

RULES AND REGULATIONS

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 64]

[L-00990140]

Cramming and Slamming

The Pennsylvania Public Utility Commission (Commission) on July 20, 2000, adopted a final rulemaking order standardizing local exchange company responses to customer contacts alleging cramming and slamming. The contact persons are Janice Ragonese, Bureau of Consumer Services (717) 772-4835 and Terrence Buda, Law Bureau (717) 787-5755.

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. As a result of this situation, on January 27, 1999 the Commission issued a Proposed Rulemaking Order at Docket No. L-00990140 and Final Interim Guidelines at Docket No. M-00981063 to standardize local exchange company responses to customer contacts alleging unauthorized billing charges and unauthorized changes in telecommunications service providers. The purpose of the regulation is to standardize local exchange company 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 local exchange company 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 local exchange company and the Commission's Bureau of Consumer Services.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on May 19, 1999, the Commission submitted a copy of the notice of proposed rulemaking, published at 29 Pa.B. 2779 (May 29, 1999), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Commission has considered all comments from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act (71 P.S. § 745.5a(d)), on October 11, 2000, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on October 19, 2000, and approved the final-form regulations.

Commissioners Present: John M. Quain, Chairperson; Robert K. Bloom, Vice-Chairperson; Nora Mead Brownell; Aaron Wilson, Jr.; Terrance J. Fitzpatrick

Public Meeting held
July 20, 2000

Final Rulemaking Order

By the Commission:

At public meeting of January 14, 1999, the Pennsylvania Public Utility Commission (Commission) issued an order at this docket adopting and directing publication of proposed regulations to standardize 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. In addition, the Commission adopted the proposed regulations as Final Interim Guidelines at M-00981063 to be used by jurisdictional utilities, on a voluntary basis, to provide guidance until such time as final regulations are approved. The proposed regulations were published on May 29, 1999, at 29 Pa.B. 2779, and a 30-day comment period set. The proposed rulemaking was served on all jurisdictional telecommunications utilities, the Office of Trial Staff, the Office of Consumer Advocate, the Small Business Advocate, and all commentators to the Tentative Order at M-00981063. The 30-day comment period ended June 28, 1999.

We received written comments from Bell Atlantic-Pennsylvania, Inc. (BA-PA); the Office of Consumer Advocate (OCA); the Pennsylvania Telephone Association (PTA); Conectiv Communications, Inc. (Conectiv); the Office of Trial Staff (OTS), and the Independent Regulatory Review Commission (IRRC).

We have considered all these comments. We appreciate and thank the commentators for suggestions to improve the proposed regulations.

Cramming

1. General Comments

The PTA comments that the Commission's action is a step in the right direction toward elimination of this illegal and reprehensible conduct. PTA clarifies their previous comments emphasizing that "consistent with the concept of regulatory parity, the Final Regulations should be applicable to both ILECs and CLECs." PTA also emphasizes that the local exchange carrier (LEC) is not responsible for the ultimate actions taken by service providers, and believes, therefore, that the Commission should limit LEC responsibilities.

BA-PA applauds the Commission's efforts to protect consumers, supports the adoption of the proposed cramming regulations with one exception (see comment to subsection (a)(5)), and believes that they are appropriate and should be adopted. The OCA states that the regulations are a "step in the right direction" and commends the Commission for taking a proactive stance. OCA supports the guidelines but believes that the rules could be strengthened. The OCA also believes that the Commission should consider steps to prevent slamming and cramming.

Response to General Comments

We appreciate industry support for our rulemaking initiative. However, while we hope that the implementation of these regulations will have the effect of deterring

future cramming occurrences, the purpose of the proposed regulations is to standardize the LEC's response to the customer contact once the unauthorized charge appears on the bill. Consistent with the concept of regulatory parity, the proposed regulations would apply to all companies providing local exchange service.

2. Comments on Subsection (a)—Billing period

In its comments, IRRC requests an explanation as to why the cramming provisions do not reference specific billing periods like the slamming provisions. IRRC points out that subsection (a) sets forth the LEC's responsibilities when the customer alleges that cramming has occurred "on the bill rendered to the customer" while subsection (b) establishes the LEC's responsibilities in a specific time frame when a customer alleges "slamming has occurred on one or both of the past two bills." IRRC recommends that for consistency, the same reference to billing periods should be included in subsection (a).

