

STATE OF ALASKA
THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

G. Nanette Thompson, Chair
Bernie Smith
Patricia M. DeMarco
Will Abbott
James S. Strandberg

In the Matter of the Consideration
of Regulations Governing Changes
to a Customer's Preferred Tele-
communications Carriers)
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)
)
_____)

R-00-6
ORDER NO. 1

**ORDER ADDRESSING FEDERAL REQUIREMENTS;
ISSUING NOTICE OF INQUIRY; AND
ESTABLISHING FILING SCHEDULE**

BY THE COMMISSION:

Background

Slamming is the practice where a customer's preferred carrier for long distance or local service is changed without the customer's permission. Both state and federal regulations exist to discourage and prevent slamming. Those regulations generally identify how a carrier change-request must be submitted (e.g., in writing, electronically) and what verification practices are needed to ensure that the customer is the entity authorizing the request and the request is valid.

State Regulations

In general, Alaska regulations and policy allow a customer's intrastate interexchange carrier (IXC) to change by (a) a letter of authorization signed and dated by the customer or (b) verbal authorization from the customer who has been positively

identified. Local exchange carrier (LEC) change rules are similar but not identical to the interexchange rules. The intrastate slamming regulations¹ are specified at 3 AAC 53.260 for LEC changes and 3 AAC 52.334 and 3 AAC 52.336 for IXC changes. To date, the Commission has received few significant complaints regarding slamming in Alaska.

Federal Requirements

Nationwide slamming of interexchange services has been such a significant problem that Congress enacted 47 U.S.C. § 258, Illegal Changes in Subscriber Carrier Selections:

(a) Prohibition

No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [Federal Communications Commission (FCC)] shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.

(b) Liability for charges

Any telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the [FCC] may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.

¹The Commission has also waived its regulations to allow the use of recorded messages to make IXC changes.

As identified above, Congress intended the FCC to have primary authority to set slamming regulations for local and interexchange services, while allowing states an option of enforcement. The FCC provided for continued state regulation of intrastate slamming to the extent it did not contradict federal rules:

We decline to preempt generally state regulation of carrier changes. . . . We conclude that, although a state must accept the same verification procedures as prescribed by the [FCC], a state may accept additional verification procedures for changes to intrastate services if such state concludes that such action is necessary based on its local experiences.

In other words, absent a specific preemption determination, a state may provide carriers further options for verifying carrier changes to intrastate service, in addition to the [FCC's] three verification options, if the state feels that such procedures would promote consumer protection and/or competition in that state's particular region. . . .

States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as section 258. . . .

. . . We conclude that state regulation of carrier changes in the intrastate market that is compatible with our rules, along with state enforcement of our rules regarding carrier changes in the intrastate market, will enable states to play a valuable and essential role in the partnership with the [FCC] to combat slamming and protect consumers.²

The FCC recently modified its slamming rules given 47 U.S.C. § 258 and the numerous national slamming complaints.

On March 15, 1999, GCI Communication Corp. d/b/a General Communication, Inc., and d/b/a GCI (GCI) filed a letter stating that there were inconsistencies between state and federal slamming regulations and that the Commission

²CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, ¶¶ 87-90, December 23, 1998 (footnotes omitted).

may wish to either repeal or amend its intrastate slamming rules to ensure consistency with the federal rules. GCI stated that it had met with the Alascom, Inc. d/b/a AT&T Alascom (AT&T Alascom) and ATU³ and that the group suggested there be a meeting between the industry and the Commission Staff (Staff) to help resolve slamming issues.

On July 26, 1999, Staff submitted a memorandum on slamming issues. Staff identified two major areas where state regulations were believed to be inconsistent with federal requirements:

a) Under state regulation when verification is required, the local carrier (the 'executing carrier') verifies the authenticity of a change in a customer's long distance carrier before making the change. Similar regulations apply to local carrier changes.⁴ The federal rules prohibit the executing carrier from verifying the change.

b) The state regulations do not allow carrier changes to be verified by an independent third party. The federal rules require third party verification as an option. (Staff Memorandum, p. 5.)

