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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS
DOUG LITTLE - CHAIRMAN
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ANDY TOBIN

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AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE COMMISSION)
INQUIRY INTO POSSIBLE MODIFICATION OF)
THE COMMISSION'S CONSUMER)
PROTECTIONS FOR UNAUTHORIZED)
CARRIER CHANGES RULES APPLICABLE TO)
TELECOMMUNICATIONS CARRIERS, A.A.C.)
ARTICLE 19, R14-2-1901 ET SEQ. AND A.A.C.)
ARTICLE 20, R14-2-2001 ET SEQ. ALSO)
REFERRED TO AS THE COMMISSION'S)
SLAMMING AND CRAMMING RULES.)

DOCKET NO. T-00000A-15-0247

**APPLICATION TO REPEAL
SLAMMING AND CRAMMING
RULES**

Cox Arizona Telcom, LLC; Qwest Corporation d/b/a CenturyLink QC; AT&T Inc.; MCI Communications Services, Inc.; MCImetro Access Transmission Services LLC; TTI National, Inc.; Verizon Long Distance LLC; Verizon Select Services, Inc.; Arizona Local Exchange Carriers Association; Citizens Telecommunications Company of the White Mountains, Inc.; Citizens Utilities Rural Company, Inc.; Navajo Communications Company, Inc.; Frontier Communications of the Southwest, Inc.; Valley Telephone Cooperative, Inc.; Copper Valley Telephone, Inc.; Table Top Telephone Company, Inc.; Southwestern Telephone Company; Arizona Telephone Company; Accipiter Communications, Inc. d/b/a Zona Communications; Eschelon Telecom of Arizona, Inc. d/b/a Integra Telcom; Electric Lightwave, LLC d/b/a Integra Telecom; and Mountain Telecommunications of Arizona, Inc. d/b/a Integra Telcom ("Applicants") request that the Arizona Corporation Commission ("Commission" or "ACC") repeal its telecommunications "slamming" and "cramming" rules.¹

The ACC Slamming and Cramming Rules were enacted over a decade ago and in the intervening years, significant changes have occurred in the telecommunications industry. The Arizona rules are outdated, burdensome, and provide little, if any, material benefit to customers

¹ Consumer Protections for Unauthorized Carrier Changes, A.A.C. R14-2-1901 to -1913 ("ACC Slamming Rules") and Consumer Protections for Unauthorized Carrier Charges, A.A.C. R14-2-2001 to -2011 ("ACC Cramming Rules").

1 beyond parallel federal regulations. The FCC's Slamming Rules² and Truth-in-Billing Rules³
2 have proven to be very effective and would continue to protect customers upon repeal of the ACC
3 rules. Repealing the Arizona Rules will also prevent confusing inconsistencies between the
4 Arizona and federal rules, as well as eliminate the burden with having carriers comply with
5 multiple sets of rules.

6 Should the Commission desire to retain regulatory oversight of slamming and cramming
7 activities, the Applicants propose the following alternatives that will still mitigate the burden and
8 confusion of complying with the parallel state and federal rules. With respect to the slamming
9 rules, the Commission could either (i) repeal the ACC Slamming Rules and elect to administer the
10 FCC's Slamming Rules pursuant to 47 CFR 64.1110 or (ii) amend the existing ACC Slamming
11 Rules to adopt the FCC rules (proposed amended slamming rules are attached as Exhibit A). With
12 respect to the cramming rules, the Commission could amend the existing ACC Cramming Rules to
13 mitigate the differences with federal requirements (proposed amended cramming rules are attached
14 as Exhibit B).

15 **I. OVERVIEW.**

16 The ACC Slamming and Cramming Rules were enacted more than a decade ago, in very
17 different circumstances. Competition has increased throughout the telecommunications market,
18 giving customers many choices. Today, almost everyone has a cell phone—a technology not
19 regulated by the ACC Slamming and Cramming Rules. Other types of service, such as Vonage's
20 portable VOIP services, have also become popular—another technology not regulated by the
21 Slamming and Cramming Rules. Moreover, the old practice of having different local and long
22 distance providers has largely faded away, with many consumers exclusively using their
23 cellphones for long distance calls. Moreover, in today's competitive telecommunications
24 environment, virtually all carriers provide service in multiple states and typically operate customer
25 service centers that serve multiple states.

26 The ACC Slamming and Cramming Rules address the same basic concerns as the FCC

27
28 ² 47 CFR 64.1100 to .1195.

