

# PROPOSED RULEMAKING

## PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 64]

[L-990140]

### Cramming and Slamming

The Pennsylvania Public Utility Commission (Commission) on January 14, 1999, adopted a proposed rulemaking to standardize local exchange company (LEC) responses to customer contacts alleging cramming and slamming. The contact persons are Terrence Buda, Law Bureau, (717) 787-5755, and Janice Ragonese, Bureau of Consumer Services, (717) 772-4835.

#### *Executive Summary*

Over the last 2 years, hundreds of residential customers have filed informal telecommunications industry-related complaints with the Commission regarding certain practices identified as cramming, which is adding an unauthorized charge to a customer's telephone bill, and slamming, which is changing a customer's telecommunications service provider without authorization. The purpose of the proposed regulations is to standardize LEC responses to customer contacts alleging these practices. By standardizing these responses, the procedures will reduce the need for customers to seek Commission intervention to resolve cramming and slamming complaints. Thus, by having the LEC place the responsibility for resolving the complaint on the interexchange carrier, information service provider, or billing clearinghouse, the party responsible for the problem will have to expend time and effort to resolve the matter, as opposed to the LEC and the Commission's Bureau of Consumer Services.

Public Meeting held  
January 14, 1999

*Commissioners Present:* John M. Quain, Chairperson; Robert K. Bloom, Vice Chairperson; David W. Rolka; Nora Mead Brownell; and Aaron Wilson, Jr.

#### **Proposed Rulemaking Order and Final Interim Guidelines\***

#### *By the Commission:*

##### *I. Procedural History*

On June 4, 1998, the Pennsylvania Public Utility Commission (Commission) issued a Tentative Order at Docket No. M-00981063 proposing to adopt voluntary interim guidelines (Interim Guidelines) pending the promulgation of formal regulations to standardize LEC responses to customer contacts alleging unauthorized changes in telecommunications service providers and unauthorized billing charges. These voluntary Interim Guidelines, when finalized after the receipt of public comment, are intended to provide guidance to jurisdictional utilities when handling customer contacts involving cramming and slamming complaints.<sup>1</sup>

Written comments were received from AT&T Communications of Pennsylvania, Inc. (AT&T); Bell Atlantic-

Pennsylvania, Inc. (BA-PA); GTE North Incorporated and GTE Communications Corporation (GTE); MCI Telecommunications Corporation (MCI); the Office of Consumer Advocate (OCA); the Pennsylvania Telephone Association (PTA), and the United Telephone Company of Pennsylvania and Sprint Communications Company, L.P. (Sprint). After review and consideration of all comments, the Commission has developed final-form voluntary Interim Guidelines. These Interim Guidelines will also serve as proposed regulations for standardizing LEC responses to customer contacts alleging unauthorized changes to a residential customer's telecommunications service provider, and unauthorized charges added to the customer's bill. The following is a summary of comments and our response to the comments, and regulatory analysis in support of the adoption of voluntary Interim Guidelines and proposed amendments.

#### II. COMMENTS

##### A. Cramming

##### 1. General Comments

AT&T recommends that rather than implementing its own guidelines at this time, the Commission should await the implementation of several national initiatives designed to combat cramming. (AT&T Comments, p. 1). AT&T notes that the Anti-Cramming Best Practices Guidelines (Best Practices Guidelines),<sup>2</sup> which were developed by the carriers who most frequently face cramming complaints, appear to address the same issues raised in the Commission's Tentative Order as well as additional cramming issues such as LEC-service provider contract terms and provisions. AT&T believes that the Commission's best course at this time would be to determine first whether the LECs operating in this Commonwealth in fact implement these Best Practices Guidelines. If the LECs do use them, AT&T concludes that "an additional set of largely redundant state guidelines should be unnecessary." (AT&T Comments, pp. 2-3).

Based on the need for a jurisdictional consistency, Sprint recommends that the Commission refrain from adopting any binding regulations prior to Federal direction. Sprint notes that "the FCC is wisely delaying its rules to ensure they are in line with any new Federal legislative direction." (Sprint Comments, p. 6).

The PTA states that "with some modification, the Interim Guidelines will be a step in the right direction toward elimination of this illegal and reprehensible conduct," but also advises that the Commission should "keep in mind that the unauthorized carriers, and not the LECs should be made to atone for the illegal conduct." (PTA Comments, p. 8).

GTE supports "all commercially reasonable efforts to control slamming and cramming," and, agreeing with PTA's theme, asserts that "the Commission should focus action on the offending carriers and not the LECs." (GTE Comments, p. 3).

The BA-PA suggests that the Commission defer the rulemaking until the Commission can determine the effect of Federal guidelines, but states that it "intends to implement the Commission's interim guidelines, once

\*Editor's Note: Interim Guidelines Docket No. M-00981063 was published at 28 Pa.B. 3176 (July 4, 1999).

<sup>1</sup>The terms "cramming" and "slamming" are specifically defined in Appendix A and refer to unauthorized charges for products or services and unauthorized changes of telecommunications service providers, respectively.

<sup>2</sup>The Best Practices Guidelines, issued on July 22, 1998, are the culmination of an industry workshop's efforts to identify best practices designed to prevent, deter, and eliminate cramming. On April 22, 1998, William Kennard, Chairperson of the Federal Communications Commission, invited a group of the largest local exchange carrier providers of billing and collection services to participate in this workshop.

they are finalized, except in limited instances where it may be impracticable for it to do so." (BA-PA Comments, pp. 1-2).

MCI states that "well-intentioned measures taken against cramming caused by non-telecommunications companies—such as billing aggregators, clubs, and entities offering hotlines—may adversely affect MCI's ability to offer its 'casually' billed, tariffed services and such popular services as 1-800-COLLECT and 10-10-321 and other third party billed services." MCI is afraid that the Commission's rules will have the unintended and adverse anticompetitive effect of reducing customer choice. (MCI Comments, p. 4-5). MCI believes that the timing of BA-PA's July 22, 1998, announcement that it will be the first company to "limit the number of service providers whose charges can appear on their bills" with the publication of the Commission's Interim Guidelines is no coincidence, and asserts that "the Commission should not give the dominant carrier in this Commonwealth the legally sanctioned means to discriminate." (MCI Comments, p. 7).

The OCA supports the Tentative Order of June 5, 1998, and Interim Guidelines and proposes, with specific explanations, that the Interim Guidelines be further strengthened. (OCA Comments, p. 1). One of the OCA's proposals for strengthening the Interim Guidelines is to require the LEC to advise consumers that local service cannot be terminated for nonpayment of charges that result from slamming or cramming. The OCA believes that with such a requirement in place, "consumers will be able to refuse to pay unauthorized charges without unwarranted fear that they may risk the loss of their basic telephone service as a result." (OCA Comments, p. 1).

The OCA also questions the extent to which similar remedies would be applied to consumers who are victims of slamming or cramming by local exchange carriers. Although the cramming and slamming definitions appear, in OCA's opinion, to apply to cramming and slamming by LECs, the OCA believes that the cramming and slamming remedies do not seem to specifically apply to unauthorized charges imposed by a LEC or toll service slammed by a LEC. The OCA submits that "the PUC should make the Interim Guidelines applicable to all potential slamming and cramming incidents, regardless of the type of service provider." (OCA Comments, p. 5-6).

## 2. Response to General Comments

We do not agree with the recommendations that would prevail upon this Commission to refrain from finalizing the proposed Interim Guidelines, or refrain from a rulemaking pending review of the effect of the various National initiatives and Federal action. Having recognized that the problem of cramming exists, we have a responsibility and duty to the consumers in this Commonwealth, at the very least, to provide a means for them to eliminate these crammed charges from their telephone bills. Moreover, we do not believe there is anything in our voluntary Interim Guidelines that conflicts with the Anti-Cramming Best Practices Guidelines advocated by some of the commentators, which are also voluntary. As a result of our viewpoint, we are not predisposed to find that our Interim Guidelines with respect to cramming are largely redundant and therefore unnecessary. Instead of taking a wait and see attitude and delaying any action until we determine whether the LECs use the Best Practices Guidelines, we will have in place our own guidelines in the interim.

