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

22 R14-2-2005(B) requires telecommunications companies to communicate a host of informa-
23 tion to consumers when they request service. Many customers do not want to be inundated with
24 information when they sign up for a service, but they might find it useful to know that a
25 telecommunications company has an obligation to provide more detailed information if they
26 request it. The Commission can streamline this Rule by requiring telecommunications companies
27 to notify customers that they have the right to have access to additional product and billing detail

1 while at the same time reducing the burden on telecommunications companies to provide the
2 information for every customer, regardless of the customer's desire to receive the information.
3 Telecommunications companies should only be required to offer the information to customers upon
4 request. Alternatively, the information should be provided to the customer with the first bill. It is
5 at this point that the customer may have questions and will have information such as the contact
6 number readily available.

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

8 R14-2-2005(C) requires telecommunications companies to obtain authorization and to offer
9 to conduct all sales transactions in English and Spanish and the customer's choice. To minimize
10 the awkwardness that the Rule will impose, the Commission should modify this Rule to require
11 telecommunications companies to communicate with customers in English or Spanish upon
12 request. In addition, the Commission should clarify that carriers are not required to conduct
13 transactions in any language, but only in the languages that the carrier uses to solicit business. The
14 second sentence of this subsection should be modified to read: "During any sales transaction, if the
15 customer requests to conduct the transaction in specific language, the Company must comply with
16 the customer's request or shall not complete the transaction."

17 **B. R14-2-2007 – Notice of Subscriber Rights**

18 The obligation to provide notice of subscriber rights contained in R14-2-2007 places an
19 unnecessary burden on telecommunications companies while accomplishing little in terms of
20 protecting customers from fraudulent business practices. For wireless telecommunications
21 companies, such as the members of the AZ Wireless Carriers Group, that offer service in multiple
22 states and produce printed material to give to customers, the requirement to separately identify
23 Arizona legal requirements in these materials will be extremely burdensome and costly.¹

24
25 ¹ One of the subsections of R14-2-2007 is already required in large part by federal law and is
26 therefore superfluous. Under FCC rules, carriers must prominently display a toll-free number on all bills for
27 customer inquiries. 47 C.F.R. § 64.2001(d) The remaining requirements of R14-2-2007(C)(1) are more
detailed than the federal rule because they include the obligation to include name, address, and telephone
number of the telecommunications company. These added burdens are unnecessary in light of this federal
requirement.

1 The *ROO* does not adequately address the AZ Wireless Carriers Group's alternative
2 proposal regarding the timing of the notice. Under the Rules as written, it is questionable whether
3 many customers would even have the notice of subscriber rights at the time they had a complaint.
4 Under R14-2-2007(D), notice must be provided at the time service is initiated, and many customers
5 do not keep materials provided to them at the time service is initiated. R14-2-2007(D) also
6 requires carriers to provide notice upon request, which means that these customers will need to call
7 the carrier anyway, making the requirement to provide the notice duplicative at best.

8 The AZ Wireless Carriers Group believes this requirement should be deleted. Alterna-
9 tively, the AZ Wireless Carriers Group submits that the Commission can account for all of these
10 concerns by permitting telecommunications companies to achieve compliance with this subsection
11 *by placing an abbreviated form of the notice of subscriber rights on the initial bill or in periodic*
12 *bill messages.* This also ensures that the notice will in fact be provided. In this way, telecom-
13 munications companies can avoid the cost and burden of producing Arizona-specific printed
14 material for new customers while at the same time increasing the likelihood that all customers will
15 have information when they need it.

16 **C. R14-2-2008 – Informal Complaint Process**

17 In its previous comments, the AZ Wireless Carriers Group proposed that this Rule include a
18 requirement that customers attempt to resolve complaints first with the telecommunications
19 company before resorting to the Commission's informal complaint process. This would decrease
20 the number of potential complaints that will be filed at the Commission. The *ROO* did not address
21 that proposal. The AZ Wireless Carriers Group submits that such a requirement would conserve
22 resources of both the Commission and the carriers.

