

105TH CONGRESS
2D SESSION

S. 1740

To amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 10, 1998

Ms. COLLINS (for herself and Mr. DURBIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to improve the protections against the unauthorized change of subscribers from one telecommunications carrier to another, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telephone Slamming
5 Prevention Act of 1998”.

1 **SEC. 2. IMPROVEMENTS OF PROTECTIONS AGAINST UNAU-**
2 **THORIZED CHANGES OF PROVIDERS OF**
3 **TELEPHONE SERVICE.**

4 (a) **CLARIFICATION OF VERIFICATION PROCE-**
5 **DURES.**—Subsection (a) of section 258 of the Communica-
6 tions Act of 1934 (47 U.S.C. 258) is amended to read
7 as follows:

8 “(a) **PROHIBITION.**—

9 “(1) **IN GENERAL.**—No telecommunications
10 carrier shall submit or execute a change in a sub-
11 scriber’s selection of a provider of telephone ex-
12 change service or telephone toll service except in ac-
13 cordance with this section and such verification pro-
14 cedures as the Commission shall prescribe.

15 “(2) **VERIFICATION.**—The procedures pre-
16 scribed by the Commission to verify a subscriber’s
17 selection of a telephone exchange service or tele-
18 phone toll service provider shall—

19 “(A) preclude the use of negative option
20 letters of agency as a verification method; and

21 “(B) require the retention of the verifica-
22 tion of a subscriber’s selection in such manner
23 and form and for such time as the Commission
24 considers appropriate.”.

25 (b) **LIABILITY FOR CHARGES.**—Subsection (b) of
26 such section is amended—

1 (1) by striking “(b) LIABILITY FOR
2 CHARGES.—Any telecommunications carrier” and
3 inserting the following:

4 “(b) LIABILITY FOR CHARGES.—

5 “(1) IN GENERAL.—Any telecommunications
6 carrier”;

7 (2) by designating the second sentence as para-
8 graph (3) and inserting at the beginning of such
9 paragraph, as so designated, the following:

10 “(3) CONSTRUCTION OF REMEDIES.—”; and

11 (3) by inserting after paragraph (1), as des-
12 ignated by paragraph (1) of this subsection, the fol-
13 lowing:

14 “(2) SUBSCRIBER PAYMENT OPTION.—

15 “(A) IN GENERAL.—A subscriber whose
16 telephone exchange service or telephone toll
17 service is changed in violation of the procedures
18 prescribed under subsection (a) may elect to
19 pay the carrier previously selected by the sub-
20 scriber for any such service received after the
21 change in full satisfaction of amounts due from
22 the subscriber to the carrier providing such
23 service after the change.

24 “(B) PAYMENT RATE.—Payment for serv-
25 ice under subparagraph (A) shall be at the rate

1 for such service charged by the carrier pre-
2 viously selected by the subscriber concerned.”.

3 (c) ADDITIONAL PENALTIES.—Such section is fur-
4 ther amended by adding at the end the following:

5 “(c) CIVIL PENALTIES.—

6 “(1) IN GENERAL.—Unless the Commission de-
7 termines that there are mitigating circumstances,
8 any telecommunications carrier who submits or exe-
9 cutes a change in a provider of telephone exchange
10 service or telephone toll service in violation of the
11 procedures prescribed under subsection (a) shall be
12 fined a minimum of \$50,000 for the first offense
13 and shall be fined a minimum of \$100,000 for any
14 subsequent offense.

15 “(2) PENALTIES FOR ACTIVITIES OF AGENTS
16 AND RESELLERS.—The Commission may assess pen-
17 alties for violations of the procedures prescribed
18 under subsection (a) in the case of a carrier that
19 submits or executes unauthorized changes on behalf
20 of its agents or resellers if the carrier meets such
21 conditions as the Commission shall prescribe in reg-
22 ulations.

23 “(d) CRIMINAL PENALTIES.—Any person who sub-
24 mits or executes a change in a provider of telephone ex-

1 change service or telephone toll service in willful violation
2 of the procedures prescribed under subsection (a)—

3 “(1) shall be fined in accordance with title 18,
4 United States Code, imprisoned not more than 1
5 year, or both; but

6 “(2) if previously convicted under this sub-
7 section at the time of a subsequent offense, shall be
8 fined in accordance with title 18, United States
9 Code, imprisoned not more than 5 years, or both, for
10 such subsequent offense.

11 “(e) DISQUALIFICATION FROM CERTAIN ACTIVI-
12 TIES.—

13 “(1) DISQUALIFICATION OF PERSONS.—Subject
14 to paragraph (3), any person convicted under sub-
15 section (d), in addition to any fines or imprisonment
16 under that subsection, may not carry out any activi-
17 ties covered by section 214.