Our experience with some consumers who have had charges crammed on their bills is that one of the most

frustrating aspects of the problem is the inability to reach the party responsible for the crammed charge. The consumer might attempt to call the interexchange carrier, but instead reach the clearing house or billing aggregator, and the billing agent may attempt to resolve the billing dispute charges, but cannot provide the consumer with details about the call. The consumer often wants to know who provided the service for which they are charged and they want to talk to that company. Given that consumers often cannot reach the company to discuss the legitimacy of the charge, many of these consumers will then turn to their LEC to express their dissatisfaction over the crammed charge. We believe that the Interim Guidelines establish a process for the LEC to remove the charges, thereby addressing an important part of a residential customer's cramming complaint quickly and effectively.

It is not our specific intent, at this point, to prevent the actual cramming occurrence. Rather, the purpose of the Interim Guidelines is to standardize the LEC's response to the customer contact once the authorized charge appears on the bill. Consequently, we are not persuaded by arguments that we do not have jurisdiction to regulate this response. We submit that arguments raised by GTE on this jurisdictional issue miss the mark because of a misunderstanding regarding the intent and scope of the proposed guidelines.

Instead of regulating the services that a LEC provides on a contractual basis to other carriers, Chapter 64 (relating to standards and billing practices for residential telephone service) and the proposed amendments address the billing and collection service a LEC provides to its customers. As indicated in § 64.1 (relating to statement of purpose and policy), the regulatory provisions are intended to establish and enforce fair residential telephone service standards for, among other services, billing. Therefore, under Commonwealth law, LECs are obligated to provide consumers with basic billing rights for all billing on the local telephone bill.

Stated another way, we perceive billing as a part of the overall local exchange service a Pennsylvania LEC provides to its customers, as opposed to the service provided to a carrier or service provider under a contract where the LEC bills for their charges. We believe that the bill a utility presents to its customers is included within the service it provides, whether the utility service is dial tone, natural gas, kilowatts or water. *Cf. West Penn Power Company v. Pennsylvania Public Utility Commission*, 578 A.2d 75 (Pa. Cmwlth. 1990), (vegetation maintenance by an electric utility is a service which is governed by section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501). Even if the bill included charges for services we do not regulate or calls outside our jurisdiction (interstate), we still regulate presentation of the charges on the bill. The fact that we may not regulate the rate for a long distance telephone call or the quality of service for the call does not mean we do not regulate the presentation of the charges for the call by a Pennsylvania LEC to a Pennsylvania consumer. In fact, as a point of reference, if an interexchange carrier issued the bill, these same regulations under Chapter 64 would not have to be complied with by the carrier since the carrier is not a LEC. *Final Rulemaking Order, Chapter 64—Standards and Billing Practices for Residential Telephone Service*, I-80090338, adopted November 30, 1984, effective January 1, 1985 (14 Pa.B. 4354). It is through the billing service provided by the LEC to its customers that the Commission asserts jurisdiction.

Additionally, specific regulations in Chapter 64 clarify that while we may not have jurisdiction over an inter-

state call, we retain jurisdiction over how the call is to be billed to a Pennsylvania consumer by a Pennsylvania LEC. Section 64.14(a)(5) (relating to billing information) requires that the bill for toll charges list the "date, time, destination, duration and rate period for each toll call." GTE's assertion that the Commission has not asserted jurisdiction over the intrastate billing process could not be further from the truth. Billing is a part of the telecommunications service that a LEC provides to its customers. Therefore, it is effectively tariffed since the rate for dial tone by a LEC is tariffed.

We also disagree with the OCA recommendation that "the PUC should make the Interim Guidelines applicable to all potential slamming and cramming incidents, regardless of the type of service provider." It is specifically the submission of charges by third parties to LECs for inclusion on the customer's local telephone bill that led us to recognize the problem of cramming. We believe that the problem is, by definition, a problem with third-party billing. We further believe that there are already remedies in place under the Chapter 64 residential telephone service standards to deal with a LEC that would include unauthorized charges of its own on its bill. Regarding the OCA's recommendation to require the LEC to advise consumers that local service cannot be terminated for nonpayment of charges that result from slamming or cramming, we do not believe this additional information needs to be part of the guidelines since the charges are to be removed from the LEC bill. Finally, the residential suspension notice required under § 64.72 (relating to suspension notice information) clearly informs a customer, at the appropriate time, of the part of an arrearage that threatens basic service.

### 3. *Comments Responding to Specific Issues Raised in Tentative Order*

In the Tentative Order, the Commission expressed interest in receiving comments about the following four specific issues relating to cramming: (1) the extent of Commission jurisdiction over complaints which involve cramming of telephone related charges or service and nontelephone related charges or service; (2) the Commission's authority to order LECs to recouse the charges to the information service provider and what effect billing contracts may or may not have on the Commission's authority; (3) the Commission's authority to order LECs to flag an account at the request of a customer so that no future billing or charges can be placed on the account; and (4) the type of complaints that should be referred to the Office of Attorney General (OAG), the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC).

In regard to the first two issues, we have already indicated that GTE asserts that the Commission does not have jurisdiction in these instances and emphasizes that "the Commission has no jurisdiction over interstate calls and the vast amount of the disputed charges will be interstate calls." Additionally, GTE argues that the current billing and collections contracts with the carriers do not contain terms and conditions that permit the actions proposed in the Interim Guidelines. (GTE Comments, pp. 3-10). Finally, GTE states that the Commission does not have the authority to order the LEC to recouse the unauthorized charges "especially if such recourse violates the current contract between the LEC and IXC." (GTE Comments, p. 11).

The BA-PA believes that the Commission "correctly suggests that the wellspring of its jurisdiction in this area is its power to control the service quality and adequacy of

LEC billing and collection directed at the LEC's end user customers." The BA-PA also believes that the Commission's jurisdiction should encompass LEC billing and collection for information service provider charges, regardless of whether such charges are telephone or non-telephone related. (BA-PA Comments, p. 2).

MCI maintains that there is the potential for anticompetitive behavior and fraud with respect to recouping charges. MCI also calls into question the Commission's authority regarding this type of regulatory provision given sections 253 and 258 of the Telecommunications Act of 1996 (TA-96 or the Act) (MCI Comments, p. 21).

Regarding the third issue on the Commission's authority to order LECs to "flag" an account, GTE again believes that the Commission does not have the authority to order LECs to "flag" an account. (GTE Comments, p. 11). In response to the Commission's query about flagging being anticompetitive, GTE suggests that flagging is not permissible when it is based on types of service and not a provider. GTE references section 251(b) of TA-96 and the FCC *Second Report and Order* in Docket No. CC 96-98, pointing out that although the issue of flagging is not addressed specifically, these sections indicate that "non-discriminatory treatment should be permissible if directed by the Commission." (GTE Comments, pp. 11-12).

MCI interprets the Interim Guidelines as allowing third party billing for such services as 1-800-COLLECT (where the called party consents to the call), 10-10-321 and 10-10-222 "dial around" calls (where the end users affirmatively dial MCI's carrier identification code, thus indicating consent to be billed for the call by the LEC on MCI's behalf). MCI has not yet determined whether it is technically possible to "bill block" in accordance with the provisions, but is certain that such capacity would give LECs "the unilateral ability to prevent the use of MCI's casual services, thus diminishing consumer choice and protecting the LECs' services from competitive pressures." (MCI Comments, p. 21-22).

The BA-PA believes that the Commission's jurisdiction to direct LECs to flag accounts is questionable and suggests that the Commission remove the flag provision of the interim cramming guidelines. The BA-PA argues that a broad prohibition of this sort would take LECs beyond the limits of their authority and force them to be billing police. In addition to being impracticable, the BA-PA asserts that should an account flag prevent the billing of any competitive telecommunications service covered by TA-96, an aggrieved provider might contest the flag as a barrier to entry or otherwise unlawful under the Act. (BA-PA Comments, p. 5).

The fourth issue relates to the appropriate complaint referral. GTE comments that the FCC has jurisdiction over interstate or international service charges, the FTC has responsibility over nontelephone service charges, and the OAG is responsible for investigating any case of suspected fraud or violation of State law. (GTE Comments, p. 12).

The BA-PA recommends that the Commission require LECs to provide information about complaint options only to customers who inquire about filing a complaint with a regulatory agency. The BA-PA argues that it would be time-consuming and potentially confusing to have to determine which regulatory agency is the appropriate complaint forum for a particular consumer. In many cases, the BA-PA submits, the information would be unnecessary considering that some consumers will have

no interest in filing a complaint with another agency after they get the cramming charges off their bill. The BA-PA believes that the jurisdictional distinction for complaints to the FCC, FTC and OAG, as set forth in the Tentative Order, is reasonable and would apply that criteria in assisting crammed customers seeking information about filing a complaint with a regulatory agency. (BA-PA Comments, p. 5-6).

