

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE EXAMINATION WHETHER THE COMMISSION SHOULD ADMINISTER THE FEDERAL COMMUNICATIONS COMMISSION'S NEW SLAMMING RULES, 47 C.F.R. §§ 64.1100 et seq.)

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CASE NO. GNR-T-00-38

ORDER NO. 28644

On December 4, 2000, the Commission issued a Notice of Modified Procedure requesting public comment whether it should adopt and administer the Federal Communications Commission's new slamming rules. The term "slamming" refers to the unauthorized change in a telephone customer's selection of a local or long-distance carrier. In its new slamming rules, the FCC encouraged States to administer the new slamming rules. If adopted, this Commission would investigate slamming complaints filed by Idaho customers and carriers regarding both intrastate and interstate telecommunications services.

Timely comments were filed by the Idaho Attorney General's Office, the Commission Staff, Qwest Corporation, WorldCom, and AT&T Communications. All comments, with the exception of AT&T, urged the Commission to adopt the FCC rules. AT&T neither supported nor opposed the adoption but stated "the Commission must decide for itself whether to 'opt-in' to administer the FCC's new slamming rules." Based upon our review of the FCC slamming rules and the comments filed in this docket, we find that it is in the public interest to adopt and administer the FCC slamming rules.

BACKGROUND

A. State-Partnership

In its rulemaking, the FCC found that "it is in the public interest to have state commissions . . . perform the primary administrative functions of our slamming liability rules." 65 Fed. Reg. 47,681 at ¶ 20. In inviting state commissions to administer the new slamming rules, the FCC noted that state commissions have extensive experience in handling and resolving consumer complaints against telecommunications carriers. 65 Fed. Reg. 47,682 at ¶ 21. The FCC found that there are several advantages with partnering with the states to deter slamming. In particular, the FCC recognized that having state commissions enforce slamming rules will provide consumers with a single point of contact for each state, thereby enabling slammed consumers to rectify their situations, receive refunds, and get appropriate relief with one phone call. State commissions will also be able to provide consumers and carriers with timely processing of slamming disputes. Finally, but of critical importance, states will provide a neutral forum for the resolution of slamming disputes.

Id. at ¶ 22. If state commissions decline or are unable to administer the new rules, customers may file a written slamming complaint with the FCC. Id. at ¶ 23. The FCC's slamming rules became effective on November 28, 2000. 65 Fed. Reg. 66,934 (November 8, 2000).

B. Resolving Slamming Complaints

In amending its slamming rules, the FCC noted that the amendments were to take the profit out of slamming by absolving subscribers of liability for some slamming charges. "These new liability rules were designed to ensure that carriers could not profit from slamming activities, as well as to compensate subscribers for the inconvenience and confusion experienced due to slamming." First Order, FCC 00-135 at ¶ 3. The rules provide different remedies for customers depending whether customers have paid the slamming carrier.

If the customer has been slammed by an unauthorized carrier, the customer is absolved of all liability for calls made within the first 30 days of being slammed. For example, if a customer's long-distance service is slammed, the customer

does not have to pay the unauthorized carrier for long-distance services for up to 30 days after being slammed. First Order, FCC 00-135 at ¶¶ 3, 6-12; 65 Fed. Reg. at 47,679-80. Charges for calls made beyond the 30-day limit must be paid by customers to the authorized carrier at the authorized carrier's rates, even though the service was provided by the slamming carrier.

If customers have paid their telephone bills and subsequently discover they have been slammed, the slamming company must pay the authorized carrier 150% of the charges it received from the customer. Out of this amount, the authorized carrier will then be allowed to retain 100% of the collected charges. The remaining 50% of the charges will be reimbursed to the customer. First Order, FCC 00-135 at ¶¶ 16-21; 65 Fed. Reg. at 47,680-81.