Response to Comments on Subsection (a)

We understand IRRC's concern. Nevertheless, we disagree with their recommendation that, for consistency, the reference to billing periods that appears in subsection (b) should also be included in subsection (a). Given that slamming and cramming are different, we made a conscious decision not to reference a specific billing period in subsection (a). We did not want to limit the time frame in which a customer could bring a cramming allegation to the attention of the LEC. We believe that entities that engage in cramming appear to rely heavily on consumer confusion over telephone bills in order to mislead consumers into paying for services that were not authorized or received. Cramming is not as evident on bills as slamming and, therefore, can be more easily overlooked by a consumer. Because the cramming charge often appears as a single line item with a general label such as "monthly fee," it can be difficult to detect without careful review of every bill. By using language in our regulation that refers to a general time frame, stated as "on the bill rendered to the customer," we believe that we are providing additional protection to the consumer and, therefore, are not changing the wording in subsection (a).

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

The OCA recommends in its comments that in addition to informing the customer that the charges will be removed and recurred, the LEC should also inform the customer that failure to pay crammed charges cannot result in termination of basic service. IRRC also comments that customers may not be aware that basic service cannot be terminated for failure to pay non-basic charges and recommends that we adopt OCA's recommendation.

Response to Comment on Subsection (a)(2)

Having reconsidered our position on this issue, we agree with IRRC and the OCA that we should improve the consumer protection provision of this rulemaking by adding the requirement that the LEC explicitly disclose, upon the initial cramming complaint, that the customer's local basic service cannot be terminated for failure to pay the crammed charges. We now believe that even though termination of basic local service in these instances is prohibited, consumers may be concerned that their local service can be disconnected for failure to pay these unauthorized charges. Therefore, we have changed the language in the regulation to require that LECs explicitly disclose this information.

4. Comments on Subsection (a)(5)—LEC Informing the Customer of the Right to Contact the Pennsylvania Office of Attorney General, the Federal Communications Commission, and the Federal Trade Commission

In its comments, IRRC points out that subsection (a)(5) requires the LEC, at the customer's request, to provide information on how to file a complaint with the Pennsylvania Office of Attorney General (OAG), the Federal Communications Commission (FCC), and the Federal Trade Commission (FTC). IRRC states that it is concerned that this information may be valuable to customers, but customers may not be aware they can ask for it. The OCA also submits in its comments that the requirement to provide complaint information to customers should not be limited to customers who specifically request it, emphasizing that it may be especially important for customers alleging cramming to have the information they need to protect themselves if further collection action is taken.

Conectiv suggests that this provision should specify that the carrier may provide information "orally or in writing" about pursuing a complaint with the OAG, FCC, or FTC.

BA-PA suggests in its comments that this rule should be clarified to "properly limit complaint disclosure information to that pertaining to the appropriate complaint forum, depending on the nature of the cramming charges complained about." BA-PA expresses concern that the language as written suggests that the customer receive information about how to file complaints with all three of the entities listed. BA-PA suggests that this rule be clarified by changing the language to read "the Pennsylvania Office of Attorney General, the Federal Communications Commission, or the Federal Trade Commission, as appropriate."

Response to Comments on Subsection (a)(5)

We agree with IRRC and OCA and, therefore, will amend this provision to require LECs to disclose to their customers information on filing a complaint with other agencies. We believe that consumers should be fully informed about their options. Finally, we do not believe that requiring LECs to disclose this information would be excessively burdensome.

We disagree with the Conectiv and BA-PA suggestions to change the language under subsection (a)(5). In response to Conectiv's suggestion that the language should specify that the contact information can be "oral or written," we believe that the language can be interpreted to allow oral or written information and it is not necessary to specifically state the form in which the information can be provided.