23 The Commission should also provide telecommunications companies with sufficient time to
24 research and resolve complaints once they are filed with the Commission. Although the AZ
25 Wireless Carriers Group supports prompt resolution of complaints, the wireless carriers often face
26 situations where obtaining pertinent information may take significant time. For example, a
27 complaint might involve roaming charges that could require more research than simply reviewing a

1 customer's account. In such an instance, research may require contacting other carriers for relevant
2 and necessary information. The AZ Wireless Carriers Group therefore proposes that the
3 Commission change the time frames set forth in R14-2-2008 as follows:

- 4 ♦ R14-2-2008(B)(3) – change “5” days to “10” days
- 5 ♦ R14-2-2008(B)(4) – change “within 10 business days of the initial
6 Staff” to “within 20 business days after receipt of the initial Staff”
- 7 ♦ R14-2-2008(B)(5) – change “within 10 business days of Staff’s” to
8 “within 20 business days of receipt of Staff’s”
- 9 ♦ R14-2-2008(B)(8) – change “within 15 business days shall be
10 deemed” to “within 25 business days from the initial request shall be
11 deemed”
- 12 ♦ R14-2-2008(C) – change “within 30 days” to “within 30 business
13 days”

14 These slight extensions of response times may provide Staff more responsive
15 answers sooner, rather than repeated good faith responses that the carrier is awaiting
16 responsive documentation from another carrier.

17 **D. R14-2-2009 – Compliance and Enforcement**

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

21 **E. R14-2-2012 – Script Submission**

22 Although the proposed revisions to Rule 2012 address some of the issues previously raised
23 by the AZ Wireless Carriers Group, Rule 2012 – even as revised – is unduly burdensome. Carriers
24 offer a wide range of service plans and options to meet the varied needs and lifestyles of their
25 customers. This rule requires wireless carriers to inundate the Commission with copies of sales or
26 marketing scripts used by direct and indirect sales and customer service representatives for all
27 service plans and options. Initial and ongoing compliance with this requirement will be extremely
costly to the wireless carriers, with little benefit to the Commission or Arizona consumers, since
submission of these scripts is not connected to specific customer complaints. Moreover, this Rule
is unnecessary, because the wireless industry sales practices are already subject to comprehensive,

1 consumer protection laws that address misleading or other improper marketing activities, such as
2 the Arizona Consumer Fraud law, A.R.S. § 44-1521 *et seq.* The AZ Wireless Carriers Group
3 believes that the submission of sales or marketing scripts to Staff in connection with actual
4 complaints or in response to a specific request for review from the Commission is a more
5 appropriate balancing of benefit against burden than is the annual wholesale submission of such
6 scripts. Subsections 2012.A and 2012.B should be deleted and replaced with a subsection that
7 states: “Upon request of the Director, a Telecommunications Company shall provide under seal
8 any marketing or sales script related to a specific customer complaint or other specific request from
9 the Director.”

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

11 R14-2-2001(E) applies the Consumer Protections for Unauthorized Carrier Charges Rules,
12 A.A.C. R14-2-2001 *et seq.* to “telecommunications companies,” which includes all providers of
13 wireless, cellular, personal communications services, or commercial mobile radio services. These
14 proposed rules are contrary to the statutory directives that are the basis for the Rules. As set forth
15 in the pleadings previously filed by Verizon Wireless in this docket, which the AZ Wireless
16 Carriers Group incorporates by reference, A.R.S. §44-1571 *et seq.* – which is the statutory
17 authorization for the Rules – expressly exempts wireless carriers from the applicability of the
18 statute. A.R.S. §§44-1571.3, 44-1571.4. Moreover, as set forth its previous comments, the AZ
19 Wireless Carriers Group further disagrees with the position taken by Staff on the Commission’s
20 ability to impose the Unauthorized Carrier Charges Rules on wireless carriers. The AZ Wireless
21 Carriers Group’s exceptions that discuss potential revisions to the proposed Rules are not a waiver
22 of the jurisdictional challenge to the rules. As a result, the proposed Rules should expressly
23 exempt wireless carriers.

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1 **III. CONCLUSION**

2 The AZ Wireless Carriers Group urges the Commission to expressly exempt wireless
3 telecommunications companies from application of the proposed Rules. Alternately, the
4 Commission should revise the Rules as recommended above to be workable and sufficient to
5 prevent fraudulent conduct, while eliminating the many overbroad or unworkable mandates that do
6 not provide significant benefits for Arizona consumers.

7
8 RESPECTFULLY SUBMITTED October 17, 2002.

9 **ARIZONA WIRELESS CARRIERS GROUP**

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