#### 4. *Response to Comments on Specific Issues*

Although the billing and collection contracts between the LEC and the information service provider or billing aggregator do not need to be filed with the Commission, we do have oversight responsibilities regarding the billing practices of the LECs. (See 52 Pa. Code § 64). The Anti-Cramming Best Practices Guidelines issued on July 22, 1998, concede that "consumer-designated billing options can be an extremely powerful method of controlling third party cramming on the LEC bill and should be actively pursued." (p. 25). It is interesting to note that these industry sponsored guidelines consider this method a Best Practice worth pursuing. Yet, most of the comments on the practice of flagging an account for telephone-related services were negative and perceive the practice to be anticompetitive.

The purpose of proposed § 64.23(a)(3) (relating to standardizing LEC responses to customer contacts alleging unauthorized changes to the customer's long distance carrier and unauthorized changes added to the customer's bill) is to address the recurring nature of some third-party crammed charges. In many of the cramming complaints filed with the Commission, the crux of the complaint is that the charge appears on the customer's bill every month. Even though the charge is removed when the customer complains to the company, the customer does not want to have to call each month to dispute the charge and have it removed. Therefore, we included the requirement that in addition to recouring the disputed charge, the LEC will make an effort to stop further billing of the charge. Given the ongoing nature of this unsavory billing practice, it is necessary that we retain this provision.

In light of the comments, however, we clarify that it is only when a charge is recurring that the LEC must attempt to prevent the further billing of that charge. For example, a customer may notice on his bill a monthly charge of \$4.05 for voicemail. Simply recouring the \$4.05 will not necessarily mean that the charge will not appear again the next month. The proposed amendments require the LEC to notify the alleged crammer that charges for this voicemail service should no longer be sent through for billing.

In the previous section of this order we have addressed at length our authority over the presentation of the bill by the LEC and our jurisdiction over the billing service provided by a LEC. We are satisfied that the conclusion we have reached is legally correct.

Contrary to GTE's assertion, in our experience, the vast amount of disputed charges regarding cramming are not for interstate calls—most are for charges for products or services such as caller ID, pager, personal 800 number, and the like. Furthermore, as evidenced by recent actions of the BA-PA, billing and collections contracts can be modified. In fact, the Best Practices Guidelines, which GTE played a part in developing, rely heavily on modifying billing and collection contracts as a means to thwart cramming. Give the amount of time that will elapse between the issuance of voluntary Interim Guidelines and

final-form regulations, it is our opinion the LECs will have ample time to address appropriate modification of billing and collection contracts. Finally, in light of the BA-PA's comments on the complaint options, we have modified subsection (a)(5). However, rather than making the customer ask, the modified provision will state that the LEC should ask if the customer wants additional information for filing a complaint with a regulatory agency or other appropriate entity.

#### 5. *Comment on Definitions*

GTE recommends using the definition of "cramming" that appears as follows in the Best Practices Guidelines: "The submission or inclusion of unauthorized, misleading, or deceptive charges for products or services on End-user Customer's local telephone bills." GTE reasons that the definition as proposed in the Interim Guidelines "may lead a reader to believe that the LEC is in the practice of billing in a careless manner and is not implementing the proper rules to combat the cramming problem." (GTE Comments, p. 13).

MCI believes that the words "customer" and "authorized" used in the definition of "cramming" and also "slamming" are vague and can be interpreted in different ways. MCI explains that if "customer" means the person responsible for the telephone bill and "thereby the only person who may authorize a change in carrier," the definitions are "contrary to the way many households conduct business today and would impose a burden on consumers" by not permitting one spouse or member of a household to change the telecommunications service of the household. MCI states that the terms are "pejorative and lend themselves to emotional responses, are over-broad and subject to differing interpretations." (MCI Comments, pp. 13-15). Regarding the definition of "service provider," MCI recommends that a distinction be made between "service provider" and "telecommunications provider." The definition of service provider, in MCI's opinion, should include only "unregulated entities—those entities maintaining 'hotlines,' 'clubs,' 900-numbers and the like." Furthermore, MCI believes that the interim rules should not apply to telecommunications providers, "pending further proceedings." (MCI Comments, p. 15).

#### 6. *Response to Comments on Definitions*

We agree with GTE's recommendation to use the definition that appears in the Best Practices Guidelines. However, in changing the definition to reflect the language in the Best Practices Guidelines, we are not changing our position that a ratepayer of record clearly has the right to contact a LEC about the bill for which he is responsible, and allege that there are charges on the bill for services or products that the ratepayer neither ordered nor authorized and, therefore, wants removed.

MCI's recommendation to modify the definition appears to reflect its fear that "casually" billed, tariffed services will be adversely affected if a distinction is not made between service provider and telecommunications service provider. We do not believe that such a distinction is necessary since it has been our experience in the handling of informal complaints alleging cramming that the services that are "crammed" onto customers' local exchange bills are nonbasic services which, by definition, are services and products other than telephone service. See, 52 Pa. Code § 64.2.

#### 7. *Comments on subsection (a)(1)—Clarifying the Customer's Complaint*

MCI seeks a determination as to what "clarification" the LECs would "suggest and thereby procure" from a

customer. MCI anticipates that "given the other powers conferred by the Interim Guidelines," one might question whether the LECs can be "depended upon to give neutral information." MCI also questions what investigation the LECs would "engage in before 'removing' charges and 'instructing' an IXC as to how it may proceed with respect to the latter's customers?" In answer to its own questions, MCI postulates that litigation would ensue over, not only the effect of the Interim Guidelines on billing and collection agreements, but also over the Commission's authority under sections 253 and 258 of TA-96. In regard to "cramming," MCI recommends that if interim rules are issued at all, they should be with respect to "unauthorized charges from non-telecommunications companies." (MCI Comments, p. 20-21).

8. *Response to Comments on subsection (a)(1)*

We will not modify the language in subsection (a)(1) since the proposed language requires only that the LEC identify the charge and clarify that it is a cramming complaint.<sup>3</sup> In other words, upon contact from a customer alleging that the bill includes an unauthorized charge for, by way of example, a paging service, the LEC would pick out the charge on the bill and make sure that the customer is complaining about the charge because he or she never ordered a paging service from that company. No investigation is needed since the LEC is not making a determination as to the legitimacy of the charge and merits of the complaint—the LEC is simply removing the charge from the bill and sending it back to the third party. Rather than "instructing the IXC as to how it may proceed" with its customers, the LEC is removing the charge and telling the company in question not to send that charge through again because the customer has complained that the charge is unauthorized. The IXC or service provider certainly has the choice to bill the charge directly or to pursue other avenues of collection.

With respect to the authority to enforce these types of provisions under section 253 of the Act, the argument appears to be that this state regulatory provision is an "illegal barrier to entry" under section 253. In response, we submit that there is no legal right to bill for an unauthorized service and, in any event, nothing in TA-96 would prohibit the state from protecting public welfare and safeguarding the rights of consumers.

9. *Comments on Subsection (a)(2)—Removing Charges from LEC Bill and Recursing to Service Provider or Billing Agent*

The PTA agrees that the unauthorized cramming charges should be recoured to the IXC, billing clearinghouse, or information service provider. (PTA Comments, p. 2). The BA-PA comments in a footnote that the LEC's removal and recouping of claimed cramming charges "should put the information service provider and any billing aggregator involved on notice that the customer has objected to the charges as unauthorized, and that no additional charges for the unauthorized service should be billed on the customer's telephone bill." (BA-PA Comments, p. 4).

10. *Response to Comment on Subsection (a)(2)*

No changes will be made in this provision. To reiterate, no determination is being made by the LEC as to the legitimacy of the charges. The charges are simply being removed from the LEC bill.

<sup>3</sup>We are, however, modifying subsection (a), as well as subsection (b), for slamming by deleting the phrase "it is recommended" since final regulations (Annex A) will require mandatory language.

