

TELECOMMUNICATIONS COMPETITION AND CONSUMER  
PROTECTION ACT OF 1998

OCTOBER 8, 1998.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

Mr. BLILEY, from the Committee on Commerce,  
submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3888]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3888) to amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## AMENDMENT

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

### SECTION 1. SHORT TITLE.

This Act may be cited as the “Telecommunications Competition and Consumer Protection Act of 1998”.

## TITLE I—SLAMMING

### SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.

(a) CONSUMER PROTECTION PRACTICES.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258) is amended to read as follows:

#### “SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER SELECTIONS OF CARRIERS.

##### “(a) ALTERNATIVE MODES OF REGULATION.—

“(1) INDUSTRY/COMMISSION CODE.—Within 180 days after the date of enactment of the Telecommunications Competition and Consumer Protection Act of 1998, the Commission, after consulting with the Federal Trade Commission and representatives of telecommunications carriers providing telephone toll service and telephone exchange service, State commissions, and consumers, and considering any proposals developed by such representatives, shall prescribe, after notice and public comment and in accordance with subsection (b), a Code of Subscriber Protection Practices (hereinafter in this section referred as the ‘Code’) governing changes in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.

“(2) OBLIGATION TO COMPLY.—No telecommunications carrier (including a reseller of telecommunications services) 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—

“(A) the Code, if such carrier elects to comply with the Code in accordance with subsection (b)(2); or

“(B) the requirements of subsection (c), if—

“(i) the carrier does not elect to comply with the Code under subsection (b)(2); or

“(ii) such election is revoked or withdrawn.

##### “(b) MINIMUM PROVISIONS OF THE CODE.—

“(1) SUBSCRIBER PROTECTION PRACTICES.—The Code required by subsection (a)(1) shall include provisions addressing the following:

“(A) IN GENERAL.—A telecommunications carrier (including a reseller of telecommunications services) electing to comply with the Code shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service only in accordance with the provisions of the Code.

“(B) NEGATIVE OPTION.—A telecommunications carrier shall not use negative option marketing.

“(C) VERIFICATION.—A telecommunications carrier shall verify the subscriber’s selection of the carrier in accordance with procedures specified in the Code.

“(D) UNFAIR AND DECEPTIVE ACTS AND PRACTICES.—No telecommunications carrier, nor any person acting on behalf of any such carrier, shall engage in any unfair or deceptive acts or practices in connection with the solicitation of a change in a subscriber’s selection of a telecommunications carrier.

“(E) NOTIFICATION AND RIGHTS.—A telecommunications carrier shall provide timely and accurate notification to the subscriber in accordance with procedures specified in the Code.

“(F) SLAMMING LIABILITY AND REMEDIES.—

“(i) REQUIRED REIMBURSEMENT AND CREDIT.—A telecommunications carrier that has improperly changed the subscriber’s selection of a telecommunications carrier without authorization, shall at a minimum—

“(I) reimburse the subscriber for the fees associated with switching the subscriber back to their original carrier; and

“(II) provide a credit for any telecommunications charges incurred by the subscriber during the period, not to exceed 30 days, while that subscriber was improperly presubscribed.

“(ii) PROCEDURES.—The Code shall prescribe procedures by which—

“(I) a subscriber may make an allegation of a violation under clause (i);

“(II) the telecommunications carrier may rebut such allegation;

“(III) the subscriber may, without undue delay, burden, or expense, challenge the rebuttal; and

“(IV) resolve any administrative review of such an allegation within 75 days after receipt of an appeal.

“(G) RECORDKEEPING.—A telecommunications carrier shall make and maintain a record of the verification process and shall provide a copy to the subscriber immediately upon request.

“(H) QUALITY CONTROL.—A telecommunications carrier shall institute a quality control program to prevent inadvertent changes in a subscriber’s selection of a carrier.

“(I) INDEPENDENT AUDITS.—A telecommunications carrier shall provide the Commission with an independent audit regarding its compliance with the Code at intervals prescribed by the Code. The Commission may require a telecommunications carrier to provide an independent audit on a more frequent basis if there is evidence that such telecommunications carrier is violating the Code.

“(2) ELECTION BY CARRIERS.—Each telecommunications carrier electing to comply with the Code shall file with the Commission within 10 days after the adoption of the Code, or within 10 days after commencing operations as a telecommunications carrier, a statement electing the Code to govern such carrier’s submission or execution of a change in a customer’s selection of a provider of telephone exchange service or telephone toll service. Such election by a carrier may not be revoked or withdrawn unless the Commission finds that there is good cause therefor, including a determination that the carrier has failed to adhere in good faith to the applicable provisions of the Code, and that the revocation or withdrawal is in the public interest. Any telecommunications carrier that fails to elect to comply with the Code shall be deemed to have elected to be governed by the subsection (c) and the Commission’s regulations thereunder.

“(c) REGULATIONS OF CARRIERS NOT COMPLYING WITH CODE.—

“(1) IN GENERAL.—A telecommunications carrier (including a reseller of telecommunications services) that has not elected to comply with the Code under subsection (b), or as to which the election has been withdrawn or revoked, shall not 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 this subsection and such verification procedures as the Commission shall prescribe.

“(2) VERIFICATION.—

“(A) IN GENERAL.—In order to verify a subscriber’s selection of a telephone exchange service or telephone toll service provider under this subsection, the telecommunications carrier submitting the change to an executing carrier shall, at a minimum, require the subscriber—

“(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question;

“(ii) to acknowledge the type of service to be changed as a result of the selection;

“(iii) to affirm the subscriber’s intent to select the provider as the provider of that service;

“(iv) to acknowledge that the selection of the provider will result in a change in providers of that service; and

“(v) to provide such other information as the Commission considers appropriate for the protection of the subscriber.

“(B) ADDITIONAL REQUIREMENTS.—The procedures prescribed by the Commission to verify a subscriber’s selection of a provider shall—

“(i) preclude the use of negative option marketing;

“(ii) provide for a complete copy of verification of a change in telephone exchange service or telephone toll service provider in oral, written, or electronic form;

“(iii) require the retention of such verification in such manner and form and for such time as the Commission considers appropriate;

“(iv) mandate that verification occur in the same language as that in which the change was solicited; and

“(v) provide for verification to be made available to a subscriber on request.

“(C) NOTICE TO SUBSCRIBER.—Whenever a telecommunication carrier submits a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service, such telecommunications carrier shall clearly notify the subscriber in writing, not more than 15 days after the change is submitted to the executing carrier—

“(i) of the subscriber’s new carrier; and

“(ii) that the subscriber may request information regarding the date on which the change was agreed to and the name of the individual who authorized the change.

“(3) LIABILITY FOR VIOLATIONS.—

“(A) NOTIFICATION OF CHANGE.—The first bill issued after the effective date of a change in a subscriber’s provider of telephone exchange service or telephone toll service by the executing carrier for such change shall—

“(i) prominently disclose the change in provider and the effective date of such change;

“(ii) contain the name and toll-free number of any telecommunications carrier for such new service; and

“(iii) direct the subscriber to contact the executing carrier if the subscriber believes that such change was not authorized and that the change was made in violation of this subsection, and contain the toll-free number by which to make such contact.