Furthermore, we shall not adopt BA-PA's recommendation to limit the complaint disclosure information. We do not want to burden the LEC with having to make judgment calls, and we believe that requiring the LEC to provide the customer with the information relevant to contacting all three agencies or only the agency for which the customer requests information is in the best interest of the customer. We disagree that the word "and" acts as an encouragement to file complaints with multiple agencies. It is the consumer's prerogative to file a complaint with any agency that the consumer wishes, and the agency will then redirect the consumer if there is a more appropriate forum for that complaint.

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

Both the OTS and the PTA commented on this subsection relating to record maintenance. The OTS proposed language changes that it believes would facilitate the performance of duties and responsibilities delegated to the OTS to investigate and prosecute incidents of customer complaints of both cramming and slamming. The additional language proposed by the OTS would require the LEC to submit quarterly reports to OTS and BCS summarizing the records of all customer complaints of cramming. The PTA suggested that the reporting rules be similar to the FCC's. In its comments, the PTA said "periodic reporting of cramming and slamming complaints, like that presently proposed before the FCC, would provide the Commission with pertinent information upon which it could base an investigation or take appropriate penal action." The PTA also commented that it believes the 3-year record retention period is too lengthy and should be shortened.

Response to Comments on Subsection (a)(6)

As indicated earlier, the overall intent of this rule-making in regard to cramming is to provide a customer with a means to eliminate crammed charges by standardizing the LEC's response to a customer alleging cramming. However, as pointed out by OTS and the PTA, with a periodic reporting requirement, the Commission may have the opportunity to further investigate some of these entities and even to take action against them with periodic reporting. We believe that quarterly reports would provide pertinent information upon which we could base such action. Therefore, we have amended subsection (a)(6) to require quarterly reports to the Commission.

In response to the PTA's suggestion that the 3-year record retention period is too lengthy, we see no supporting evidence that this is the case. We reiterate our response to the first round of comments, settling on 3 years consistent with the statute of limitations provision at 66 Pa.C.S. § 3314.

Slamming

1. General Comments

Comments made by BA-PA indicate that their major concern is that the proposed regulations are inconsistent with the FCC rules on slamming. The PTA also comments that the Commission should reconsider finalizing the proposed rules until the FCC's slamming rules are final so that they are not inconsistent with the FCC's. On this point, PTA agrees with BA-PA. IRRC, in its comments, questioned why it is necessary for the Commission to proceed with its own slamming rules prior to final implementation of the FCC rules. IRRC noted that commentators have questioned the need for the Commission to put the proposed subsection (b) slamming rules in place "at a time when the FCC liability rules on slamming are pending." IRRC referenced commentators' assertions that "if both sets of rules are in place at the same time and contain conflicting requirements, it will be virtually impossible for them to comply."

IRRC recommended that if the Commission does finalize these slamming regulations, it should ensure that the final-form regulation does not conflict with the FCC requirements and that any inconsistencies be eliminated "to avoid potential compliance problems and additional recordkeeping and paperwork requirements."

Conectiv supports the Commission's efforts, but cautioned that "any rules promulgated by the Commission be

consistent with any cramming and slamming rules which the FCC may adopt in response to the May 17, 1999 stay of the liability provisions of the FCC's slamming rules by the U.S. Court of Appeals for the District of Columbia Circuit." Conectiv adds that it supports the Commission's development of a process for responding to consumer complaints if no consistent liability scheme is implemented at the federal level.

The OCA points out that the Commission should expand the rules to encompass local service slamming. The OCA submits that "the PUC should use the authority pursuant to the Public Utility Code to take action against slammers." OCA comments that while they support the broad definition of slamming, Chapter 64 does not contain any specific reference to slamming and cramming.

As indicated above, BA-PA recommends that the Commission reconsider the adoption of its proposed slamming regulations or defer such adoption pending the FCC's implementation of comprehensive liability slamming rules. In presenting the basis for its position, BA-PA asserts that there are conflicts between the proposed state rules and the federal rules that would make it impossible for BA-PA and other Pennsylvania LECs and interexchange carriers (IXCs) to comply with both sets of rules. PTA agrees with this position that the Commission should re-evaluate its decision to move forward with this rulemaking so that carriers are not subjected to two differing sets of slamming regulations.