11. *Comments on Subparagraph (a)(3)—LEC Informing Billing Agent and/or Service Provider to Prevent Further Billing*

The PTA emphasizes that its member companies do not currently have mechanisms in place to flag an individual account in order to prevent the billing of future unauthorized charges. Furthermore, the PTA member companies "do not believe that it is their responsibility to block the charges from an IXC, billing clearinghouse, or information service provider." It is the belief of these member companies that a "flag," instituted by a LEC could disadvantage a customer and, practically speaking, it would be difficult to flag an account for many services." (PTA Comments, p. 2).

12. *Response to Comment on Subsection (a)(3)*

The purpose of this provision is not to prevent further cramming. We included the provision as a means to stop the continued billing of a charge for a product or service that the customer claims has been crammed onto their local telephone bill. Many of these charges represent monthly recurring fees. We recognize the difficulty that LECs may encounter when attempting to limit the charges that appear on the LEC's bill to only the charges from the LEC and from the customer's regional and long distance carriers. We also recognize that such a move may be impracticable. However, given this clarification, we will retain this provision to help stop the continued billing of a charge for a product or service that the customer claims has been crammed onto his local telephone bill.

13. *Comments on Subsection (a)(4) and (5)—LEC Informing the Customer of Other Collection Remedies and the Right to Contact the OAG, the FCC and the FTC*

In regard to subsection (a)(4), the PTA agrees with informing the customer that the billing entity may attempt other methods to collect the charges. (PTA Comments, p. 3). However, with respect to subsection (a)(5), the PTA objects to having to inform the customer of the right to pursue a cramming complaint with the OAG, FCC or FTC. The PTA believes that the provision would require the LEC to make judgment calls on the nature of the complaint and the charge at issue in order to make an assessment of which agency would have jurisdiction. (PTA Comments, p. 3). The PTA emphasizes that the revisions to the Residential Telephone Service Regulations<sup>4</sup> relieved LECs of having to take responsibility for this type of dispute. The PTA submits that, instead of the responsibility being the LECs, the IXC or other service provider "with whom the customer has the dispute" should be charged with the responsibility of informing the customer of his or her options to pursue a complaint. (PTA Comments, p. 4).

MCI states that carriers should "when asked" advise consumers to contact the appropriate agency. It is MCI's opinion, however, that, if the consumer is satisfied, "not all complaints need to be escalated to a State or Federal agency." (MCI Comments, p. 3).

The BA-PA recommends that this guideline be changed to require the LEC to provide this information only to those customers who inquire about filing a complaint with a regulatory agency. (BA-PA Comments, p. 5).

14. *Response to Comments on Subsection (a)(4) and (5)*

In light of the comments, we have modified subsection (a)(5). However, rather than making the LEC ask if the

<sup>4</sup>See *Rulemaking to Rescind Obsolete Regulations Regarding Telephone and Residential Telephone Service*, 52 Pa. Code Chapters 63 and 64, Docket No. L-00960113.

customer wants additional information for filing a complaint with a regulatory agency or other appropriate entity, the LEC will only be required to provide the information to customers who indicate a desire to receive this information.

15. *Comments on Subsection (a)(6)—Record Maintenance to Monitor Adherence to Billing Contract*

Sprint recommends that in the interest of jurisdictional consistency, the Commission should adopt the FCC's guideline of preserving complaint records for a 12-month period. According to their comments, Sprint has already implemented policies and updated billing and collection contracts to allow for "the termination of billing for service providers that knowingly and purposefully slam or cram customers." Sprint states that revised National billing and collection policy guidelines issued by Sprint on March 1, 1998 are more restrictive as to what services and products Sprint will bill. (Sprint Comments, p. 4).

The BA-PA maintains that, as part of its anticramming program, it has developed an internal data base to track individual customer cramming complaints. The BA-PA explains that it will use this data base to monitor billing and collection contract compliance, "and to directly notify information service providers and/or their billing agents to cease billing charges objected to by customers as unauthorized." (BA-PA Comments, p. 6).

16. *Response to Comments on Subsection (a)(6)*

We have modified the time frame for record maintenance from 2 years to 3 years to be consistent with 66 Pa.C.S. § 3314, which sets 3 years as the time frame within which the Commission can bring an action or prosecution for violations of our regulations. If it becomes necessary to initiate some type of enforcement action to assess penalties, the 3 year record retention will provide the opportunity to review instances that may be part of the action. Therefore, although we originally proposed 2 years as the time period for record retention that the commentators were to consider, we must settle on three years to acknowledge the statutory provision in the Public Utility Code.

B. *Slamming*

17. *General Comments*

GTE expressed a general concern that the Commission's proposed guidelines would effectively "put the responsibility of the enforcement/correction efforts" on the LECs." GTE believes that the Commission's proposals would place the administrative burden and cost of slamming on the LEC. According to GTE, slamming is best prevented and controlled through proper verification procedures, and it recommends the use of the current FCC verification rules in this Commonwealth to assure cross-jurisdictional consistency. (GTE comments, p. 4).

AT&T notes that the FCC has instituted two prior rulemaking proceedings regarding slamming and is currently considering comments in response to a July 15, 1997, *Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration* (FNPRM) in CC Docket 94-129. (AT&T Comments, p. 3). AT&T, along with Sprint and MCI, suggest that the Commission evaluate the impact of the FCC's regulations before implementing additional rules within the Commonwealth. (AT&T Comments, p. 4; Sprint Comments, p. 6; MCI Comments, p. 9).

More specifically, Sprint believes that customer education is also an important factor in minimizing instances of slamming as well as cramming, and reveals that it is

developing material to educate consumers on issues such as "fully reading and understanding the fine print before signing Letter of Authorization (LOA) forms, and listening to and understanding telemarketing sales attempts." (Sprint Comments p. 5).

MCI again expresses concern that the Interim Guidelines inadvertently provide the BA-PA with an additional weapon against its competitors by allowing LECs to remove and return legitimate long distance and related charges to IXC's. (MCI Comments, p. 4). Furthermore, MCI argues that the Interim Guidelines, if unchanged, will have the effect of raising toll rates and stifling the development of competition in this Commonwealth. (MCI Comments, p. 4). MCI recommends that the Interim Guidelines be modified to state that the Commission will enforce the FCC's verification rules with respect to unauthorized changes of carriers. (MCI Comments, p. 9). MCI believes these FCC verification rules, codified at 47 CFR 64.1100 and 64.1150, combined with the voluntary practices of responsible carriers, provide a consistent, balanced approach to slamming. (MCI Comments, p. 4).

The OCA supports the proposed guidelines and suggests two ways to further strengthen them. First, the OCA recommends specifically informing customers that their basic local service cannot be terminated for failure to pay charges resulting from slamming and cramming. (OCA Comments, p. 1). The OCA submits that in many instances consumers pay charges resulting from slamming and cramming because they believe the failure to pay the charges may risk termination of local or basic service. The OCA, therefore, believes the Interim Guidelines would be strengthened by a requirement that the LECs advise consumers they may refuse to pay unauthorized charges without the fear of loss of basic telephone service. (OCA Comments, p. 2). Second, the OCA recommends that the Commission apply the Interim Guidelines to local services. The OCA notes that the proposed definition of slamming includes reference to local exchange service; however, the slamming remedies seem to apply only to slamming by IXC's. The OCA argues that the PUC not discriminate between industry segments when applying slamming and cramming remedies. The OCA, therefore, recommends that the Interim Guidelines should be applicable to all potential slamming and cramming incidents regardless of the type of service provider. (OCA Comments, pp. 5-6).

18. *Response to General Comments*

At this point, given the negative comments from parties regarding the "slamming" portion of our proposed rulemaking order, we believe it important to reiterate and clarify some points made in our Tentative Order. First, the proposed regulations are intended to focus on resolution of the narrow portion of the customer's complaint over which the Commission clearly has jurisdiction; namely, the LEC intrastate billing and collection service. The fact that the LEC performs billing on a contractual basis for IXC's does not negate the Commission's jurisdiction over this LEC intrastate billing function. Customers who receive consolidated billing from their local exchange company favor such billing because of its convenience. When consolidated billing becomes a vehicle for placement of unauthorized charges, a residential customer deserves a quick method of eliminating the unauthorized charges. Under the Interim Guidelines, customers who allege they are victims of an unauthorized presubscribed interexchange carrier (PIC) switch receive the immediate benefit of removal of outstanding charges placed by an allegedly unauthorized party on their LEC bills, along

with an offer to “flag” or “freeze,” at the customer’s request, the customer’s account to prevent a recurrence of the incident.