“(B) AUTOMATIC SWITCH-BACK OF SERVICE AND CREDIT TO CONSUMER OF CHARGES.—

“(i) OBLIGATIONS OF EXECUTING CARRIER.—If a subscriber of telephone exchange service or telephone toll service makes an allegation, orally or in writing, to the executing carrier that a violation of this subsection has occurred with respect to such subscriber—

“(I) the executing carrier shall, without charge to the subscriber, execute an immediate change in the provider of the telephone service that is the subject of the allegation to restore the previous provider of such service for the subscriber;

“(II) the executing carrier shall provide an immediate credit to the subscriber’s account for any charges for executing the original change of service provider; and

“(III) if the executing carrier conducts billing for the carrier that is the subject of the allegation, the executing carrier shall provide an immediate credit to the subscriber’s account for such service, in an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—

“(aa) beginning upon the date of the change of service that is the subject of the allegation; and

“(bb) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in subparagraph (A) is issued.

“(ii) OBLIGATIONS OF CARRIERS NOT BILLING THROUGH EXECUTING CARRIERS.—If a subscriber of telephone exchange service or telephone toll service transmits, orally or in writing, to any carrier that does not use an executing carrier to conduct billing an allegation that a violation of this subsection has occurred with respect to such subscriber, the carrier shall provide an immediate credit to the subscriber’s account for such service, and the subscriber shall, except as provided in subparagraph (C)(iii), be discharged from liability, for an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—

“(I) beginning upon the date of the change of service that is the subject of the allegation; and

“(II) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in paragraph (1) is issued.

“(iii) TIME LIMITATION.—This subparagraph shall apply only to allegations made by subscribers before the expiration of the 1-year period that begins on the issuance of the bill described in subparagraph (A).

“(C) PROCEDURE FOR CARRIER REMEDY.—

“(i) IN GENERAL.—The Commission shall, by rule, establish a procedure for rendering determinations with respect to violations of this subsection. Such procedure shall permit such determinations to be made upon the filing of (I) a complaint by a telecommunications carrier that was providing telephone exchange service or telephone toll service to a subscriber before the occurrence of an alleged violation, and seeking damages under clause (ii), or (II) a complaint by a telecommunications carrier that was providing services after the alleged violation, and seeking a reinstatement of charges under clause (iii). Either such complaint shall be filed not later than 6 months after the date on which any subscriber whose allegation is included in the complaint submitted an allegation of the violation to the executing carrier under subparagraph (B)(ii). Either such complaint may seek determinations under this paragraph with respect to multiple alleged violations in accordance with such procedures as the Commission shall establish in the rules prescribed under this subparagraph.

“(ii) DETERMINATION OF VIOLATION AND REMEDIES.—In a proceeding under this subparagraph, if the Commission determines that a violation of this subsection has occurred, other than an inadvertent or unintentional violation, the Commission shall award damages—

“(I) to the telecommunications carrier filing the complaint, in an amount equal to the sum of (aa) the gross amount of charges that the carrier would have received from the subscriber during the violation, and (bb) \$500 per violation; and

“(II) to the subscriber that was subjected to the violation, in the amount of \$500.

“(iii) DETERMINATION OF NO VIOLATION.—If the Commission determines that a violation of this subsection has not occurred, the Commission shall order that any credit provided to the subscriber under subparagraph (B)(ii) be reversed, or that the carrier may resubmit a bill for the amount of the credit to the subscriber notwithstanding any discharge under subparagraph (B)(ii).

“(iv) SPEEDY RESOLUTION OF COMPLAINTS.—The procedure established under this subparagraph shall provide for a determination of each complaint filed under the procedure not later than 6 months after filing.

“(D) MAINTENANCE OF INFORMATION.—

“(i) IN GENERAL.—The Commission shall, by rule, require each executing carrier to maintain information regarding each alleged violation of this subsection of which the carrier has been notified.

“(ii) CONTENTS.—The information required to be maintained pursuant to this paragraph shall include, for each alleged violation of this subsection, the effective date of the change of service involved in the alleged violation, the name of the provider of the service to which the change was made, the name, address, and telephone number of the subscriber who was subject to the alleged violation, and the amount of any credit provided under subparagraph (B)(ii).

“(iii) FORM.—The Commission shall prescribe one or more computer data formats for the maintenance of information under this paragraph, which shall be designed to facilitate submission and compilation pursuant to this subparagraph.

“(iv) MONTHLY REPORTS.—Each executing carrier shall, on not less than a monthly basis, submit the information maintained pursuant to this subparagraph to the Commission.

“(v) ACCESS TO INFORMATION.—The Commission shall make the information submitted pursuant to clause (iv) available upon request to any telecommunications carrier. Any telecommunications carrier obtaining access to such information shall use such information exclusively for the purposes of investigating, filing, or resolving complaints under this section.

“(4) CIVIL PENALTIES.—Unless the Commission determines that there are mitigating circumstances, violation of this subsection is punishable by a forfeiture of not less than \$40,000 for the first offense, and not less than \$150,000 for each subsequent offense.

“(5) RECOVERY OF FORFEITURES.—The Commission may take such action as may be necessary—

“(A) to collect any forfeitures it imposes under this subsection; and

“(B) on behalf of any subscriber, to collect any damages awarded the subscriber under this subsection.

“(d) APPLICATION TO WIRELESS.—This section does not apply to a provider of commercial mobile service.

“(e) COMMISSION REQUIREMENTS.—

“(1) SEMIANNUAL REPORTS.—Every 6 months, the Commission shall compile and publish a report ranking telecommunications carriers by the percentage of verified complaints, excluding those generated by the carrier’s unaffiliated resellers, compared to the number of changes in a subscriber’s selection of a provider of telephone exchange service and telephone toll service.

“(2) INVESTIGATION.—If a telecommunications carrier is listed among the 5 worst performers based upon the percentage of verified complaints, excluding those generated by the carrier’s unaffiliated resellers, compared to its number of carrier selection changes in the semiannual reports 3 times in succession, the Commission shall investigate the carrier’s practices regarding subscribers’ selections of providers of telephone exchange service and telephone toll service. If the Commission finds that the carrier is misrepresenting adherence to the Code or is willfully and repeatedly changing subscribers’ selections of providers, it shall find such carrier to be in violation of this section and shall fine the carrier up to \$1,000,000.

“(3) CODE REVIEW.—Every 2 years, the Commission shall review the Code to ensure its requirements adequately protect subscribers from improper changes in a subscriber’s selection of a provider of telephone exchange service and telephone toll service.

“(f) ACTIONS BY STATES.—

“(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has violated the Code or subsection (c), or any rule or regulation prescribed by the Commission under subsection (c), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such violation, to enforce compliance with such Code, subsection, rule, or regulation, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

“(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (A) to intervene in such action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

“(3) VENUE.—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

“(4) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(5) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this subsection shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

“(6) LIMITATION.—Whenever the Commission has instituted a civil action for violation of this section or any rule or regulation thereunder, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission’s complaint for violation of any rule as alleged in the Commission’s complaint.