³ 47 CFR 64.2400 to .2401.

1 rules. However, the two sets of rules contain numerous differences in operation. As a result,
2 carriers operating in Arizona face the cost and challenge of ensuring that changes in carriers or
3 service in Arizona comport with a different process and that their customer service representatives
4 are familiar with such differences between the rules.

5 To avoid duplication, undue burden and unnecessary confusion, Applicants request that the
6 Commission repeal the ACC Slamming and Cramming Rules and allow the FCC to regulate
7 slamming and cramming under its established and effective counterparts. This will eliminate
8 confusing operational inconsistencies between the different sets of rules thus eliminating the
9 burden of having to comply with multiple sets of rules designed to address the same concerns.

10 **II. HISTORICAL BACKGROUND OF THE SLAMMING AND CRAMMING RULES.**

11 The ACC Rules originated with an "Application for Emergency Rulemaking"⁴ filed by US
12 West Communications, Inc.⁵ on January 28, 1999. US West's Application asked the Commission
13 to immediately adopt the federal slamming rules on an emergency basis to fight an epidemic of
14 slamming that existed at the time. US West explained that the problem existed in both the
15 interLATA and intraLATA markets:

16 Although slamming is traditionally thought of as the unauthorized change of a
17 customer's interLATA carrier, the FCC rules state that slamming also occurs
18 when an unauthorized change of a customer's intraLATA toll or local provider
19 takes place. In order to prevent slamming in each of these unique markets, the
20 FCC rules require "separate authorization and verification" for interLATA toll,
21 intraLATA toll and local service.⁶

22 US West claimed that "Slamming has become so pervasive that it warrants, in fact
23 demands, this Commission's immediate attention. The facts show that the problem is increasing at
24 an alarming rate."⁷ US West also noted the confusion between changing interLATA and
25 intraLATA carriers:

26 LATA lines are a creature of divestiture about which very few consumers are
27 even aware.... After polling over 75,000 customers in five states, over 65% of

28 ⁴ Docket No. RT-00000J-99-0034

⁵ Qwest Corporation d/b/a CenturyLink QC is the successor to US WEST Communications, Inc.

⁶ US West Application, page 2.

⁷ Id., page 4.

1 the consumers who had their intraLATA provider changed were unaware that
2 they had changed both their interLATA and intraLATA toll carriers. Thus,
customer confusion was the rule, not the exception.⁸

3 US West also objected to certain practices it alleged that some long-distance carriers engaged in.
4 MCI WorldCom, Inc. responded in February 1999, strongly objecting to US West's proposal,
5 claiming that MCI's practices were not misleading, and that US West was simply trying to
6 preserve its market share.⁹ Numerous other telecommunications companies filed various
7 comments.

8 On May 22, 2001, the Commission Staff filed draft slamming and cramming rules for
9 comment. The draft cramming rules largely paralleled the slamming rules. Staff stated that "[i]n
10 developing these proposed rules, Staff has researched the FCC rules related to these subjects, as
11 well as rules from other states." Staff released a revised draft on July 2, 2001, and a third draft on
12 August 22, 2001. Staff also hosted workshops to discuss the proposed rules. Numerous
13 companies filed comments to one or more of the drafts.

14 The Commission initially approved a Notice of Proposed Rulemaking in Decision No.
15 64800 (May 12, 2002). Numerous companies filed comments. The Commission then issued
16 Decision No. 65452 (Dec. 12, 2002) which approved a Notice of Final Rulemaking and directed
17 that the rules be sent to the Attorney General for certification under A.R.S. § 41-1044. In response
18 to a dispute over the applicability to wireless carriers, the Commission approved a revised Notice
19 of Final Rulemaking in Decision No. 66967 (May 11, 2004), which excluded such carriers from
20 the rules. The ACC Slamming and Cramming Rules then took effect in July 2004.

21 **III. THE TELECOMMUNICATIONS LANDSCAPE HAS RADICALLY CHANGED**
22 **SINCE 1999.**

23 The telecommunications industry has significantly evolved since US West filed its
24 rulemaking application in January 1999. Back then, US West was prohibited from offering
25 interLATA long-distance service, and large long-distance companies aggressively marketed their
26 long distance services. Almost everyone had a traditional "land line" phone. Only 26% of the
27

28 ⁸ Id., page 5.

⁹ Comments of MCI WorldCom, Inc., Feb. 05, 1999, in Docket RT-00000J-99-0034.