BA-PA explains that the FCC has both adopted and proposed comprehensive slamming rules to enforce the Telecommunications Act of 1996 prohibition of slamming. 47 U.S.C. § 258; *In Re 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 Dec. 23, 1998). BA-PA maintains that the FCC's slamming liability rules conflict with proposed Section 64.23(b)(3), (4), and (5).

The liability rules were stayed by the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). *MCI WorldCom, Inc. v. FCC*, No. 99-125 (D.C. Cir. May 18, 1999). However, the D.C. Circuit on June 27 granted the FCC's motion to dissolve the stay of the slamming rules. In its *First Order on Reconsideration* at CC Docket No. 94-129 (Released May 3, 2000), the FCC revised the liability rules so as to provide for slamming disputes to be brought before state commissions and modified the liability rules that apply when a customer has paid charges to a slamming carrier.

According to BA-PA's comments, the Commission's proposed regulations require LECs to remove alleged slammer IXC charges from a customer's bill and recourse them back to the IXC. In contrast, BA-PA believes that the FCC liability rules set forth different procedures to determine slamming liability along with refund and payment responsibility. As an example, BA-PA points out that the Commission's rules require BA-PA to remove and recourse up to 2 months of a customer's billed charges from an alleged slammer IXC. However, under the FCC's liability rules the customer is absolved of liability for unpaid charges imposed by the slammer IXC for services provided during the first 30 days after the unauthorized change.

BA-PA also alleges further inconsistencies involving the FCC regulations and, in summary, believes that we

should defer adopting our proposed rules pending the FCC's implementation of its slamming liability rules. If necessary, BA-PA suggests that the Commission can modify its regulations to be consistent with the rules finally implemented by the FCC.

Response to General Comments

We have been persuaded by BA-PA's comments that the proposed regulations as they apply to slamming are in need of some modification to forestall any potential conflicts with Federal requirements. However, we do not anticipate the need to generally postpone the adoption of final regulations as they apply to a LEC's response to slamming complaints.

Our position is grounded in the basic belief that these proposed regulations do not affect or even address liability for instances of slamming. Whereas the FCC's rules provide a comprehensive scheme for determining liability for unpaid charges and paid charges between the customer, authorized IXC and slammer IXC, the Commission's proposed regulations address merely the LEC's response to the slam and the charges that the LEC will be allowed to bill. In other words, these regulations do not determine liability or require the LEC to take any action with respect to disposition of the charges. Rather, the Commission's proposed regulations simply require the LEC to refrain from billing for charges on one or both of the past two bills. 52 Pa. Code § 64.23(b). Our regulations specifically contemplate that an IXC or billing agent may attempt to directly bill the customer. 52 Pa. Code § 64.23(b)(5).

Therefore, given our intention that the LEC will only remove charges from the LEC bill and not determine liability, it will be necessary to delete the reference in Section 64.23(b)(3) that requires the LEC to recourse the charges. This phrase "and [charges] returned to the IXC or its billing agent" implies that a disposition of the charges has been made by the LEC. Clearly, this is not our intention and we shall delete this language so that subparagraph (b)(3) limits the LEC's action to removing the charges from the bill. Although this issue was not raised with respect to cramming, we shall, for the same reasons, delete the reference to "recourse" in subsections (a)(2) and (a)(4).

In taking this action, we are mindful that a LEC may have had contractual responsibilities for the billing services it provides and that the FCC's rules propose to impose on carriers, including LECs, the responsibility to enforce the slamming liability rules. In order to comply with this regulation the LEC will not be able to bill for the second month in which slamming has occurred. Therefore, to the extent that the LEC's billing contract with the IXC would require that these charges be placed on the LEC bill, the contract would have to be modified to recognize the regulation. It is hoped that the residual effect of this modification will be to deter the unauthorized switch in the first instance. Finally, compliance with the regulation by the LEC would not prevent the executing carrier from implementing the FCC's rules by informing the subscriber of the 30-day absolute period or the subscriber's liability for any other charges. The proposed regulation will merely prohibit the LEC from billing for any unauthorized charges that pertain to the last two bills after the slam has occurred.