“(7) ACTIONS BY OTHER STATE OFFICIALS.—In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers.

“(g) STATE LAW NOT PREEMPTED.—

“(1) IN GENERAL.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes requirements, regulations, damages, costs, or penalties on changes in a subscriber’s selection of

a provider of telephone exchange service or telephone toll service that are less restrictive than those imposed under this section.

“(2) EFFECT ON STATE COURT PROCEEDINGS.—Except as provided in subsection (f)(6), nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

“(h) RULES OF CONSTRUCTION.—

“(1) CHANGE INCLUDES INITIAL SELECTION.—For purposes of this section, the initiation of service to a subscriber by a telecommunications carrier shall be treated as a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.

“(2) ACTION BY UNAFFILIATED RESELLER NOT IMPUTED TO CARRIER.—No telecommunications carrier may be found in violation of this section solely on the basis of a violation of this section by an unaffiliated reseller of that carrier’s services or facilities.

“(i) DEFINITIONS.—For purposes of this section:

“(1) SUBSCRIBER.—The term ‘subscriber’ means the person named on the billing statement or account, or any other person authorized to make changes in the providers of telephone exchange service or telephone toll service.

“(2) EXECUTING CARRIER.—The term ‘executing carrier’ means, with respect to any change in the provider of local exchange service or telephone toll service, the local exchange carrier that executed such change.

“(3) ATTORNEY GENERAL.—The term ‘attorney general’ means the chief legal officer of a State.”

(b) NTIA STUDY OF THIRD-PARTY ADMINISTRATION.—Within 180 days of enactment of this Act, the National Telecommunications and Information Administration shall report to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on the feasibility and desirability of establishing a neutral third-party administration system to prevent illegal changes in telephone subscriber carrier selections. The study shall include—

(1) an analysis of the cost of establishing a single national or several regional independent databases or clearinghouses to verify and submit changes in carrier selections;

(2) the additional cost to carriers, per change in carrier selection, to fund the ongoing operation of any or all such independent databases or clearinghouses; and

(3) the advantages and disadvantages of utilizing independent databases or clearinghouses for verifying and submitting carrier selection changes.

## **TITLE II—SPAMMING**

### **SEC. 201. SENSE OF THE CONGRESS.**

It is the sense of the Congress that—

(1) in order to avoid interference with the rapid development and expansion of commerce over the Internet, the Congress should decline to enact regulatory legislation with respect to unfair or intrusive practices on the Internet that the private sector can, given a sufficient opportunity, deter or prevent; and

(2) it is the responsibility of the private sector to use that opportunity promptly to adopt, implement, and enforce measures to deter and prevent the improper use of unsolicited commercial electronic mail.

## **TITLE III—AUCTION RESCISSION AND RE-AUCTION**

### **SEC. 301. RE-AUCTION OF C-BLOCK LICENSES.**

(a) OPTION TO ELECT RESCISSION.—Upon the election of a C-block licensee, the Commission shall rescind such licensee’s authority to utilize frequencies in the C-block in accordance with the provisions of subsection (b), and such action by the Commission shall cancel the debt obligations the licensee assumed under the C-block installment payment program.

(b) REQUIREMENTS.—In carrying out the provisions of this section, the Commission shall—

(1) require any licensee making an election under subsection (a) to do so with regard to all its C-block licenses;

(2) permit all licensees that returned C-block licenses to the Commission prior to the effective date of this section (including those who elected a C-block restructuring option on June 8, 1998, pursuant to WT Docket No. 97–82) to reconsider their decision prior to making the election specified in subsection (a);

(3) grant each licensee that makes an election pursuant to subsection (a) of this section a full bidding credit in an amount equal to the sum of all down payments, installment payments, and interest payments made prior to the effective date of this section, with such credit to be available to the licensee to use in bidding on any license in a subsequent re-auction of C-block frequencies that the Commission shall commence prior to March 24, 1999;

(4) permit such bidding credit to be freely transferable, in whole or in part, to any entity that is eligible to participate in the re-auction in accordance with paragraph (7);

(5) not refund any unused bidding credit;

(6) not utilize installment payments in C-block re-auctions;

(7) limit eligibility to participate in any re-auction of C-block spectrum to entities that (A) participated in the C-block auction which began on December 18, 1995, or the C-block auction which began on July 3, 1996; and (B) any entity that would have been eligible to participate in either of those auctions under Commission rules in effect as of those dates; and

(8) take final action within 60 days following the end of a C-block re-auction on license applications filed by entities the Commission has named as winning bidders in the re-auction.

(c) OPERATIONAL LICENSEES.—The Commission shall restructure the indebtedness of any C-block licensee that has commenced offering service to the public in any BTA prior to the start of the re-auction required by this section so that the amount that such licensee owes the Commission for the license for such BTA is approximately equal to the winning amount bid at such re-auction for BTA's with comparable populations.

(d) RULEMAKING REQUIRED.—The Commission shall adopt a final order in WT Docket 97–82 implementing the requirements of this section within 30 days of its enactment.

(e) SUSPENSION OF PAYMENTS.—The Commission shall suspend all payments due under the C-block restructuring rules (pursuant to WT Docket 97–82) until completion of the re-auction required by this section.

(f) DEFINITIONS.—As used in this section—

(1) the term “Commission” means the Federal Communications Commission;

(2) the term “C-block” has the same meaning as under the Commission’s rules;

(3) the term “BTA” has the same meaning as under the Commission’s rules; and

(4) the term “licensee” means any entity the Commission named a high bidder in C-block auctions that began on December 18, 1995, or July 3, 1996, and who thereafter was authorized to utilize C-block frequencies, regardless of whether such entity subsequently returned such licenses to the Commission in whole or in part.

## **TITLE IV—GWCS AUCTION DEADLINE**

### **SEC. 401. ELIMINATION OF ARBITRARY AUCTION DEADLINE.**

Section 309(j)(9) of the Communications Act of 1934 (47 U.S.C. 309(j)(9)) is amended by striking “, not later than 5 years after the date of enactment of this subsection,”.

## **TITLE V—REINSTATEMENT OF CERTAIN APPLICANTS**

### **SEC. 501. REINSTATEMENT OF APPLICANTS AS TENTATIVE SELECTEES.**

(a) IN GENERAL.—Notwithstanding the order of the Federal Communications Commission in the proceeding described in subsection (b), the Commission shall—

(1) reinstate each applicant as a tentative selectee under the covered rural service area licensing proceeding; and



(2) permit each applicant to amend its application, to the extent necessary to update factual information and to comply with the rules of the Commission, at any time before the Commission's final licensing action in the covered rural service area licensing proceeding.

(b) PROCEEDING.—The proceeding described in this subsection is the proceeding of the Commission In re Applications of Cellwave Telephone Services L.P., Futurewave General Partners L.P., and Great Western Cellular Partners, 7 FCC Rcd No. 19 (1992).