When an alleged unauthorized carrier is informed by a customer of an alleged slam, the carrier must remove all charges assessed for the first 30 days of service from the customer's bill. The carrier shall notify the customer that he or she must file a complaint with the Commission within 30 days if the customer is not satisfied with the resolution of the dispute with the carrier. 65 Fed. Reg. 47,683 at ¶¶ 28-30.

THE COMMISSION'S NOTICE

In its Notice, the Commission stated that if adopted, slamming complaints filed by Idaho customers and carriers would be submitted for resolution to this Commission. Order No. 28580 at 1. The Commission observed that the FCC recognized that having state commissions administer slamming rules will provide aggrieved customers with "a single point of contact for each state, thereby enabling slammed consumers to rectify their situations, receive refunds, and get appropriate relief with one phone call." Order No. 28580 at 2 citing 65 Fed. Reg. 47,682 at ¶ 22 (August 3, 2000). The Notice also observed that 31 state commissions have opted to administer the new slamming rules. Order No. 28580 at 2.

In its Notice, the Commission sought specific comments regarding the procedures for resolving slamming complaints. In particular, the Commission contemplated that it would process slamming complaints in the same manner as it currently receives informal complaints regarding utility services: in person, by mail, by e-mail, or by telephone. The Commission anticipated that the Consumer Assistance Staff would investigate the informal slamming complaints by consumers or carriers and issue a written determination of its findings. Order No. 28580 at 3, 4.

The Commission also sought comments regarding challenges to the Staff's factual determination. The Commission "envisions that appeals from the Consumer Assistance Staff determination of the slamming complaint [will] be filed as a formal complaint with the Commission," similar to the procedures contained in the Commission's procedural Rule 54, IDAPA 31.01.01.054. Order No. 28580 at 4. The Commission specifically invited comment whether such appeals from the Staff's determination should be filed as formal complaints "within 10 business days or some other suitable time limit." Id.

THE COMMENTS

As previously mentioned, the Commission received two types of comments: general comments supporting adoption of the FCC's slamming rules and specific comments addressing proposed slamming procedures. Each type of comment is addressed separately below.

A. General Comments

1. Attorney General. In his comments, the Attorney General stated that it is appropriate for the Commission to administer the new slamming rules. He noted that slamming constitutes a violation of the Idaho Consumer Protection Act and the Attorney General's Office may prosecute violations of the Act. He also stated that "there are efficiencies to be gained at the state level by having the Commission enforce the FCC rules. . . . Allowing the Commission to enforce the FCC's slamming rules will provide consumers with a single point of contact for Idaho. Moreover, utilizing the Commission will also provide an effective forum for the resolution of slamming disputes." Attorney General Comments at 3.

The Attorney General also noted that his Consumer Protection Unit and the Commission Staff have agreed on coordination procedures if the Commission adopts the slamming rules. In those instances where the Commission Staff identifies a particular pattern of slamming on the part of a long-distance carrier, the Staff will notify the Attorney General's Consumer Protection Unit. In appropriate cases, the Attorney General may exercise his enforcement authority under the Consumer Protection Act. He concluded that adoption of the FCC's rules "will benefit Idaho consumers and hopefully reduce slamming complaints." Id.

2. Commission Staff. The Staff strongly encouraged the Commission to administer the FCC slamming rules. In its comments, the Staff noted from 1997 to 1999, the Commission received 1,453 informal complaints regarding slamming. The Staff opined that Idaho consumers prefer to seek assistance from resources closer to home than the FCC in Washington, D.C. Staff Comments at 2.

3. Qwest. In its comments, Qwest supported the Commission's "adoption and administration of rules recently promulgated by the Federal Communications Commission regarding the practice of 'slamming'." Qwest Comments at

1.

4. WorldCom. In their comments, WorldCom and MCI WorldCom Communications supported the Commission's proposal to take primary responsibility for resolution of slamming complaints. WorldCom Comments at 1. They noted that consistency across the various states will reduce errors, unnecessary expenses, and customer confusion. Idaho consumers will benefit by "having one point of contact to resolve slamming problems." Id. at 3.