2. Comments on Subsection (b)—Time Period for Filing a Slamming Complaint

Conectiv comments that this section establishes a procedure for addressing a customer's allegation that "slam-

ming has occurred on one or both of the past two bills rendered to the customer," but should specify the carrier's responsibilities in the event that charges by an unauthorized carrier appeared on the customer's bill prior to the last two bills. In other words, Conectiv wants the proposed regulations to address situations where a customer might delay informing the local carrier that their service was slammed. Conectiv recommends that the Commission establish a time period after which the customer could not have the service switched back without charge. Conectiv presents a potential situation of a customer intentionally switching carriers, using the new carrier for 6 months and then informing the LEC that the service had been slammed thereby entitling the customer to a change back to the original carrier without charge because the slammed charges appeared on the last two bills. Conectiv recommends that the regulations specify clearly that a customer who acquiesces in the carrier change for more than 90 days would not receive the protections provided by the rules.

Response to Comments on Subsection (b)

Based on documentation from our Bureau of Consumer Services' (BCS) regarding IXC slamming complaints, we decline to adopt Conectiv's recommendation. The case documentation from those complaints filed by customers with BCS does not offer any evidence that customers make allegations of slamming to avoid a charge for switching carriers. Therefore, we do not believe it is necessary to specify a limit after which a customer complaining that his or her service was slammed would not be entitled to the protections set forth in the regulations.

3. Comments on Subsection (b)(2)—Account Safeguard

Both IRRC and the OCA comment about the LEC's role in providing customers with the optional safeguard to protect an account from being slammed again in the future. IRRC expresses concern that although subsection (b)(2) requires the LEC to put a safeguard on the customer's account at the customer's request, the customer may not request such a measure because he or she may not be aware that a safeguard is an option. IRRC recommends that the Commission amend subsection (b)(2) to require the LEC to inform the customer that a safeguard can be placed on the account.

The OCA, in its comments, states that it supports the Commission's clarifying change to make this provision state that the safeguard is to be placed on the account by the LEC "at the request of the customer." The OCA reiterates that this change helped to alleviate concerns about the potential anti-competitive use of such safeguards.

IRRC, in further comments on this provision, brings up a clarity issue. IRRC states that it is not clear what constitutes the customer's "express authorization" and recommends that, for improved clarity, we amend this subsection to specify what constitutes "express authorization."

Response to Comments on Subsection (b)(2)

We agree with IRRC that customers may not be aware that requesting a safeguard on their account is an option. We believe that we can rectify the problem without resurrecting concerns about possible anti-competitive use of such safeguards. This can be done by requiring that the LEC inform the customer about the option of having a safeguard put on the account. We believe that as long as the customer, not the LEC, makes the choice to safeguard

the account from future slamming, consumer interests will be served without impeding competition.

For clarity and continuity, we have accepted, in part, IRRC's recommendation regarding express authorization. We will use the term "express consent" rather than "express authorization" to reflect the terminology used in the FCC's regulations regarding slamming. We will also add a reference to the FCC's rules or procedures for lifting preferred carrier freezes. A preferred carrier freeze prevents a change in a customer's preferred carrier selection unless the customer gives the carrier from whom the freeze was requested his or her express consent. Once a freeze is placed on the account, no one, including the customer, will be able to make a change in carrier selection unless the customer lifts the preferred carrier freeze. Therefore, the express consent needed to make a change in the customer's preferred carrier selection would be the customer's written and signed authorization stating the customer's intent to lift a preferred carrier freeze; or the customer's oral authorization stating his or her intent to lift the freeze. The oral authorization must be done using a three-way conference call between the customer, the submitting carrier, and the carrier administering the freeze, whereby the carrier administering the freeze can confirm appropriate verification data.