18 “(2) DISQUALIFICATION OF COMPANIES.—Sub-
19 ject to paragraph (3), any company substantially
20 controlled by a person convicted under subsection
21 (d) may not carry out any activities covered by sec-
22 tion 214.

23 “(3) REINSTATEMENT.—

24 “(A) IN GENERAL.—The Commission may
25 terminate the application of paragraph (1) or

1 (2) of this subsection to a person or company,
2 as the case may be, if the Commission deter-
3 mines that the termination would be in the pub-
4 lic interest.

5 “(B) EFFECTIVE DATE.—The termination
6 of the applicability of paragraph (1) or (2) to
7 a person or company, as the case may be, under
8 subparagraph (A) may not take effect earlier
9 than 5 years after the date on which the appli-
10 cable paragraph applied to the person or com-
11 pany.

12 “(f) ACTIONS BY STATES.—Whenever the attorney
13 general of a State, or an official or agency designated by
14 a State, has reason to believe that any person has engaged
15 or is engaging in a pattern or practice of unauthorized
16 changes in providers of telephone exchange service or tele-
17 phone toll service of residents in such State in violation
18 of the procedures prescribed under subsection (a), the
19 State may bring a civil action on behalf of its residents
20 to enjoin such practices, to recover damages equal to the
21 actual monetary loss suffered by such residents, or both.
22 If the court finds the defendant executed such changes
23 in willful and knowing violation of such procedures, the
24 court may, in its discretion, increase the amount of the

1 award to an amount equal to not more than 3 times the
2 amount awardable under the preceding sentence.

3 “(g) NO PREEMPTION OF STATE LAW.—Nothing in
4 this section shall preempt the availability of relief under
5 State law for unauthorized changes of providers of intra-
6 state telephone exchange service or telephone toll service.

7 “(h) REPORTS ON COMPLAINTS.—

8 “(1) REPORTS REQUIRED.—Each telecommuni-
9 cations carrier shall submit to the Commission, as
10 frequently as the Commission shall require, a report
11 on the number of complaints of unauthorized
12 changes in providers of telephone exchange service
13 or telephone toll service that are submitted to the
14 carrier by its subscribers. Each report shall specify
15 each provider of service complained of and the num-
16 ber of complaints relating to such provider.

17 “(2) UTILIZATION.—The Commission shall use
18 the information submitted in reports under this sub-
19 section to identify telecommunications carriers that
20 engage in patterns and practices of unauthorized
21 changes in providers of telephone exchange service
22 or telephone toll service.”.

23 (d) TREATMENT OF REGULATIONS.—The Federal
24 Communications Commission may treat the regulations
25 prescribed under section 258 of the Communications Act

1 of 1934 before the date of enactment of this Act as regula-
2 tions prescribed under such section 258, as amended by
3 this section, but only to the extent that the regulations
4 prescribed before such date of enactment are not incon-
5 sistent with the requirements of such section, as so
6 amended.

7 (e) REPORT ON SLAMMING VIOLATIONS.—

8 (1) IN GENERAL.—Not later than October 31,
9 1998, the Federal Communications Commission
10 shall submit to Congress a report on its enforcement
11 actions against carriers for violations of the proce-
12 dures prescribed under section 258(a) of the Com-
13 munications Act of 1934, as in effect on the day be-
14 fore the date of enactment of this Act.

15 (2) ELEMENTS.—The report shall—

16 (A) set forth the number of complaints
17 against each telecommunications carrier that
18 was subject to more than 100 complaints in
19 1997 for violation of the procedures referred to
20 in paragraph (1); and

21 (B) describe the penalties assessed against
22 each such carrier for violations of such proce-
23 dures.

1 **SEC. 3. REVIEW OF ADEQUACY OF LICENSING REQUIRE-**
2 **MENTS AND PROCEDURES.**

3 Not later than 6 months after the date of enactment
4 of this Act, the Federal Communications Commission shall
5 submit to Congress a report that—

6 (1) assesses the adequacy and effectiveness of
7 the licensing requirements and procedures of the
8 Commission under section 214 of the Communica-
9 tions Act of 1934 (47 U.S.C. 214) in determining
10 whether or not a carrier is suitable for licensing
11 under that section; and

12 (2) identifies additional actions that the Com-
13 mission could take under that section in order to en-
14 sure that new licenses are not issued under that sec-
15 tion to persons or carriers that have previously lost
16 their licenses for violations of section 258 of that
17 Act (47 U.S.C. 258) or have otherwise engaged in
18 egregious violations of such section 258.

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