1 population had a wireless phone.¹⁰ Some consumers had different interLATA and intraLATA
2 long distance carriers. Long distance rates were of significant concern to consumers. And US
3 West's rates were still set using traditional rate-of-return rate cases.

4 The market has now changed radically. The original issue raised by US West—confusion
5 over changing interLATA verses intraLATA toll carriers—is a relic of the past. LATAs arose
6 under the breakup of AT&T in the early 1980's. Following divestiture, the “baby bells” or
7 Regional Bell Operating Companies (“RBOCs”) were prohibited from offering interLATA
8 service, but that restriction has long since been lifted.

9 Moreover, as the price of long distance services dropped due to advances in technology
10 (such as fiber optic communications and regulatory restrictions being lifted) the old practice of
11 having a separate long-distance provider has faded away, and almost all customers receive both
12 local and long-distance service from the same company. Indeed, most residential consumers now
13 use the ubiquitous wireless phones to place long distance calls.

14 In short, the telecommunications market is now radically different than when the ACC
15 Rules were first proposed in 1999, or when they took effect in 2004.

16 **IV. THE FCC RULES ARE EFFECTIVE.**

17 When the ACC Rules were initially drafted and implemented, no one knew whether the
18 FCC counterparts would be effective. However, with more than a decade of experience and the
19 changes in the telecommunications industry, we now know that the concerns over slamming and
20 cramming raised in 1999 have been addressed nationwide and no longer necessitate separate state
21 regulation.

22 The FCC has nationwide slamming rules in effect that cover all carriers for all
23 telecommunications services and have been very effective in deterring slamming activity.
24 Between changes in the marketplace and the FCC slamming rules, slamming has become rare.
25 Moreover, the FCC rules allow states to enforce the FCC slamming rules, and 36 states have
26 elected to do so.¹¹ Only a handful of states—including Arizona—have elected to create

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28 ¹⁰ See FCC Fourth Report on Wireless Competition, FCC 99-136 (Released June 24, 1999) at page 8.

¹¹ <https://www.fcc.gov/encyclopedia/slamming>

1 duplicative regulation by enforcing their own rules while leaving the enforcement of the federal
2 rules to the FCC. Likewise, the FCC's Truth-in-Billing rules—which set forth requirements for
3 billing format and information about billed charges—also have proven effective in reducing
4 slamming and cramming activity.

5 **V. THE ACC SLAMMING AND CRAMMING RULES ARE DUPLICATIVE,**
6 **UNNECESSARY AND BURDENSOME.**

7 The current ACC Slamming and Cramming Rules not only duplicate the oversight
8 provided by the FCC slamming and Truth-in-Billing rules, they are also unnecessarily
9 burdensome. Inconsistencies between the FCC rules and the ACC Rules create challenges for
10 national or multi-state carriers. Following different processes for carrier changes and ensuring
11 appropriate detailed training of customer service representatives and other personnel on unique
12 state requirements is costly and confusing.

13 Moreover, other unique and differing ACC requirements, such as the submission of sales
14 or marketing scripts or certain notices, do not appear to have provided significant additional
15 consumer protections beyond the FCC rules. Additionally, should any activity arise that could
16 impact consumers negatively, the ACC always has the authority to investigate such activity and
17 request documentation it may need for any such investigation.¹² Repeal of the ACC's Slamming
18 and Cramming Rules would not impair the Commission's investigatory authority.

19 **VI. RELIEF REQUESTED.**

20 Applicants request that the Commission repeal the ACC Slamming and Cramming Rules
21 and allow slamming and cramming to be regulated through the established, effective FCC rules.

22 Alternatively, the Applicants propose the following:

23 1. With respect to slamming, the Commission could either (i) repeal the ACC Slamming
24 Rules and elect to administer the FCC's Slamming Rules pursuant to 47 CFR 64.1110 or (ii)
25 amend the existing ACC Slamming Rules to adopt the FCC rules (proposed amended slamming
26 rules are attached as Exhibit A).

27 2. With respect to cramming, the Commission could amend the existing ACC Cramming

28 ¹² See, e.g., A.R.S. § 40-204.

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Rules to mitigate the differences with federal requirements (proposed amended cramming rules are attached as Exhibit B).

RESPECTFULLY SUBMITTED this 16th day of February, 2016.