4. Comments on Subsection (b)(3)—Informing Customer that Isolated Charge Will Be Removed and Returned to the IXC or Billing Agent

IRRC questioned the reasonableness of requiring the LEC to return the charges to the IXC or its billing agent. Conectiv also commented on this requirement. Conectiv recommended that this provision be changed to require the LEC simply to remove the charges from the LEC bill. Conectiv presented a two-pronged argument in support of this change. First, Conectiv contends that not all carriers' billing systems have the ability to return the usage to the IXC or its billing agent. Second, Conectiv states that "this information is one of the internal mechanics of billing between companies." IRRC recommended that we should require only that the LEC remove the charge from the customer's bill and that the LEC and the IXC can determine how these charges should be handled.

Response to Comments on Subsection (b)(3)

We agree with IRRC and Conectiv and have changed the language in this provision to omit the requirement to "return" charges to the IXC or its billing agent.

5. Comments on Subsection (b)(6)—Provide Customer with Right to Contact the PA OAG and FCC

This subsection substantially mirrors subsection (a)(5) in the cramming section and elicited the same comments. The OCA and IRRC both maintain that customers may be unaware that complaint disclosure information is available and therefore would not know to ask for it. IRRC comments that subsection (b)(6) should require LECs to inform customers that complaint information is available upon request. IRRC notes that subsection (b)(6) requires the LEC, at the customer's request, to provide information on how to file a complaint with the Pennsylvania OAG and the FCC. IRRC states that it is concerned that this information may be valuable to customers, but customers may not be aware they can ask for it. In the case of slamming, the OCA has an additional suggestion. The OCA recommends that slamming complainants should also be advised that they may file complaints with the Commission, as well as the FCC or the Attorney General's Bureau of Consumer Protection. The OCA presents, as a basis for this recommendation, that "most

telephone bills involve both intrastate and interstate toll charges, and in such cases, the PUC certainly has jurisdiction to act."

Response to Comments to Subsection (b)(6)

We agree with the recommendation made by IRRC and the OCA that customers should be informed that complaint information is available upon request. Therefore, we have added this requirement. As with subsection (a)(5), we believe that it would not be burdensome to require LECs to disclose to customers that information on filing their complaint with other agencies is available. We believe that fully informing consumers about their options realizes the consumer protections intended by this section.

In addition, we agree with the OCA that complainants should be advised that they may file complaints with the Public Utility Commission, as well as with the FCC or the Attorney General's Bureau of Consumer Protection. There is nothing more that the Commission would be able to do at the informal level for an individual customer beyond making sure that the LEC removed the charges from the local bill and returned the customer to the authorized provider. However, a person complaining of slamming should be informed of the right to file a formal complaint with the Commission. Therefore, we have changed this section accordingly to include advising complainants that they may file complaints with the Commission.

6. Comments on Subsection (b)(7)—Record Maintenance

Both the OTS and the PTA commented on this subsection relating to record maintenance. The OTS proposed language changes that it believes will facilitate the performance of duties and responsibilities delegated to the OTS to investigate and potentially prosecute incidents of customer complaints of slamming. The additional language proposed by the OTS would require the LEC to submit quarterly reports to OTS and BCS summarizing the records of all customer complaints of slamming. The PTA suggested that the reporting rules be similar to the FCC's.

In its comments, the PTA said "periodic reporting of cramming and slamming complaints, like that presently proposed before the FCC, would provide the Commission with pertinent information upon which it could base an investigation or take appropriate penal action." Finally, the PTA commented that it believes the 3-year record retention period is too lengthy and should be shortened.

Response to Comments on Subsection (b)(7)

The overall intent of this rulemaking in regard to slamming is to provide a customer with a means to eliminate slammed charges from the LEC bill and to return to the authorized carrier. We believe we have accomplished this by standardizing the LEC's response to a customer alleging slamming. However, as pointed out by OTS and the PTA, the Commission may have the opportunity, with periodic reporting, to further investigate IXC service providers and take action against them as appropriate. We believe that quarterly reports would provide this pertinent information upon which we could base such action. Therefore, we have amended subsection (a)(7) to require quarterly reports to the Commission.

In response to the PTA's suggestion that the 3-year period is too lengthy, we see no supporting evidence that this is the case. We reiterate our response to the first round of comments—3 years is consistent with the statute of limitations in the Public Utility Code.