This offer to place a “flag” or “freeze” on the account is not new—this option has been available for several years. Furthermore, the Interim Guidelines ensure that a customer is informed that the charges that are removed by the LEC from the LEC bill are not necessarily eliminated or forgiven by the service. The IXC retains its rights to pursue collection of these charges, and the customer, in turn, may pursue any dispute over these charges.

The Interim Guidelines are not standards governing changing IXCs since the procedures are applied after a switch has occurred. Therefore, the intent behind the Interim Guidelines cannot be to prevent slamming, but to regulate the LECs’ reaction to the slamming occurrence. In other words, the Interim Guidelines do not replace the FCC verification rules or any additional Federal regulations designed to govern PIC switches. Thus, we believe the effect of these Interim Guidelines on IXCs that currently implement reasonable marketing and switching practices should be minimal.

Given our position on the impact that our Interim Guidelines will have on PIC switches, we shall not follow the IXCs’ recommendation to evaluate the new FCC regulations on slamming before moving forward on additional rules. We do, however, welcome the tougher rules being adopted by the FCC to reduce slamming. *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129 (Released December 23, 1998). Under the new rules, customers who have had their telephone service provider changed without their consent are relieved from paying charges imposed for up to 30 days after such a slamming incident. The FCC also strengthened carrier switch verification procedures and broadened the scope of its anti-slamming procedures by extending the rules to LECs and local phone service. The verification procedures were strengthened by requiring companies to obtain either a written letter authorizing the change, third-party verification of the request, or have customers call a toll-free number on their own. As can be clearly seen, these new rules will have no impact on our Interim Guidelines.

Also, since the Interim Guidelines are not standards for changing or switching carriers, we do not agree with the OCA that the Interim Guidelines should include a reference to alleged unauthorized changes in a customer’s local exchange carrier. We view this type of complaint as falling under the dispute provisions of Chapter 64. Unauthorized local exchange carrier switches, while included in the definition of “slamming,” need not be included in the instant voluntary Interim Guidelines since the instant guidelines are designed to restore account billing to its prior status and remove allegedly unauthorized charges billed on a contractual basis for IXCs. In the case of alleged local exchange carrier slamming, the affected customer’s grievance about the unauthorized switch in the provision of residential telephone service falls under the scope of Chapter 64. Therefore, these types of complaints are properly viewed as Chapter 64 disputes and resolved through application of the appropriate Chapter 64 provisions.

The issue of the inclusion of intraLATA toll service and charges in the application of the instant Interim Guide-

lines is more complex. As noted by the PTA in its comments, the recent revisions of the Chapter 64 included amendment of the definition of “dispute” to exclude IXC charges on the LEC bill. Some IXC charges are for intraLATA toll usage, and therefore, some customers who alleged unauthorized switching by an IXC will need to have IXC charges for intraLATA toll service removed from the LEC bill as part of the application of the Interim Guidelines. However, where the LEC provides intraLATA toll service, any disagreement over the billing of these charges require application of the Chapter 64 provisions since the revision in § 64.2 in the definition of the term “dispute” does not exclude as disputable subject matter intraLATA toll service provided by the LEC.

Accordingly, we will continue to define the term “slamming” to include the unauthorized changing of a customer’s local exchange carrier and intraLATA toll carrier, but will not require application of the instant voluntary Interim Guidelines to either (1) local exchange charges or (2) intraLATA toll charges provided by the customer’s LEC.

#### 19. *Comments on Definitions*

MCI notes that the proposed definition of “slamming” refers to the customer not having authorized a transaction, or to there having been an unauthorized transaction. MCI expresses concern that this language would not permit one spouse or another member of a household to change the telecommunication service of the household. If the customer is the person responsible for the telephone bill and is thereby the only person who may authorize a change in carrier, MCI submits that the definitions are contrary to the way many households conduct business today and would impose a burden on consumers. (MCI Comments, p. 13). MCI argues that carriers should not be punished if the billed “customer” later claims that an adult member of the household lacked “authority” to make a PIC change if that member is a decision-maker and over 18 years old. (MCI Comments, p. 14). Therefore, MCI recommends that if the Interim Guidelines are to address authorization or what one may or may not authorize, the LECs should recognize the FCC’s verification rules as providing a safe harbor for IXCs with respect to slamming. (MCI Comments, p. 13).

AT&T recommends that the Interim Guidelines should include the failure to switch carriers in the definition of “slamming” to address those complaints where a customer has not had their request for change in carrier implemented timely. (AT&T Comments, p. 6).

#### 20. *Response to Comments on Definitions*

We disagree with MCI’s argument that carriers are being unfairly treated by allowing the ratepayer of record for a residential account to allege that an adult member of the household lacked “authority” to make a PIC change. We believe that a ratepayer of record clearly has the right to contact the LEC about the bill for which he or she is liable and allege that changes to the account were not authorized by the ratepayer of record and, therefore, should be reversed. IXCs should be reminded that once the action is reversed, the carrier may pursue any claim of liability that it wishes to make before an appropriate legal forum. However, in this Commonwealth, this Commission will continue to place considerable weight and importance on arguments from ratepayers of record who complain that actions affecting their accounts were taken without their permission.

With respect to AT&T’s recommendation concerning the definition of “slamming,” we decline to include the phrase

"failure to switch carriers" in this definition since, as stated previously, we are not attempting to design rules for changing carriers, or for addressing disputes about timely changes. We are designing standards which address the hundreds of complaints we have received about changes in LEC intrastate billings due to alleged unauthorized switching of a customer's PIC.

21. *Comments on Subsection (b)(1) and (3)—Identifying the Name of the IXC and Isolating the Charges*

MCI recommends that the Commission clarify subsection (b)(1) and (3) so as to insure that only those charges related to the alleged slam be "protected" from collection action while the PIC switch is being investigated. MCI contends that consumers should pay current bills as due. MCI also questions how the LEC would "clarify" that the customer did not authorize the switch, and also questions whether LECs can be depended upon to give neutral information. Finally, MCI expresses concern about the type of investigation the LECs, armed with these provisions, would engage in before "removing" charges and "instructing" an IXC as to how it may proceed with respect to the IXC's customers. (MCI Comments, pp. 20-21). As a result of these concerns, MCI believes the Commission should "leave the existing 'no fault' PIC dispute process in place and implement the FCC's verification rules with respect to unauthorized changes in carriers; and issue interim rules, if at all, with respect to unauthorized charges from non-telecommunications companies." (MCI Comments, pp. 20-21).

22. *Response to Comments and Subsection (b)(1) and (3)*

We will adopt MCI's suggestion and modify subsection (b)(3) of the Interim Guideline to clarify that the isolated charges are the only charges that will be removed from the LEC bill. In regard to MCI's concerns over the actions of the LEC, the intent of the rules is not to require the LEC to conduct any type of investigation of the customer's allegation of slamming. Subsection (b)(4) clarifies this point by providing that the LEC inform the customer that it does not intend to investigate the matter, or make a determination regarding the validity of the customer's allegation of slamming. The LEC is merely restoring the customer's bill to its status prior to the alleged slamming. The IXC may decide to pursue its claim of liability through other collection remedies, and the LEC will inform the customer of this possibility. Given this possibility of further collection action on the part of the service provider or billing agent, the LEC will also provide the customer with general information about how the customer may pursue a complaint alleging slamming.

23. *Comments on Subsection (b)(2)—Waiving PIC Charge*

The PTA endorses the proposed procedure whereby the LECs would reconnect the customer to their "chosen" long-distance company prior to slamming and remove the PIC change charge from the customer's account. The PTA notes that LECs have a tariff in place to recoup waived PIC change charges. (PTA Comments, p. 4).

GTE's position is that LECs should not have to restore the customer's account to its pre-slammed PIC designation without charge, since that would violate GTE North's approved tariffs. Given that there is a cost incurred by the LEC to make such changes, GTE believes that the offending carriers should pay for the charges. (GTE Comments, p. 7).

24. *Response to Comments on Subsection (b)(2)*

We will not modify the language at subsection (b)(2) which provides that the LEC offer to restore the custom-

er's account, at no charge, to the IXC the customer received service from prior to the alleged unauthorized switch. As MCI recognized in its comments, the major carriers subscribe to a no fault policy for consumer PIC changes whereby a customer who wants to switch back to their prior carrier for any reason may do so at no charge. We agree with MCI that this no fault policy is consumer friendly and, therefore, will retain language that ensures that a customer does not incur this expense in cases where the customer alleges slamming has occurred. While this admittedly limits the manner by which GTE may apply its tariff rule in cases of alleged slamming, it does not prevent GTE from applying its tariff rule. In this regard, we direct GTE's attention to the PTA's comment that "LECs have tariffs in place to recoup the waived PIC change charge from the unauthorized IXC."