**SEC. 502. CONTINUATION OF LICENSE PROCEEDING.**

(a) AWARD OF LICENSES.—The Commission shall award licenses under the covered rural service area licensing proceeding within 90 days after the date of the enactment of this title.

(b) SERVICE REQUIREMENTS.—The Commission shall provide that, as a condition of an applicant receiving a license pursuant to the covered rural service area licensing proceeding, the applicant shall provide cellular radiotelephone service to subscribers in accordance with sections 22.946 and 22.947 of the Commission's rules (47 CFR 22.946, 22.947); except that the time period applicable under section 22.947 of the Commission's rules (or any successor rule) to the applicants identified in subparagraphs (A) and (B) of section 504(1) shall be 3 years rather than 5 years and the waiver authority of the Commission shall apply to such 3-year period.

(c) EDUCATIONAL AND PUBLIC SAFETY INFRASTRUCTURE.—Upon the grant of a license by the Commission to an applicant under the covered rural service area licensing proceeding, the applicant shall provide to each public school, library, and public safety entity (including police, fire, and emergency medical service entities) located within the rural service area of the grantee, at the option of each such entity and free of charge—

(1) 1 cellular telephone; and

(2) not less than 200 minutes of local service per month for each such cellular telephone.

A telephone and local service for the telephone provided pursuant to this subsection may be used only while the telephone is in the rural service area of the grantee and may be used only for official business of the school, library, or public safety entity for which it is provided.

(d) ENHANCED EMERGENCY SERVICES.—After the grant of a license by the Commission to an applicant under the covered rural service area licensing proceeding, the applicant shall provide free of charge, during each emergency that requires activation of the Emergency Alert System (as referred to in section 11.1 of the Commission's rules (47 CFR 11.1) or any successor rule) within the rural service area of the grantee, to public safety personnel (including police, fire, and emergency medical services personnel)—

(1) at least 50, but not more than 100, cellular telephones; and

(2) service for each cellular telephone provided pursuant to paragraph (1).

A telephone and service for the telephone provided pursuant to this subsection may be used only for official business of public service personnel during the emergency for which it is provided.

(e) PRIVACY SAFEGUARDS.—Except as otherwise provided under Federal law and the Commission's rules, an applicant that is granted a license by the Commission under the covered rural service area licensing proceeding shall not disclose to any third party any location information generated through a subscriber's use of a cellular telephone in the service area of the applicant.

(f) AUCTION AUTHORITY.—If, after the amendment of an application pursuant to section 501(a)(2) of this title, the Commission finds that the applicant is ineligible for grant of a license to provide cellular radiotelephone services for a rural service area or the applicant does not meet the requirements under subsection (b) of this section, the Commission shall grant the license for which the applicant is the tentative selectee (pursuant to section 501(a)(1)) by competitive bidding pursuant to section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)).

**SEC. 503. PROHIBITION OF TRANSFER.**

During the 5-year period that begins on the date that an applicant is granted any license pursuant to section 501, the Commission may not authorize the transfer or assignment of that license under section 310 of the Communications Act of 1934 (47 U.S.C. 310). Nothing in this title may be construed to prohibit any applicant granted a license pursuant to section 501 from contracting with other licensees to improve cellular telephone service.

**SEC. 504. DEFINITIONS.**

For the purposes of this title, the following definitions shall apply:

- (1) **APPLICANT.**—The term “applicant” means—
- (A) Great Western Cellular Partners, a California general partnership chosen by the Commission as tentative selectee for RSA #492 on May 4, 1989;
  - (B) Monroe Telephone Services L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #370 on August 24, 1989 (formerly Cellwave Telephone Services L.P.); and
  - (C) FutureWave General Partners L.P., a Delaware limited partnership chosen by the Commission as tentative selectee for RSA #615 on May 25, 1990.
- (2) **COMMISSION.**—The term “Commission” means the Federal Communications Commission.
- (3) **COVERED RURAL SERVICE AREA LICENSING PROCEEDING.**—The term “covered rural service area licensing proceeding” means the proceeding of the Commission for the grant of cellular radiotelephone licenses for rural service areas #492 (Minnesota 11), #370 (Florida 11), and #615 (Pennsylvania 4).
- (4) **TENTATIVE SELECTEE.**—The term “tentative selectee” means a party that has been selected by the Commission under a licensing proceeding for grant of a license, but has not yet been granted the license because the Commission has not yet determined whether the party is qualified under the Commission’s rules for grant of the license.

#### PURPOSE AND SUMMARY

H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1998, has two overarching purposes. First, the legislation enacts a non-regulatory solution to the problem of “slamming,” which is the unauthorized changing of a consumer’s provider of telephone exchange service or telephone toll service. Second, the legislation promotes intense and efficient use of the electromagnetic spectrum by resolving two matters that have been mired in regulatory and legal disputes for several years, thus denying consumers the benefit of additional competition in the commercial mobile services market.

#### BACKGROUND AND NEED FOR LEGISLATION

##### *Eliminating “slamming”*

Slamming is a problem that affects thousands of consumers across the country, and it is a problem that will continue to plague consumers if strong anti-slamming measures are not put in place. With the advent of “equal access” and customer choice among competing long distance carriers following the Bell System divestiture, consumers of interLATA voice service (i.e., long distance telephone service) were first exposed to slamming. Within a few years, slamming became and has remained among the leading sources of customer complaints to the Federal Communications Commission (FCC or the Commission), State public utility commissions (PUCs) and other consumer protection agencies. The Committee is particularly concerned that the scourge of slamming may potentially worsen as competition spreads to other telecommunications services markets. In particular, because the Telecommunications Act of 1996 removed all barriers to competition in all telecommunications services markets, consumers of local and short-haul toll services may be exposed to slamming of their chosen providers of these additional telecommunications services.

The Committee believed that it had addressed the problem of slamming in the Telecommunications Act of 1996. There, the Committee added to section 101 of the Telecommunications Act a provi-

sion (now codified at 47 U.S.C. § 258) that gave the Commission ample authority to protect consumers against slammers. Section 258 to the Communications Act directs the FCC to establish rules against unauthorized changes in a consumer's chosen provider of telecommunications service. However, much to the Committee's dismay, the FCC to date has failed to implement section 258, thus requiring Congress to revisit this important issue.

While seeking to find meaningful solutions for consumers in fighting slammers, the Committee also is mindful of its commitment to promoting competition in all telecommunications markets. It is clear that unnecessary restrictive regulation of the carrier selection process would inhibit the development of a robustly competitive telecommunications services marketplace. The introduction of effective carrier choice in the interexchange services market following the Bell System divestiture has provided consumers lower prices and a wide range of services and features for long distance calling. The Telecommunications Act of 1996 was enacted to provide these same consumer benefits in the intraLATA toll and local exchange services markets which are now overwhelmingly served by incumbent local exchange carriers. Regulation of slamming that impairs the ability of new market entrants to compete fairly and effectively for consumers' business in these newly emerging markets is therefore contrary to the objectives of the Telecommunications Act.