Conclusion

We believe that the final-form regulations promulgated by this order are extremely important to consumers. The regulations provide standards for LECs responding to allegations of cramming and slamming, thereby requiring the LEC to address the customer's immediate problem and help the customer to safeguard his or her rights after cramming or slamming has occurred.

Interested parties have had an opportunity to provide public comment; first, on the Interim Guidelines at M-00981063, and then on the proposed regulations originally published May 29, 1999 at 29 Pa. B. 2779. We have carefully considered these comments and have also taken into consideration developments at the Federal level.

Finally, we have made additional changes to Annex A, but consider them to be purely editorial. In particular, we have reversed the order of cramming and slamming in the title.

Accordingly, under 66 Pa.C.S. §§ 501, 504—506, 1301, and 1501, and the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201—1208), and regulations promulgated thereunder at 1 Pa. Code §§ 7.1—7.4, the Commission hereby adopts final regulations to standardize local exchange company responses to customer contacts alleging unauthorized charges added to the customer's bill and unauthorized changes to the customer's telecommunications service provider, as noted and set forth in Annex A; *Therefore,*

It Is Ordered that:

1. The Commission's regulations, 52 Pa. Code Chapter 64, are amended by amending § 64.2 and by adding § 64.23 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

2. The Secretary shall submit this order and Annex A to the Office of Attorney General for approval as to legality.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of the fiscal impact.

4. The Secretary shall submit this order and Annex A for formal review by the designated standing committees of both houses of the General Assembly, and for formal review and approval by the Independent Regulatory Review Commission.

5. The Secretary shall deposit the original certified order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

6. A copy of this order and Annex A shall be served upon all persons who submitted comments in this rule-making proceeding.

7. The regulations adopted with this order are effective upon publication in the *Pennsylvania Bulletin*.

JAMES J. MCNULTY,
Secretary

Fiscal Note: Fiscal Note 57-204 remains valid for the final adoption of the subject regulations.

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission, relating to this document, see 30 Pa.B. 5807 (November 4, 2000).)

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 context clearly indicates otherwise:

* * * * *

Cramming—The submission or inclusion of unauthorized, misleading or deceptive charges for products or services on an end-user customer's local telephone bill.

* * * * *

Service provider—Facilities-based interexchange carrier, interexchange reseller or information service provider initiating the service or charges to end-user customers.

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

* * * * *

Subchapter B. PAYMENT AND BILLING STANDARDS

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

(a) *Cramming.* Upon contact from a 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 of the services or products associated with the charges.

(2) Inform the customer that the charges will be removed from the LEC bill and that basic local service cannot be disconnected for failure to pay cramming charges.

(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 removed charges or use of a collection agency.

(5) Provide notice of a customer's right to pursue a complaint. To customers who indicate a desire to receive complaint disclosure information, the LEC shall provide 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 (FCC), and the Federal Trade Commission.

(6) Maintain for a minimum of 3 years records of all customer complaints of cramming in order 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. Submit quarterly reports summarizing the records to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus.

(b) *Slamming*. Upon contact from a 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 charges, the LEC shall do the following:

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

(2) Offer to restore the customer's account, at no charge, to the service provider the customer had received service from prior to the unauthorized switch, and inform the customer of the option to request that a safeguard be placed on the customer's account to prevent the LEC from processing a service provider request for a switch without the LEC obtaining express consent from the customer, consistent with FCC rules or procedures for lifting preferred carrier freezes.

(3) Inform the customer that the isolated charges will be removed from the LEC bill.

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

(6) Provide notice of a customer's right to pursue a complaint against the service provider or billing agent and, to customers who indicate a desire to receive complaint disclosure information, information about how to pursue a complaint against the service provider or billing agent, or both, by contacting the FCC, the Commission or the Bureau of Consumer Protection, (800) 441-2555, of the Office of Attorney General.

(7) Maintain for a minimum of 3 years records of all customer allegations of slamming and submit quarterly reports summarizing the records to the Commission's Office of Trial Staff and Bureau of Consumer Services in a format prescribed by those bureaus.

[Pa.B. Doc. No. 01-176. Filed for public inspection February 2, 2001, 9:00 a.m.]