Commission Findings: Based upon the FCC's invitation to have the States administer the slamming rules and the comments set out above, we find it is reasonable and in the public interest for the Commission to adopt and administer the FCC's slamming rules. As we observed in our Notice, having the Commission administer slamming rules will "provide consumers with a single point of contact for each state. This will provide consumers and carriers with local points of contact which will more efficiently process slamming complaints." Order No. 28580 at 2. Idaho joins the growing number of states that are administering the slamming rules. Having determined that it is in the public interest to adopt the slamming rules, we now turn to the comments that address specific procedures for handling slamming complaints.

B. The Specific Comments

Processing Slamming Complaints. The Commission's Notice proposed that slamming complaints be initially processed as "informal complaints." After investigating the complaint, the Consumer Assistance Staff would issue a written determination of its findings. Order No. 28580 at 4. AT&T agreed that at the conclusion of its investigation, the Consumer Assistance Staff should issue a written determination of its findings. AT&T Comments at 5. AT&T agreed that the proposed procedures for receiving informal complaints (i.e., in person, by mail, by e-mail, or by telephone) is an appropriate process for receiving slamming complaints. If possible, AT&T requested that the Commission forward slamming complaints via e-mail or other electronic means.

AT&T also suggested that the Staff's written determination be issued electronically. AT&T recommended that the Staff issue its determination within 45 to 90 days after receipt of the evidence provided by the alleged unauthorized carrier. Although AT&T recognizes that the Commission intends to use the informal complaint process as the "initial step" to resolve the slamming complaint, AT&T suggests that parties be permitted to file formal complaints upon the issuance of the Consumer Staff's determination. AT&T requests that the Commission clarify that completion of the informal complaint process is mandatory.

The Staff also supported the use of the informal complaint process to investigate slamming complaints. Staff Comments at 3. Staff suggested that the investigation resolution of slamming complaints follow the "Best Practices Guide to Administering the New FCC Slamming Rules" issued in November 2000..

Commission Findings: As proposed in our Notice, we find that slamming complaints shall be initially processed as informal complaints. This will allow complaints to be expeditiously resolved yet still permit aggrieved parties to appeal an adverse determination. We also agree with AT&T that slamming complaints and the Staff determinations be electronically served where possible. This is consistent with our electronic filing case GNR-U-99-1 and Order No. 28173. We further find that use of the informal complaint process (IDAPA 31.01.01.021-.024) shall be mandatory for the initial processing of slamming complaints.

Submitting Information or Documents Regarding the Complaint. The Commission's Notice requested comments regarding what customer information should be submitted regarding slamming complaints. In addition to the alleged slammer providing a copy of the valid "proof of verification" of the customer's change in carrier, the Commission asked what other documents or information should be provided.

AT&T suggested that the slamming complaint also include: the name, address, and telephone number of the person filing the complaint; the name/identity of the alleged slamming carrier; the name of the previous carrier; the billing entity (LEC or direct-billed by carrier); the date the alleged slam occurred; whether the customer has been restored to his or her preferred carrier; the customer's experience in attempting to resolve the problem; a copy of the bill(s) which should show the charges billed by the alleged slammer; and whether the customer was charged a PIC change charge. AT&T recommended that if possible, the Commission should require the complainant mail or fax a copy of the complete bill to the Commission so that it may forward the bill with the complaint to the alleged unauthorized carrier. AT&T believes that providing this information comports with the "State Commission Best Practices Guide" and will expedite resolution of slamming complaints. AT&T Comments at 2-3.

WorldCom also suggested that customers submitting a slamming complaint provide a copy of the relevant telephone bill(s). This will allow the carriers to determine the amount of reimbursement (if necessary). In addition, WorldCom noted that some long-distance carriers (such as WorldCom) may designate other carriers or companies to act as their billing agents. Qwest explained that because the "long distance carrier bills the local exchange carrier rather than the end-users, the long distance carrier would not have a 'bill' in the form received by the complainant." Qwest Comments at 2. Thus, such carriers may not have access to billing records.