The Committee has thus endeavored to find a solution that not only addresses the need to limit consumers' exposure to slammers but also promotes competitive entry into all telecommunications services markets. The Code of Subscriber Practices, delineated in Title I of H.R. 3888, achieves the necessary balance. The Code will provide a powerful incentive for carriers to regulate themselves and protect the interests of consumers. To the extent a carrier chooses not to participate, or otherwise fails to comply with the Code, then the carrier falls into the net of FCC regulation that is substantially more stringent. The Committee finds that this bifurcated regulatory regime best serves the interests of consumers and the cause of competition.

*The critical role of spectrum management*

Because of the increasingly important role spectrum plays in providing the American people with communications services they value, the Federal government's role in managing the allocation and assignment of spectrum takes on added significance. Growing demand for spectrum-based services has been most evident in the area of mobile telecommunications. In recent years, technological advances have woven into the fabric of everyday life a wide range of mobile services, such as pocket-sized mobile telephones, pagers, portable fax machines, wireless personal computers, and Internet access services.

Congress created the FCC in 1934 for the principal purpose of managing spectrum used by commercial entities, as well as spectrum used by non-Federal government agencies. (The National Telecommunications and Information Administration (NTIA) manages spectrum used by Federal agencies.) Congress' principal mandate to the FCC has been to license services quickly and efficiently

so as to further the public interest, convenience, and necessity. Congress has emphasized the importance of the licensing process because, where spectrum management is concerned, licensing ensures the deployment of a wide array of services from multiple providers, which in turn promotes competition and lower prices for consumers. Congress therefore has provided the FCC with administrative authority to ensure quick and efficient licensing.

But recently, notwithstanding Congress' direction to the FCC to implement reliable licensing procedures, numerous FCC licensing proceedings have become embroiled in unrelated or secondary issues. Some argue that the FCC has been focusing too much on means, rather than ends, and as a result, a substantial amount of spectrum lies fallow in numerous administrative and legal proceedings. One witness at a recent spectrum management hearing before the Subcommittee on Telecommunications, Trade, and Consumer Protection made the following observation:

The [FCC's refusal, over a 10-year period, to award three permanent cellular licenses serving three rural markets] arose as a result of a fundamental misstep in FCC licensing policy—specifically, a confusion between ends and means that resulted in an effort to find reasons not to grant licenses rather than to find reasons to grant them. [Title V of H.R. 3888] offers a solution to this problem that, if emulated, would help assure that spectrum is put to its highest, best, and fullest use. \* \* \* Regardless of the mechanism the FCC uses, the most important aspect of its licensing activities is assigning licenses quickly and securely. It is only after that has happened that the market can produce the important social benefits of competition, innovation, and economic growth. All of this is too well understood to require much elaboration.

Spectrum Management Oversight: Hearings Before the Subcomm. on Telecommunications, Trade, and Consumer Protection, 105th Cong., 2d Sess. (1998) (Testimony of Philip L. Verveer).

The extent of regulatory delay appears to be quite large. The FCC recently informed Congress that “approximately 63,909 [wireless] matters \* \* \* have been pending for one year or more”—some of which have been pending for longer than a decade. Letter from The Honorable William E. Kennard, Chairman, Federal Communications Commission, to The Honorable John McCain, Chairman, Committee on Commerce, Science, and Transportation, United States Senate, at 4 (July 9, 1998). Those matters include spectrum allocated for:

(1) *broadband C-block PCS*, in which more than 80 percent of the spectrum lies fallow as bankruptcy court and administrative proceedings plod along;

(2) *narrowband PCS*, where after four years of administrative proceedings and more than a billion dollars in auction payments, only a single nationwide licensee is providing service on a meaningful scale;

(3) *rural cellular service*, where permanent service has yet to be authorized in many rural areas, some with populations approaching 500,000;

(4) *paging service*, where an FCC-initiated freeze on spectrum licensing is now in its third year;

(5) *220 MHz service*, where complex and formalistic licensing rules have thwarted efforts to deploy service;

(6) *interactive video and data services (IVDS)*, which the FCC began licensing in 1993, but no viable service has emerged; and

(7) *multiple address systems*, where more than 50,000 license applications have remained on file for more than six years, without any service being provided.

Given the amount of spectrum that now lies fallow, the Committee is necessarily concerned that the Commission has deviated from its statutory responsibility to promote “efficient and intensive use of the electromagnetic spectrum.” 47 U.S.C. § 309(j)(3)(D). Titles III and V of H.R. 3888 are intended to address two of the more critical instances where consumers are being denied the benefits of additional competition from multiple wireless providers. Through Titles III and V, the Committee intends to begin the process of ensuring that the Commission re-focuses its resources to promoting efficient and intensive use of the electromagnetic spectrum, rather than further embroiling itself in regulatory and legal disputes that serve no one, except the communications bar. Indeed, the Committee has learned that, in FY 1997 alone, the FCC paid the law firm of Sidley & Austin \$765,775.00 to serve as a “bankruptcy consultant for matters relating to actual and potential bankruptcies of FCC licensees that owe funds arising from installment payment financing of spectrum auctions.” Letter from The Honorable William E. Kennard, Chairman, Federal Communications Commission, to The Honorable Tom Bliley, Chairman, Committee on Commerce, United States House of Representatives, at 9 (August 28, 1998).