25. *Comments on Subsection (b)(2)—"Flagging" the Account*

Numerous comments were made regarding the Interim Guideline procedures that direct the LEC to offer to place a safeguard on the customer's account to prevent further switches without express authorization from the customer. The PTA agrees with offering the customer the option of having his account flagged with a "Don't Touch" (DT) indicator, as opposed to the Commission ordering LEC's to impose a DT on every account that has been slammed. The PTA believes customers should know about the DT options, but the LEC should place it on a customer's account only upon customer request since (1) customers having the DT on their account must notify the LEC orally or in writing before the LEC changes their carrier, and (2) once the DT indicator is on the account, the customer will not be able to call the carrier and have a Letter of Agency sent to the LEC to change carriers. The PTA opines that the DT indicator is not anti-competitive provided the customer, not the LEC, has made the choice about whether to put the indicator on the account. (PTA Comments, p. 5).

The BA-PA and GTE argue that the Commission does not have the authority to order LECs to flag all slammed residential accounts and require verbal or written customer authorization before making any subsequent PIC change. These parties point out that a blanket flag on all slammed accounts might conflict with the wishes of many slammed customers. This in turn could result in claims by IXCs that this restriction constitutes an unlawful barrier to entry to this Commonwealth's toll market in violation of TA-96. (BA-PA Comments, p. 7; GTE Comments, p. 6).

While GTE opposes a blanket requirement to flag all slammed accounts, it is not opposed to a PIC freeze upon customer request given that, in GTE's opinion, "PIC freezes are the best customer safeguard against slamming." GTE contends that the Commission may allow LECs to offer PIC freezes after the customer has been slammed so as to ensure that it does not happen again. GTE explains further that it currently offers a PIC freeze but only after the customer has requested one, and signed and returned a numbered form. GTE cautions that allowing verbal authorization from the customer would weaken an effective GTE practice and would not be in the best interest of the consumer or the industry. (GTE Comments, p. 6).

AT&T points out that the Commission's proposal does not contain administrative rules that would be necessary to prevent anticompetitive practices while advancing the proconsumer intent of the PIC freeze. (AT&T Comments, p. 4-5). Specifically, AT&T recommends that the LEC be



required to provide written notification to customers when they implement a PIC freeze, and that the notification include an explanation of the procedures necessary to lift the freeze. Additionally, AT&T recommends that if a PIC freeze rule is to be adopted, it should be modified to establish a separate freeze for both interLATA and intraLATA PIC selections. AT&T asserts that the Commission needs to define the phrase "express authorization" since this phrase allows too much room for a LEC to engage in anticompetitive behavior by interpreting the phrase in whatever manner it deems appropriate. In this regard, AT&T suggests that a customer with a PIC freeze should be allowed to change their presubscribed carrier through proper third party verification procedures. Finally, AT&T argues that there should be a mechanism in place for a carrier to determine that a potential customer has a PIC freeze in place. (AT&T Comments, p. 4-5).

In expressing concerns similar to AT&T's, MCI contends that it is anticompetitive for an ILEC to be in competition with an IXC or CLEC and to place PIC "freezes" on customer accounts. In MCI's view, this practice denies the IXC and/or the CLEC the opportunity to fairly compete for that customer. (MCI Comments, p. 4). MCI further contends that PIC freezes can be anticompetitive because the freeze locks customers into their existing provider, which in most cases is the incumbent LEC.<sup>5</sup> With a PIC freeze in place, MCI submits that a soliciting carrier has no way of knowing whether a consumer has a PIC freeze until they submit the order to the LEC and the LEC rejects it. MCI explains that many customers who have requested a PIC freeze do not recall that they made this request, or assume that their new choice will override the freeze. MCI argues that since the consumer would have to advise his or her carrier to lift the freeze before he or she makes a change, this step would be an additional hurdle that creates consumer frustration. In light of these concerns, MCI believes it is essential that our procedures recognize that a PIC freeze can be overridden by the customer's choice as evidenced by a properly conducted third party verification process. (MCI Comments, pp. 10-19).

The OCA believes it is appropriate for the consumer that has been slammed to be offered, at no charge, the opportunity to safeguard the account from future slamming. The OCA, however, cautions that a PIC freeze should not be abused for anticompetitive purposes and should only be applied when the consumer requests it, since the account belongs to the consumer, not to the LEC or any IXC. The OCA opines that the use of a PIC freeze should not be considered anticompetitive so long as such a safeguard is, in fact, what the consumer desires and has specifically requested in order to be protected against further unauthorized switches. Given that the OCA perceives that slamming the consumer's local exchange or basic service is likely to prove even more problematic than unauthorized switching of the consumer's toll service, the OCA encourages the Commission to apply similar rules for local service slamming as well. (OCA Comments, p. 3).

#### 26. *Response to Comments of Subparagraph (b)(2)*

We agree with the OCA's observation that a customer may wish to place a freeze or safeguard on local exchange and intraLATA services as well as interLATA service. However, we have not modified the language in the rules since, as stated previously, our intent is to address LEC billing charges that result from outside parties who use the LEC as a billing vehicle.

<sup>5</sup>We assume MCI is referring to the intraLATA traffic.

We also agree that any freeze must not be mandatory, but instead made in response to a specific customer request. Accordingly, we have modified the language at subsection (b)(2) so as to clarify that the LEC will inform the customer that, at the customer's request, the LEC will place a freeze on the portion of the service that the customer designates.

However, we shall decline to impose additional administrative rules designed to prevent anticompetitive practices at this time. We do not believe consumer interests will be advanced through the creation of additional administrative rules. Pending the promulgation of formal regulations to standardize LEC responses to customer contacts about changes to their LEC bill due to alleged IXC slamming, we will allow each LEC to continue to implement its current administrative practices to determine how the freeze process will be implemented. GTE, for example, states that it offers a PIC freeze but only after the customer has requested one, and signed and returned a numbered form. GTE believes that allowing verbal authorization from the customer would weaken an effective GTE practice and would not be in the best interest of the consumer or the industry. We have no objection to GTE's continuation of this administrative process. In the same way, other LECs may wish to honor verbal requests and follow up such requests with written notification to customers which includes in the notification an explanation of the procedures necessary to lift the freeze. We similarly have no objection to this procedure.

As indicated by our decision, we do not share the concerns expressed by MCI with respect to anticompetitive behavior. Given the purpose of the Interim Guidelines, which is to safeguard the rights of customers after a slam, we cannot overly concern ourselves as to what procedures in place provide an optimum setting for competition. While we are sensitive to any claims that our Interim Guidelines will have the effect of prohibiting or negatively impacting a telecommunications carrier's ability to provide a service, we do not believe the action we are taking could be viewed as anticompetitive. We have not made the freeze mandatory, but only at the customer's request, and the customer is being frozen to the pre-slammed IXC service to which the customer subscribed. Furthermore, we submit that this procedure does not change practices that are already followed by many LECs. Since the Interim Guidelines do not affect freeze procedures already in place, such as GTE's, we cannot see how anything changes for MCI in GTE's territory. Moreover, other LECs might very well allow an oral third party verification process to override the PIC freeze. To the extent that a customer might not want to endure any inconvenience in having the freeze lifted, which he requested, we submit that the expression of consumer frustration would not be reasonable under the circumstances and we cannot set procedure under this premise.

#### 27. *Comments on Subparagraph (b)(3)—Removing Charges from LEC Bill and Recursing to IXC or Billing Agent*

The Tentative Order specifically requested comments about the rebilling by the LEC of the unauthorized charges based on the rates charged by the customer's presubscribed carrier. As expected, parties responded with diverse comments.