In its memorandum Staff also identified numerous minor inconsistencies between state and federal regulations as well as areas (e.g., special penalties) where the federal regulations go beyond the scope of the state slamming regulations. A copy of Staff's memorandum is attached to this Order as an Appendix.

Discussion

³At the time of GCI's filing, ATU was a subsidiary of the Municipality of Anchorage and did business under the name of Anchorage Telephone Utility a/k/a ATU Telecommunications. ATU is now a subsidiary of Alaska Communications Systems, Inc.

⁴In the case of a LEC change, either the customer's new or old LEC must obtain verified authorization.

The Commission has reviewed 47 U.S.C. § 258 and the slamming regulations of the FCC and concludes that in those cases where the FCC regulations and this Commission's regulations regarding slamming are inconsistent, the Commission's rules are unenforceable. Given that conclusion, the Commission will not assess penalties or take other punitive actions against a utility for violating provisions of 3 AAC 52.334, 3 AAC 52.336, or 3 AAC 53.260 as a result of complying with federal regulations at 47 C.F.R. §§ 64.1100 - 64.1190.

The Commission further concludes it would be appropriate at this time to reevaluate its existing intrastate procedures and policies regarding slamming.⁵ The Commission seeks comments on the following issues:

- a) Should 3 AAC 52.334, 3 AAC 52.336, and 3 AAC 53.260 be repealed?
- b) Should there be any state regulations governing slamming and carrier changes?
- c) What state regulations, if any, should be implemented to discourage slamming, to allow for preferred carrier freezes, and to assess slamming penalties?

⁵The Commission notes that Docket R-95-2 also concerns changes to the Commission's regulations governing intrastate IXC changes. In view of the issues raised in this Order and to avoid duplication of records, Docket R-95-2 has been closed.

d) Should the Commission amend its existing slamming/carrier-change regulations to adopt for intrastate purposes, either in whole or in part, the FCC's regulations at 47 C.F.R. §§ 64.1100 - 64.1190?

The Commission encourages commentors to submit proposed draft regulations⁶ in support of their positions in response to this Order. The Commission requests that commentors include a diskette of their comments in either IBM compatible text (.txt) format, Word 97 or earlier version, or Adobe Acrobat (.pdf). After review of the comments filed in response to this Order, the Commission anticipates proposing regulations changes for public comment to address outstanding issues.

ORDER

THE COMMISSION FURTHER ORDERS:

1. This Docket is opened for the purpose of examining changes to the Commission's policies and regulations governing changes in a customer's preferred carrier for local and for intrastate interexchange services.

2. By 4 p.m., May 12, 2000, any interested person may file with the Commission comments addressing the issues and questions addressed in the body of this Order.⁷ Commentors are encouraged to submit proposed draft regulations with their

⁶If commentors propose draft regulations that would amend the Commission's existing regulations, the Commission requests that the amendments be submitted in legislative drafting style, i.e., proposed deletions to current language should be indicated in [BRACKETS AND ALL CAPITAL LETTERS] and additions to current language should be underlined.

⁷If you are a person with a disability who may need a special accommodation, auxiliary aid, or service or alternative communication format in order to comment in this proceeding, please contact Barbara J. Miller at 1-907-276-6222 or TTY 1-907-276-4533 by April 28, 2000, to make the necessary arrangements.

comments and include a diskette of the comments in IBM compatible text (.txt) format, Word 97 format (or earlier version), or Adobe Acrobat (.pdf).

3. No penalties or other punitive action will be taken against a utility for violating 3 AAC 52.334, 3 AAC 52.336, or 3 AAC 53.260 as a result of complying with federal regulations at 47 C.F.R. §§ 64.1100 - 64.1190.

DATED AND EFFECTIVE at Anchorage, Alaska, this 5th day of April, 2000.

BY DIRECTION OF THE COMMISSION

(S E A L)