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16
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18 By *Jaclyn Howard*

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Exhibit A

ARTICLE 19. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHANGES

R14-2-1901. Purpose, Scope, and Application

These rules shall be interpreted to ensure that subscribers of telecommunications services in this state are protected from an unauthorized change in their intraLATA, or interLATA long-distance telecommunications services provider. These rules apply to each telecommunications carrier defined as a public service corporation in the Arizona Constitution, Article 15, § 2, providing telecommunications services within the state of Arizona and over which the Commission has jurisdiction, provided, however, these rules do not apply to providers of wireless, cellular, personal communications services, or commercial mobile radio services. The rules shall be interpreted to establish liability standards and penalties to ensure compliance.

R14-2-1902. Adoption of Federal Slamming Rule

- A. The Commission adopts as its rule the Federal Slamming Rules adopted by the Federal Communications Commission, 47 C.F.R. § 64.1100 to 64.1195, inclusive (the "Federal Slamming Rules"). The reference to the Federal Slamming Rules is to the version in effect as of January 1, 2015 with no future editions or amendments. Copies of the Federal Slamming Rules are available from the Federal Communications Commission at 445 12th Street SW, Washington D.C. 20554 and at the offices of the Arizona Corporations Commission at 1200 W. Washington Street, Phoenix, Arizona 85007. The rules are also online at www.gpoaccess.gov and are on file with the Office of the Secretary of State.
- B. Each telecommunications carrier shall comply with the Federal Slamming Rules when providing service to any customer in Arizona.
- C. Pursuant to the authority granted to state utility commissions by 47 C.F.R. § 64.1110, the Commission hereby declares its intention to administer and enforce the Federal Slamming Rules with regard to telecommunication carriers.

R14-2-1903. Slamming Violations.

Each occurrence of slamming to an individual account shall constitute a separate violation of this Article, subject to individual enforcement actions and penalties as prescribed herein.

R14-2-1904. Informal Complaint Process

A subscriber may use the dispute resolution procedures of A.A.C. R14-2-510(A), R14-2-510(B) and R14-2-510(C) for any dispute with a telecommunications carrier arising under this Article.

R14-2-1905. Compliance and Enforcement

- A. A telecommunications carrier subject to these rules shall provide a copy of its records of subscriber verification and unauthorized changes maintained under the requirements of this Article to Commission Staff upon request.
- B. If the Commission finds that a telecommunications carrier is in violation of this Article, the Commission shall order the company to take corrective action as necessary, and the Commission may impose such penalties as are authorized by law. The Commission may sanction a telecommunications carrier 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.

R14-2-1906. 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.

R14-2-1907 Transfer of customer base.

Any transfer of a customer base made in accordance with 47 C.F.R. 64.1120(e) is exempt from this Article. This reference to 47 C.F.R. 64.1120(e) is to the version in effect as of January 1, 2015 with no future editions or amendments. Copies of 47 C.F.R. 64.1120(e) are available from the Federal Communications Commission at 445 12th Street SW, Washington D.C. 20554 and may be found online at www.gpoaccess.gov. Any transfer of customer base that also results in a discontinuance or abandonment of local exchange service or interexchange service must still comply with A.A.C. R14-2-1107 when that rule is applicable.

Exhibit B

ARTICLE 20. CONSUMER PROTECTIONS FOR UNAUTHORIZED CARRIER CHARGES

R14-2-2001. Definitions

- A. "Commission" means the Arizona Corporation Commission.
- B. "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.
- C. "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.
- D. "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" does not include providers of wireless, cellular, personal communications services, or commercial mobile radio services.
- E. "Unauthorized Charge" ("cramming") means any recurring charge on a Customer's telephone bill that was not authorized or verified in compliance with R14-2-2005. 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.

R14-2-2002. Purpose and Scope

The provisions of this Article shall be interpreted 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, and
 - 2. Verification that Subscriber is authorized to order the product or service.
- B. A Telecommunications Company shall communicate the following information to a Subscriber requesting a product or service:
 - 1. An explanation of each product or service offered,
 - 2. An explanation of all applicable charges,
 - 3. An explanation of how a product or service can be cancelled, and
 - 4. 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 a language used at any point in the sales transaction.
- D. 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.

- 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 unless requested by the Subscriber; 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. Informal Complaint Process

A Subscriber may use the dispute resolution procedures of A.A.C. R14-2-510(A), R14-2-510(B) and R14-2-510(C) for any dispute with a Telecommunications Company arising under this Article.

R14-2-2008. Compliance and Enforcement

- A. A Telecommunications Company shall 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.

R14-2-2009. 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.