Commission Finding: We agree with AT&T and the Staff that necessary information to be submitted with the

complaint should include the elements mentioned above. This required information is also recommended in the State Commissions “Best Practices Guide.” We also acknowledge that in some instances carriers may not be able to provide billing records (e.g., when billing agents are used). Carriers and consumers will not be required to provide data/information that they do not readily possess.

Responding to the Complaint. In its Notice, the Commission requested comments on whether documents submitted in response to a slamming complaint be forwarded to the Consumer Assistance Staff no later than 10 business days after notification that a complaint has been filed against the alleged unauthorized carrier. Order No. 28580 at 4. Telephone Customer Rule 404 provides that telecommunication companies respond within 10 business days of receiving an informal complaint. IDAPA 31.41.01.404. This rule further provides that a responding company “will be granted an extension of time to prepare its response if it represents that it is making a good faith effort to resolve the matter in dispute. A full and complete response should be submitted to the Commission no later than thirty (30) days after receipt of notification from the Commission.” *Id.*

AT&T recommended that the Commission find that submission of either a letter of authorization or an audio recording of a third-party verification be sufficient evidence to constitute the defense of an unauthorized change of carrier.

AT&T requested that the Commission accept an electronic WAV file of the audio recorded third-party verification.

AT&T Comments at 2. The Commission and its Consumer Staff can receive WAV files.

In response to the proposed 10 business day period, AT&T suggested that the alleged unauthorized carrier be required to supply documentation supporting its claim of an authorized change of carrier within 30 days after receipt of the complaint. AT&T maintained that the 30-day period is necessary to provide alleged unauthorized carriers sufficient time to fully investigate the allegation and retrieve supporting documents. AT&T Comments at 4.

WorldCom agreed that 10 business days is sufficient to produce documents. WorldCom at 2. Qwest stated “if documentation is required from the long distance carrier, 10 days from the notice of a complaint is not a sufficient time for production. Qwest proposed that if this requirement applies to the long distance carrier, it be given 20 days to produce the bill and other relevant documents.” Qwest Comments at 2.

Commission Finding: Having reviewed the different proposals described above, we find it reasonable for carriers to respond to slamming complaints within 21 calendar days. Thirty days is too long a period given that the complaint will be served electronically (where possible). In addition, our goal is to resolve slamming complaints as soon as possible. Twenty-one days also provides adequate time for carriers to respond to complaints.

Administrative Appeal of the Slamming Determination. In Order No. 28580, the Commission stated that it envisions an appeal from the Staff’s written determination of a slamming complaint be filed as a formal complaint similar to the procedures outlined in the Commission’s Rule 54. The Notice also sought specific comment whether such “appeals” from the Staff’s determination “should be filed as formal complaints within 10 business days or some other suitable time limit.” Order No. 28580 at 4.

AT&T requested that the Commission clarify that the filing of a formal complaint is not an appeal but rather the next available course of action if a party is dissatisfied with the findings of the Commission Staff. AT&T Comments at 5. AT&T requests that the Commission establish a 45-day time period in which a person may file a formal complaint. If no formal complaint is filed within the 45 days, then the complainant will have deemed to have abandoned its right to bring a formal complaint regarding the slamming complaint.

The Staff believes that appeals of slamming complaints should be processed as “formal, de novo” complaints pursuant to Commission Rule 54. Staff suggested that 14 days to file a formal complaint is reasonable. Staff also suggested that if no formal complaint is filed within 14 days, then “the aggrieved party’s right to appeal should be considered waived or abandoned.” Staff Comments at 3. WorldCom did not object to the Commission’s suggested time limit that appeals from the written determination be filed as formal complaints within 10 business days pursuant to Rule 54. WorldCom Comments at 3.