#### *Resolving the growing C-block crisis*

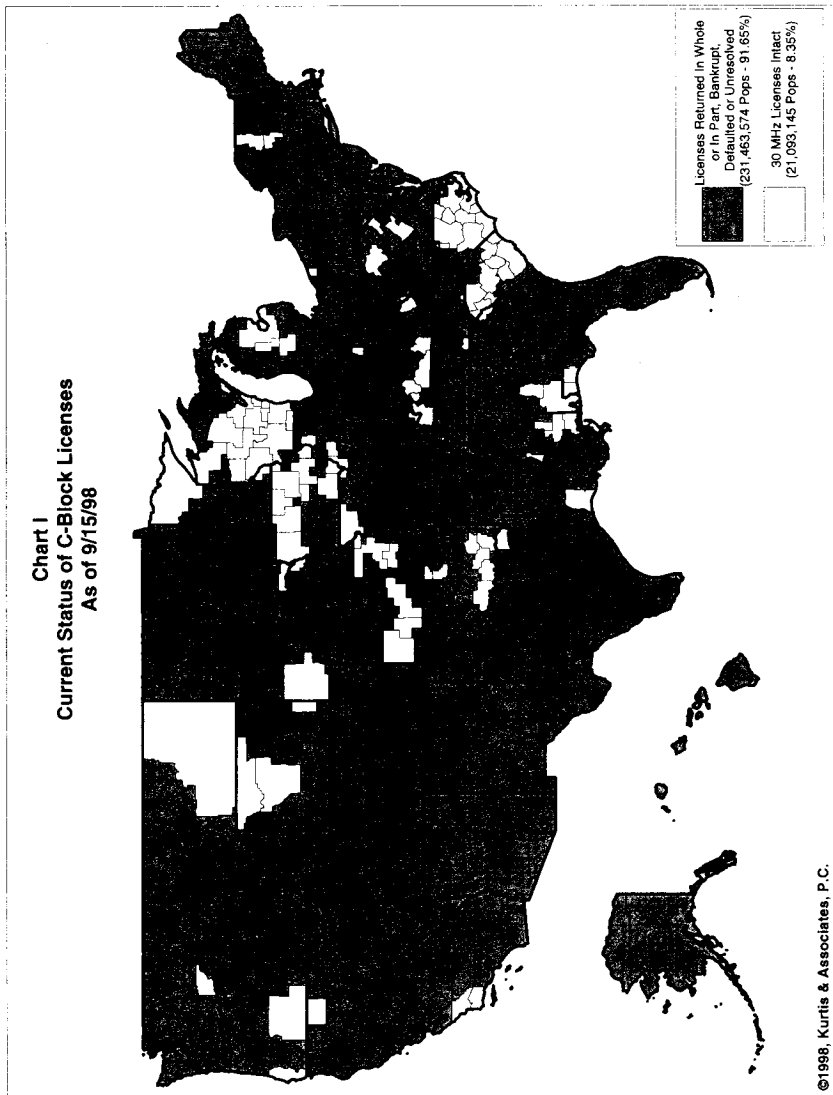
As part of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Congress instructed the FCC to promote the interests of small businesses and rural telephone companies in licensing new spectrum-based services. The FCC implemented this provision, in part, by setting aside a “block” of spectrum for personal communications services (PCS) that would be licensed exclusively to small businesses. And in early 1996, after much deliberation, the FCC eventually auctioned this block of spectrum (commonly referred to as the “C-block” auction) and received winning bids of \$10.2 billion. The FCC also established that auction receipts from the C-block auction would be collected through an installment plan that permitted the winning bidders to pay their debt obligations over a ten-year period.

At the time, the C-block auction was viewed as a huge success. The winning bids for the C-block auction eclipsed the winning bids for other PCS auctions that were open to large incumbent carriers, like AT&T, Sprint, and the regional Bell operating companies. The winning bids from these other PCS auctions (commonly referred to as the “A-block” and “B-block” auctions) totaled \$7.7 billion—nearly three billion less than the total from the C-block auction. In contrast to the rules from the C-block auction, the FCC required win-

ning bidders from the A- and B-block auctions to pay their debt obligations shortly after the close of the auction.

The luster from the C-block auction, however, has since faded. Several of the largest C-block licensees have declared bankruptcy, and many others have returned to the FCC a portion or all of the 30 MHz originally assigned to them. As a result, less than 10 percent of spectrum issued pursuant to the C-block auction is currently intact, with the remainder either tied up in bankruptcy court proceedings or returned to the FCC for re-auction. (See Chart I showing current status of all C-block licensees).

With the benefit of hindsight, some have argued that the C-block licensees bid too much for their licenses. But, it is indisputable that the FCC's handling of licensing-related issues greatly contributed to the C-block debacle. To begin with, after collecting hundreds of millions of dollars of down payments from winning bidders, the FCC failed to act on even uncontested license applications for several months, and failed to complete action on all license applications until 18 months after the auction. This delay stands in stark contrast to the relative speed with which the Commission licensed the C-block licensees' biggest competitors. For example, the A- and B-block licensees (i.e., large, well-financed carriers like Sprint and PrimeCo) received their licenses from the FCC in little more than three months after the close of the A- and B- block auctions. More importantly, the A- and B-block licensees achieved a substantial "head start" over their C-block competitors given that the FCC issued the A- and B-block licenses nearly two years before it granted the bulk of the C-block licenses.



Then, only weeks after it issued most of the C-block licenses, the FCC in April 1997 suspended all payments on the C-block licenses, effectively signaling to capital markets that the C-block was financially imperiled. In fact, the Small Business Administration formally advised the FCC that its decision to suspend payments “created a misperception that all C-block licensees are in trouble, causing further uncertainty about the viability of C-block licensees to compete.” Letter from Jere Glover, Chief Counsel, United States Small Business Administration, et al., to The Honorable Reed E. Hundt, Chairman, Federal Communications Commission, at 4–5 (Sept. 8, 1998). The availability of private financing was essential to the licensees because, by definition, participation in the C-block auction was limited by the Commission to truly “small businesses;” thus, the only way participating companies could pay for licenses was by accessing the capital markets. The FCC in June 1997 launched a proceeding to address how best to restructure the licensees’ debt. The FCC eventually adopted four options, none of which the C-block licensees viewed as commercially reasonable.

Meanwhile, at approximately the same time the FCC was attempting to forge a unified administrative solution, events in the C-block bankruptcy proceedings created even more instability and uncertainty. The FCC, for example, intervened in the bankruptcy proceeding for Pocket Communications, and offered to reduce Pocket’s debt obligations by approximately 60 percent, or approximately \$640 million. And in a separate C-block bankruptcy proceeding involving General Wireless Inc. (GWI), the bankruptcy court reduced GWI’s obligation by approximately 84 percent, or roughly \$900 million. *United States v. GWI PCS 1, Inc.*, Civ. Action No. 3:97–CV–2504–L (N.D. Tex. filed Sept. 30, 1998). In both cases, the terms offered to Pocket and GWI were widely viewed as superior to the administrative options the FCC had offered non-bankrupt C-block licensees. Indeed, shortly after the terms in both cases became public, NextWave (the largest C-block licensee) declared bankruptcy.

With less than 10 percent of the spectrum from the C-block auction currently intact, (See again Chart I showing current status of all C-block licensees) and with the bulk of the spectrum either tied up in bankruptcy court or returned to the FCC for re-auction, it is apparent that the Federal government will never collect the total \$10.2 billion from the auction. In fact, the Congressional Budget Office (CBO) issued a report in September 1997 estimating that the government will collect no more than 60 percent of the winning bids in light of the “growing likelihood of default.” CBO Memorandum, *Impending Defaults by Winning Bidders in the FCC’s C-block Auction*, at vi (Sept. 1997).

The Commission ignored entreaties by the Committee to avoid the quagmire of bankruptcy litigation. The consequence has been unnecessary delay in bringing service from C-block licensees to the public—a result that is fully at variance with the explicit goals of the statute. Indeed, the record from the Subcommittee on Telecommunications, Trade, and Consumer Protection hearing on spectrum management demonstrates that the Commission is unwilling, or unable, to implement Congress’ goal of administering C-block spectrum in ways that assure it will be deployed rapidly to the productive use of delivering service to the public without administra-



tive or judicial delay. The record further demonstrates that the FCC is presently committed to an alternative, and thoroughly ill-considered, program of spending its limited resources on expensive and lengthy litigation to drag out the C-block fiasco, rather than working with licensees to restructure debt so as to bring competitive new service to the public as expeditiously as possible.