The PTA objects strongly to the idea of the LEC being responsible for re-billing the unauthorized charges based on rates that the customer's pre-subscribed carrier would have charged. The PTA cites three reasons why the

Commission would be remiss to assign additional administrative burdens related to slamming to LEC's. First, IXCs are subject to the jurisdiction of the FCC and it must determine the most appropriate penalty for slamming. Second, the FCC has already placed the recalculation burden on the IXC. In its June 14, 1995 *Report and Order* (CC Docket No. 94-129) at paragraph 37, the FCC left it to the unauthorized carrier, in cooperation with the affected consumer, to arrive at a settlement that calculates the proper amount of charges that the consumer would have paid had the consumer's PIC never been changed. Third, rebilling by the LEC would be tantamount to changing the tariffed rates that the IXC carriers charge. (PTA Comments, p. 7)

The BA-PA and GTE agree with PTA in objecting to the LEC re-billing charges. GTE argues that the Commission does not have the authority to order the LEC to rebill, and adds the concern that such rebilling may violate current contracts between the LEC and IXC. (GTE Comments, p. 5). GTE further states it would be a severe administrative burden and require major modification of LEC billing systems to perform a rebilling and present a corrected version of the unauthorized charges. GTE believes that in those cases where the IXC alleges that the customer authorized the change consistent with the FCC's verification rules, the dispute would be between the IXC and the customer with the LEC not being involved in any manner. GTE advocates that LECs should not remove charges from the bill unless recourse is available from the carrier. Customers should pay for the costs of the calls that they would have received from their authorized carrier. (GTE Comments, pp. 5-8).

The BA-PA argues that neither BA-PA nor other LECs have the ability to rerate another carrier's charges based on a third carrier's charges, which rerating would be a prerequisite for the rebilling apparently contemplated by the Commission. The BA-PA asserts that only the customer's presubscribed carrier could do the rerating since only that carrier would be conversant with the rates charged by it to the customer. (BA-PA Comments, pp. 6-7). The BA-PA recommends that the words "or the portion of the charge(s) that the customer is unwilling to pay" be added after the word "charge(s)" in this guideline. This would permit the BA-PA and other LECs flexibility in situations where slammed customers are willing to pay some or even all of their bills from the unauthorized carrier. (BA-PA Comments, p. 8).

AT&T argues that since a slammed customer does receive a service, rather than permitting the customer to escape payment, a better alternative would be to require the unauthorized carrier to rerate the bill to the level that the authorized carrier would charge. (AT&T Comments, p. 4).

MCI notes that LECs by contract must bill long distance and related charges, and expresses the concern that LECs would find a safe harbor to remove and return legitimate long distance charges to IXCs. (MCI Comments, p. 4). MCI contends that the IXCs would not have feasible means of collecting for authorized services. MCI expects that some fraction of consumers will discover that, by claiming their carrier was changed without their consent, they can receive free service, increasing bad debt and other collection costs. MCI argues that the better remedy is to recognize and enforce the FCC's verification rules. (MCI Comments, p. 4).

Sprint opposes any regulations that would relieve customers who claim they were slammed from the duty to

pay any charges for calls made during the time that they were assigned to an allegedly unauthorized carrier. (Sprint Comments, p. 10).

The OCA believes the Commission should not authorize LEC rebilling of charges after a consumer has been slammed. The OCA argues that it may be very difficult for the LEC to determine what the appropriate bill would have been had the PIC actually provided the service. Furthermore, the OCA contends this proposal would seem to go beyond the federal law which addresses a related point. The OCA states that TA-96 requires the slamming carrier to pay the PIC when and if the consumer pays charges billed by the slamming carrier. The OCA submits that the act does not suggest any authority on the part of the LEC to re-bill the customer for a service that was not even provided by the PIC, as the Tentative Order suggests.

#### 28. *Response to Comments on Subsection (b)(3)*

We believe there is merit to the numerous arguments raised by parties opposed to the idea of a LEC rebilling unauthorized charges based on the rates charged by the customer's presubscribed carrier. Therefore, we will not attempt to encourage this action in the Interim Guidelines or impose a requirement in the proposed rulemaking.

#### 29. *Comments on Subparagraph (b)(4)—LEC Informs IXC to Cease Further Billing*

GTE believes that restoring a customer to their authorized PIC will effectively remove any further billing from the incorrect carrier and, therefore, no specific mention of billing treatment is necessary. (GTE Comments, p. 4).

#### 30. *Response to Comments on Subparagraph (b)(4)*

We do not agree that restoring a customer to their authorized PIC will automatically remove any further billing from the incorrect carrier. Customers have filed informal complaints with the Commission's Bureau of Consumer Services because of further billing from the incorrect carrier subsequent to restoration to their authorized carrier. Therefore, we will retain the provision in the Interim Guidelines that the LEC should provide this information to the customer.

#### 31. *Comments on Subsection (b)(5)—LEC Informs Customer of Other Collection Action; Subsection (b)(6)—Provide Customer with Right to Contact FCC, FTC, or PA OAG*

The PTA objects to informing the customer of the right to pursue a "slamming" complaint against the provider of the service or the billing agent by contacting the OAG, the FCC or the FTC. A regulation would require the LEC to make judgment calls on the nature of the complaint and the service or charge at issue. In addition, the PTA submits that the Commission recently revised its regulations regarding the resolution of "disputes" by LECs. According to the PTA, the regulations exclude from the definition of dispute: "matters outside the scope of this chapter, or failure to negotiate a mutually satisfactory payment agreement regarding undisputed amounts, or a disagreement over billing data provided to the local exchange carrier by an interexchange carrier." See *Rulemaking to Rescind Obsolete Regulations Regarding Telephone and Residential Telephone Service, 52 PA Code Chapters 63 and 64, Docket No. L-00960113* (adopted April 9, 1998). (PTA Comments, p. 4).

The BA-PA suggests limiting LEC complaint disclosures to only those customers who seek information about filing a complaint with a regulatory agency. (BA-PA comments,

p. 8). MCI agrees that carriers should, when asked, advise consumers to contact the appropriate agency should the consumer not be satisfied with the results of an investigation. (MCI Comments, p. 3).

32. *Response to Comments to Subparagraphs (b)(5) and (b)(6)*

The Interim Guidelines do not set forth a dispute process for resolution of customer allegations of slamming. The Interim Guidelines merely provide a customer with immediate restoral and billing of authorized services only. The alleged IXC slammer may in fact pursue a claim that the PIC switch was indeed properly authorized and argue that the charges taken off the LEC bill are legitimate. Since the Interim Guidelines will not necessarily result in a complete resolution of a customer's slamming complaint, some customers will naturally ask the LEC for information about the appropriate agency to approach in order to pursue their complaint. We realize that the LEC representative may not always make the correct assessment of which agency has jurisdiction, but experience tells us that, in instances where a customer is referred to the wrong place, the customer generally is redirected with a proper referral. In light of the comments, however, we have modified subsection (b)(6) so as to provide complaint disclosure information only to customers who indicate a desire to receive additional information for filing a complaint with a regulatory agency or government office. Accordingly, there is no burden placed on the LEC to ask the customer if he or she desires to receive this information.

33. *Comments on Subsection (b)(7)—Record Maintenance*

GTE states that the 2-year record maintenance period of informal and formal Commission written customer complaints is reasonable, but opposes the apparent Commission attempt to place the responsibility for enforcement on the LECs through cancellation of the billing contract. (GTE Comments, pp. 8-9).

The BA-PA offers that it will continue to maintain records of customer slamming complaints, but does not do this to monitor IXC's compliance with the billing and collection contracts or to provide a basis for cancellation of any contracts for excessive slamming complaints. The BA-PA contends that, unlike cramming, there is no linkage between slamming and the BA-PA's billing and collection contracts. Because of this, the BA-PA recommends that the Commission completely eliminate this guideline, or at least delete all language in the guideline from "in order to ..." onward. (BA-PA Comments, pp. 8-9).

MCI argues that the requirement to maintain the records of the slamming complaints filed with the Commission will not result in a complete record. MCI notes that LECs may not be aware of all "slamming" complaints in Pennsylvania because of the no-fault PIC change process, in which a customer may ask the LEC to change his PIC back to the previous carrier for a myriad of reasons which could include an unauthorized PIC change. Moreover, MCI believes that this subparagraph, to the extent it suggests LECs unilaterally decide what is "excessive" and when a contract should be canceled, provides the potential for anticompetitive behavior. (MCI Comments, p. 15-16).

Sprint advocates, in the interest of jurisdictional consistency, that the Commission adopt the FCC's guideline of maintaining complaint records for a 12-month period. Sprint also informs us that it already has internal policies and billing and collection contracts to allow

cancellation of billing service for service providers that knowingly and purposefully slam or cram customers. (Sprint Comments, p. 4).