Commission Findings: It is reasonable for aggrieved parties to file a formal complaint within 21 calendar days of when the Staff serves its written determination. This period will allow sufficient time for a party to prepare and file a formal complaint pursuant to procedural Rule 54 (IDAPA 31.01.01.054). Setting a deadline for filing a formal complaint will also encourage the timely resolution of a complaint. We further find that failure to file a formal complaint shall constitute a waiver or abandonment of the slamming complaint.

Formal Reconsideration and Judicial Review. If the Commission “opts-in to enforce the FCC’s slamming rules,” AT&T maintained that the Commission then acts upon delegated authority from the FCC. Consequently, AT&T asserted that the Commission must adopt the FCC’s procedures for reconsideration and judicial review. AT&T Comments at 6. AT&T also believed that any judicial appeal from a final Commission order would be a matter that must “be taken to the appropriate federal court as required by 7 U.S.C. §§ 701-706.” *Id.*

Staff recommended that the Commission’s statutes and rules regarding reconsideration and judicial review be utilized for appeals of the Commission’s determination on the formal complaint. *Id.* at 3. This suggestion conflicts with

AT&T's suggestion that judicial review of the Commission's slamming appeals be conducted in federal court
Commission Findings: After reviewing the comments and FCC rules, we reject AT&T's recommendation. In the Federal Register announcing the new slamming rules, the FCC outlined the review procedures that "apply when a state commission has resolved a slamming complaint." 65 Fed. Reg. at 47,683 ¶ 33. The FCC stated that an appeal from the factual determinations made by a state commission "shall be made in accordance with relevant review provisions that are applicable to each state commission." Id. (emphasis added). Consequently, we find that state appeal procedures should apply rather than federal procedures. The appropriate reconsideration and judicial review procedures are found in Idaho Code §§ 61-626 (Reconsideration) and 61-627 (Appeal to Supreme Court).

Rule 606. Finally, if the Commission decides to opt-in to enforcing the FCC's slamming rules, AT&T suggested that the Commission delete its Telephone Customer Rule 606 concerning the removal of charges for improperly changing a customer's carrier (PIC change charge). The Company maintained this matter is fully addressed in the FCC's slamming rule and does not need to be retained by the Commission in its Rule 606 (IDAPA 31.41.01.606).

Commission Findings: We agree with AT&T that the FCC's Slamming Order, FCC 00-255 ¶ 85, requires unauthorized carriers to pay both PIC charges (one when slammed and again to return the customer to the preferred carrier), where applicable. Consequently, Rule 606 may no longer be necessary. However, we need not decide now whether to remove this rule because we will visit this issue when we formally adopt the FCC slamming rules in a temporary/proposed rulemaking docket.

CONCLUSION

We conclude that adoption and administration of the FCC slamming rules will serve the public interest. To provide Idaho customers and carriers with adequate notice of the Commission's intent to administer the FCC's rules, we it is appropriate to designate a specific time at which these rules will become effective. Accordingly, we find it is reasonable to adopt the rules effective April 4, 2001. This will provide adequate time to notify carriers and to promulgate temporary rules.

ORDER

IT IS THEREFORE ORDERED that the Commission shall adopt and administer the FCC's new slamming rules. The Commission intends to prepare the necessary documents to formally adopt the FCC slamming rules as temporary and proposed rules.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. GNR-T-00-38 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this order or in interlocutory Orders previously issued in this Case No. GNR-T-00-38. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See Idaho Code § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of February 2001.

DENNIS S. HANSEN, PRESIDENT

MARSHA H. SMITH, COMMISSIONER

PAUL KJELLANDER, COMMISSIONER

ATTEST:

Jean D. Jewell
Commission Secretary

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\$ The current number of states enforcing the FCC slamming rules is 35, including Idaho.

ORDER NO. 28644 1

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