The FCC's testimony before the Committee concerning the C-block bankruptcy litigation in which it currently is embroiled reflects a fundamental misunderstanding of the manner in which Congress originally intended and continues to intend that auctions must be administered in order to fulfill congressional intent. Spectrum Management Oversight: Hearings Before the Subcomm. on Telecommunications, Trade, and Consumer Protection, 105th Cong., 2d Sess. (1998) (Testimony of Daniel B. Phythyon, Chief, Wireless Telecommunications Bureau, FCC). The statute contemplates that an auction and the evaluation of the qualifications of a higher bidder to hold a spectrum license shall be conducted as contemporaneously as possible. As the bidder does not have a license or the use of the spectrum until the license is granted, interposing the delay between these two events invites the possibility that market forces may alter the assumptions on which bids were made in ways that neither bidders nor the Commission could have anticipated. That is why the statute requires the Commission to license spectrum "without administrative or judicial delays," 47 U.S.C. § 309(j)(3)(A) (as cited in *In re GWI PCS 1, Inc.*, Bk. No. 397-39676-SAF-11, (Bankr. N.D. Tex. April 24, 1998)).

It is unfortunate indeed that a Texas bankruptcy judge has a better appreciation of the Congressional mandate to foster the rapid deployment of spectrum-based services without administrative or judicial delay than does the FCC. The consequences of the Commission's approach are painfully evident when compared to the bankruptcy proceedings of GWI. There, the bankruptcy judge completed all of the reorganization proceedings to allow GWI to commence use of its spectrum in less than a year. The FCC has not achieved anywhere near the same result: after two and one-half years, less than 10 percent of the spectrum from the C-block auction is intact. The commercial reasonableness of the GWI decision is evidenced by the financial commitments and support made available to GWI from leading equipment vendor immediately following the court's ruling.

By contrast, the Commission's failure in the C-block licensing process to heed the clear statutory directive to license spectrum "without administrative or judicial delay" after the conclusion of the C-block auctions created the mess the C-block finds itself in today. It is for this reason that the Committee is compelled to put forward its legislative proposal to unwind the C-block auction and try again.

H.R. 3888 will put the C-block program back on track as quickly as possible. Too much time and energy has been devoted to finger pointing and recriminations. Everyone has suffered as a result. The public has been denied the benefits of new services and competition. Licensees have suffered financial harm, and that harm has rippled out to ensnare hundreds of small business, and thousands of individual workers, whose enterprises are tied to the build-out

of C-block networks. A multitude of interested parties has struggled in good faith through the Commission's C-block restructuring proceedings. And the FCC has allowed far too many of its limited resources to be consumed by consideration of commercial financing issues that are secondary to its responsibilities under the Communications Act to promote efficient and intensive use of the electromagnetic spectrum.

It is time to put all of that aside and start anew. This legislation achieves that by providing for a rescission of the C-block auction, in recognition of the fact that the best course of action at this point is to unwind the initial auction and begin over. Rescission is the classic remedy made available in contracts cases where the goods delivered (in this case, PCS licenses) are not what was contracted for (bid for at auction). The amendment directs the FCC to permit licensees to return their licenses to the Commission, terminate their indebtedness, obtain bidding credits for amounts already paid to the government, and participate in a re-auction of C-block spectrum. It also requires that the Commission re-auction the licenses by March 24, 1999, (the date already selected by the FCC to re-auction licenses turned in or defaulted on by licensees) and consequently, will get new licenses issued as quickly as possible.

This legislation will avoid the years of delay that otherwise would result from bankruptcy litigation and will considerably accelerate the day when the public starts receiving the spectrum-based services Congress contemplated when it enacted the auction statute. The goal is to provide a fresh start, and all who participated in the initial C-block auction will have the same opportunity to participate again. Overall, the purpose of the legislation is to ensure that Congress' goals of service to the public, economic opportunity, and competition are achieved in a reasonable timeframe.

#### *Promoting rural cellular service*

In 1986, having assigned licenses in the Nation's largest markets, the Commission established geographic boundaries for over 400 rural service areas (RSAs). The Commission created two frequency allocations for each of these RSAs: the B-block frequencies for incumbent wireline carriers (i.e., the local telephone providers), and A-block frequencies for other applicants. The Commission employed a lottery system in these markets in order to award licenses as quickly as possible. In 1992, the FCC disqualified the 1988 applications submitted by three lottery-winning partnerships in three RSAs located in parts of Minnesota, Florida, and Pennsylvania. The Commission concluded that the partnerships had not complied with foreign ownership restrictions under its interpretation of the Communications Act of 1934. The Commission did not allow the companies to amend their applications and bring themselves into compliance, in contrast to similarly situated applicants who had also participated in the same lotteries but were permitted to correct foreign ownership interests.

Today, 12 years after it first established RSAs, the Commission still has not awarded permanent cellular licenses in the three RSAs. Citizens residing in these areas are not reaping the benefits of competition between permanently licensed multiple cellular service providers. In the Pennsylvania RSA, the Commission has not

awarded an interim license, leaving the local telephone company with a cellular monopoly. In the Minnesota and Florida RSAs, the Commission has awarded interim licenses, but has not yet awarded permanent licenses. The situation in these RSAs is contrary to Congress' intention that two cellular providers—both with permanent licenses—compete vigorously for customers in every RSA across the U.S.

At a recent spectrum management hearing, the Subcommittee on Telecommunications, Trade, and Consumer Protection heard testimony explaining the FCC's apparently arbitrary treatment of the applicants in these three RSAs. Testimony was also provided which characterized the difference in service between the permanent licensee and the interim licensee in the Minnesota and Florida markets. In the Pennsylvania market, the record confirms that cellular service is only being provided by one carrier.

H.R. 3888 will address the problem of these three rural areas that have received less than optimal cellular service for almost a decade. The problem arose because the Commission took a series of actions which placed its adherence to procedure ahead of achieving results that are in the public interest—procedures which the FCC now recognizes were not mandated by this Congress. In the end, the Commission failed in its duty to issue licenses so that valuable spectrum is being used, and is serving the public interest, rather than sitting idle or in the hands of interim licensees for extended periods of time. H.R. 3888 offers a solution to a problem that has persisted for ten years by helping to ensure that spectrum is put to its highest, best, and fullest use.

This legislation would improve service to the public in the three RSAs and rectify the unfair treatment of the partnerships, consistent with current law and policy, by directing the Commission to reinstate the three partnerships as tentative selectees with the opportunity to amend their applications. The FCC would then review the amended applications under its regulations. If the partnerships did not amend their applications to comply with the FCC's existing RSA service requirements, the Commission would auction the licenses pursuant to the Communications Act of 1934.