34. *Response to Comments on Subparagraph (b)(7)*

As with respect to cramming, we have also modified the time frame for record maintenance for slamming by increasing it from 2 years to 3 years to be consistent with 66 Pa.C.S. § 3314, which sets 3 years as the time frame within which the Commission can bring an action or prosecution for violations of our regulations. If it becomes necessary to initiate some type of enforcement action to assess penalties, the 3-year record retention will provide the opportunity to review instances that may be part of the action.

III. *Conclusion*

We believe that the Interim Guidelines established in this Order are critically important to protecting consumers from cramming and slamming and safeguarding their rights after a cramming or slamming, or both, has occurred. As all interested parties have already had an opportunity to provide public comment on the Interim Guidelines as proposed, we hereby adopt the Interim Guidelines, as modified per the discussion in this order, and offer them on an optional basis to jurisdictional utilities to provide guidance on standardizing LEC responses to customer contacts alleging unauthorized changes to the customer's telecommunications service provider and unauthorized charges added to the customer's bill, until the proposed regulations receive final approval. We note that this approach of adopting Interim Guidelines until final regulations have been promulgated has previously been used by this Commission in a number of other instances to implement telephone and electric reform legislation. See, e.g., *Interim Guidelines for Standardizing Local Exchange Company Responses to Customer Contacts Alleging Unauthorized Changes to the Customer's Telecommunications Service Provider and Unauthorized Charges Added to the Customer's Bill*, Docket No. M-00981063 (Tentative Order entered June 5, 1998); *Chapter 28 Electric Generation Customer Choice and Competition Act—Customer Information—Interim Requirements*, Docket No. M-00960890.F0008 (Order entered July 11, 1997); *Re: Licensing Requirements for Electric Generation Suppliers—Interim Licensing Procedures*, M-00960890.F0004 (Order entered February 13, 1997).

Nevertheless, it is also our intention to establish mandatory final-form regulations that will govern LEC responses to customer contacts alleging unauthorized changes in telecommunications service providers and unauthorized billing charges. As is the normal procedure for promulgating regulations under the Regulatory Review Act (71 P. S. §§ 745.1—745.7), we shall be informed by and carefully consider comments to the proposed-form regulations set forth as Annex A, the industry and consumer experience with the voluntary Interim Guidelines adopted herein, and any future developments at the Federal level before we issue mandatory final-form regulations for approval by the Independent Regulatory Review Commission (IRRC).

Accordingly, this proposal is promulgated under sections 501 and 1501 of the Public Utility Code, 66 Pa.C.S. §§ 501 and 1501; sections 201 and 202 of the act of July 31, 1968 (P. L. 769 No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder at 1 Pa. Code §§ 7.1, 7.2 and 7.5; section 204(b) of the Commonwealth Attorneys Act (71 P. S. § 732.204(b)); section

745.5 of the Regulatory Review Act (71 P. S. § 745.5); and section 612 of The Administrative Code of 1929 (71 P. S. § 232), and the regulations promulgated thereunder in 4 Pa. Code §§ 7.251—7.235. *Therefore,*

*It is Ordered That:*

1. The proposed rulemaking at Docket No. L-00990140 be granted to consider the regulations set forth in Annex A.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for review as to form and legality and to the Governor's Budget Office for review of fiscal impact.

3. The Secretary shall submit this order and Annex A for review and comment to IRRC and the Legislative standing committees.

4. The Secretary shall certify this order and Annex A, and deposit them with the Legislative Reference Bureau to be published in the *Pennsylvania Bulletin*. An original and 15 copies of any comments referencing the docket number of the proposed amendments be submitted within 30 days of publication in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary, P. O. Box 3265, Harrisburg, PA 17105-3265. The Secretary shall specify publication of the Order in accordance with 45 Pa.C.S. § 727.

5. The proposed Annex A regulations are hereby adopted as final Interim Guidelines at Docket No. M-00981063, and can be used by jurisdictional utilities, on a voluntary basis, to provide guidance until such time as final regulations are approved at Docket No. L-00990140.

6. The contact persons for this rulemaking are Terrence J. Buda, Law Bureau, (717) 787-5755 (legal), Louis Sauers (717) 783-6688, Janice Ragonese (717) 772-4835, and Peggy Hartman (717) 772-0806, Bureau of Consumer Services (technical).

7. A copy of this order and Annex A shall be served upon the commentators, all jurisdictional telecommunication utilities, the Office of Trial Staff, the Office of Consumer Advocate, and the Small Business Advocate.

*By the Commission*

JAMES J. MCNULTY,  
*Secretary*

**Fiscal Note:** 57-204. No fiscal impact; (8) recommends adoption.

**Annex A**

**TITLE 52. PUBLIC UTILITIES**

**PART I. PUBLIC UTILITY COMMISSION**

**Subpart C. FIXED SERVICE UTILITIES**

**CHAPTER 64. STANDARDS AND BILLING PRACTICES FOR RESIDENTIAL TELEPHONE SERVICE**

**Subchapter A. PRELIMINARY PROVISIONS**

**§ 64.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the content clearly indicates otherwise:

**Cramming**—The submission or inclusion of unauthorized, misleading or deceptive charges for products or services on end-user customers' local telephone bills.

\* \* \* \* \*

**Service provider**—Facilities-based interexchange carrier or interexchange reseller or information service provider initiating the service or charges.

**Slamming**—The unauthorized changing of a customer's telecommunications provider, whether for local exchange service, intraLATA toll or interLATA toll.

\* \* \* \* \*

**Subpart B. PAYMENT AND BILLING STANDARDS**

**§ 64.23 Standardizing LEC responses to customer contacts alleging unauthorized changes to the customer's long distance carrier and unauthorized charges added to the customer's bill.**

(a) **Cramming.** Upon contact from the customer alleging that cramming has occurred on the bill rendered to the customer by the LEC, the LEC shall do the following:

(1) Identify the charges, and clarify that the customer's complaint is that the customer did not authorize the charges or order or use the services or products associated with the charges.

(2) Inform the customer that the charges will be removed from the LEC bill and recoured to the service provider or its billing agent.

(3) Inform the customer that the LEC will instruct the billing agent or service provider, or both, to take the steps necessary to prevent further billing of those charges or types of charges to the customer's account.

(4) Inform the customer that removal of the charges from the LEC bill does not guarantee that the service provider or its billing agent will not use other collection remedies, including direct billing of the recoured charges or use of a collection agency.

(5) Provide to customers who indicate a desire to receive complaint disclosure information adequate information about how to pursue the complaint against the service provider or billing agent by contacting the Bureau of Consumer Protection, (800) 441-2555 of the Pennsylvania Office of Attorney General, the Federal Communications Commission and the Federal Trade Commission.

(6) Maintain for a minimum of 3 years records of the customer complaints of cramming to monitor adherence to the terms of the billing contract the LEC has with the service provider or billing agent, or both, relating to cancellation of the contract for excessive cramming complaints.

(b) **Slamming.** Upon contact from the customer alleging that slamming has occurred on one or both of the past two bills rendered to the customer by the LEC, regardless of dates of calls, the LEC shall do the following:

(1) Identify the name of the alleged unauthorized IXC, isolate the charge, and clarify that the customer's complaint is that the customer did not authorize the switch to this IXC.

(2) Offer to restore the customer's account, at no charge, to the IXC the customer had received service from prior to the unauthorized switch, and, at the request of the customer, to place a safeguard on the customer's account to prevent the LEC from

processing an IXC request for a switch without the LEC obtaining express authorization from the customer.

(3) Inform the customer that the isolated charges will be removed from the LEC bill and returned to the IXC or its billing agent.

(4) Inform the customer that the LEC will instruct the IXC or billing agent, or both, to take the steps necessary to prevent further billing to the customer's account.

(5) Inform the customer that removal of the charges from the LEC bill does not guarantee that the IXC or its billing agent will not use other collection remedies, including direct billing of the recouped charges or use of a collection agency.

(6) Provide to customers who indicate a desire to receive complaint disclosure information adequate information about how to pursue a complaint against the IXC or billing agent, or both, by contacting the Federal Communications Commission or the Bureau of Consumer Protection, (800) 441-2555 of the Pennsylvania Office of Attorney General.

(7) Maintain for a minimum of 3 years records of the customer allegations of slamming.

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