#### HEARINGS

The Subcommittee on Telecommunications, Trade, and Consumer Protection held related hearings on June 23, 1998 (Protecting Consumers Against Slamming), and September 18, 1998 (Spectrum Management Oversight). The Subcommittee received testimony for the slamming hearing from: The Honorable Bob Goodlatte, U.S. House of Representatives, Sixth District, Commonwealth of Virginia; The Honorable Charles F. Bass, U.S. House of Representatives, Second District, State of New Hampshire; The Honorable Christopher H. Smith, U.S. House of Representatives, Fourth District, State of New Jersey; Mr. Lawrence E. Strickling, Deputy Bureau Chief, Common Carrier Bureau, Federal Communications Commission (FCC); Mr. Ernie Kelly, Executive Director, Telecommunications Resellers Association (TRA); Mr. Otto Schultz, Member, Board of Directors, American Association of Retired Persons (AARP); Mr. Riley M. Murphy, Executive Vice President, e-spire Communications Inc; Mr. Robert M. McDowell, Deputy Gen-

eral Counsel, American Carriers Telecommunications Association (ACTA); Mr. Jerry Cerasale, Senior Vice President, Government Affairs, Direct Marketing Association (DMA); Ms. Deirdre Mulligan, Staff Counsel, Center for Democracy and Technology; Ms. Susan Grant, Vice President for Public Policy, National Consumers League; and Ms. Barbara A. Dooley, Executive Director, Commercial Internet Exchange Association.

The Subcommittee received testimony for the spectrum management hearing from: Mr. Dan Phythyon, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (FCC); Mr. Michael W. Green, President and Chief Executive Officer, Carolina PCS Corporation; and Mr. Philip L. Verveer, Esquire, Wilkie, Farr & Gallagher (representing Great Western Cellular Partners, Monroe Telephone Services, and Futurewave General Partners).

#### COMMITTEE CONSIDERATION

On August 6, 1998, the Subcommittee on Telecommunications, Trade, and Consumer Protection met in open markup session and approved H.R. 3888 for Full Committee consideration, amended, by a voice vote. On September 24, 1998, the Full Committee met in open markup session and ordered H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1998, reported to the House, amended, by a voice vote, a quorum being present.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes taken in connection with ordering H.R. 3888 reported. An Amendment in the Nature of Substitute offered by Mr. Tauzin was adopted by a voice vote. A motion by Mr. Bliley to order H.R. 3888 reported to the House, amended, was agreed to by a voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee held a legislative and oversight hearings and made findings that are reflected in this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 3888, the Telecommunications Competition and Consumer Protection Act of

1998, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 7, 1998.*

Hon. TOM BLILEY,  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3888, the Telecommunications Competition and Consumer Protection Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kathleen Gramp and Kim Cawley (for federal costs), Pepper Santalucia (for the state and local impact), and Jean Wooster (for the private-sector impact).

Sincerely,

JAMES L. BLUM  
(For June E. O'Neill, Director).

Enclosure.

*H.R. 3888—Telecommunications Competition and Consumer Protection Act of 1998*

Summary: H.R. 3888 would amend existing law and change current policies regarding licenses for use of the electromagnetic spectrum. It would modify the terms of the Federal Communication Commission's (FCC's) financing of licenses awarded pursuant to the C-block auction of spectrum. (The C-block refers to 30 megahertz of the electromagnetic spectrum allocated to personal communications services in each of 493 subdivisions of the nation and its territories.) The bill also would repeal the statutory deadline for auctioning certain frequencies and would direct the commission to grant three cellular licenses without compensation, subject to certain conditions. Other provisions would amend the Communications Act of 1934 to prohibit telecommunications carriers or service resellers from submitting or executing changes in a subscriber's selection of a provider of telephone exchange or toll service except in accordance with procedures prescribed by the FCC.

CBO estimates that enacting H.R. 3888 would increase direct spending by \$600 million in fiscal year 1999 and by an additional \$1 million in 2000. Provisions establishing new penalties could affect receipts, but CBO estimates that such receipts would not be

significant. This bill also would affect discretionary spending, but CBO estimates that the net impact would be negligible. Because the bill would affect direct spending and receipts, pay-as-you-go procedures would apply.

The bill contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt some state laws governing changes in a subscribers's choice of telecommunications carriers. CBO estimates that the cost to states to comply with this mandate would not exceed the threshold established in UMRA (\$50 million in 1996, adjusted for inflation).

H.R. 3888 would impose a private-sector mandate, as defined in UMRA, on telecommunications carriers, including resellers of telecommunication services. CBO estimates that the cost of this mandate would not exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation).

Description of the bill's major provisions: Title I would prohibit telecommunications carriers or service resellers from submitting or executing changes in a subscriber's selection of a provider of telephone exchange or toll service except in accordance with procedures prescribed by the FCC.

Title III would modify the terms of the FCC's financing of licenses awarded in the 1996 auction of the C-block frequencies. In that auction, winning bids of \$10 billion were recorded on the budget, and the winners paid 10 percent of that amount as a down payment. Licenses agreed to pay the remaining 90 percent to the FCC in installment payments over a 10-year period. The FCC is unlikely to recover the amounts due under the original notes, however. The FCC recently granted C-block licenses various forms of financial relief if they agree to return the license to the FCC, or to give up the right to use half of the frequencies covered by the initial license, or to resume the original payment schedule. In those elections, which were made in June 1998, licenses chose to return licenses that accounted for \$1.5 billion of the \$10 billion bid in 1996. Payments are expected to resume on another \$1.1 billion, and another \$30 million was prepaid. Three licenses, which together account for the remaining \$7.2 billion of the original bids, have filed for bankruptcy protection and their elections were conditioned on the outcome of those proceedings.

Title III would offer C-block licenses two additional forms of relief. Under one option, licensees who are willing to return all of their licenses to the FCC would have all of their debt obligations to the FCC canceled and would receive bidding credits equal to the sum of all down payments, interest, and installment payments made by the licensee prior to the date of enactment. These bidding credits could only be used in bidding on licenses in a reauction of C-block frequencies but would be transferrable in whole or in part to other entities eligible to participate in that auction. Under this bill, that reauction must take place no later than March 24, 1999, which is when the FCC expects to conduct a reauction of returned C-block frequencies under current law.

The second option for relief would affect the debt obligations of licensees that choose to retain their licenses. The bill would require that, after the reauction takes place in March 1999, the FCC write down the debt obligation of any licensee that has "commenced of-

fering service to the public” in a basic market area. The debts associated with that market area would be reduced so that the amounts owed by the licensee would be comparable to the winning bids in the March 1999 reauction. Title V would repeal the September 1998 deadline for the auction of 5 megahertz of frequencies formerly used by federal agencies. This spectrum was to be auctioned as part of 25 megahertz to be used for general wireless communications services (GWCS). The FCC has postponed that auction for technical and market reasons.

Title V would designate certain companies as tentative selectees for the award of cellular licenses in three rural service areas (RSAs): one in the Florida Keys, one in northeastern Pennsylvania, and one in southeastern Minnesota. These companies would be allowed to amend their license applications, which the FCC had rejected when they were originally filed. If the revised applications conform to the FCC’s current guidelines, the companies would be awarded the licenses within 90 days after enactment of the bill. If the commission determines that the companies are ineligible, the FCC would be required to grant the licenses through competitive bidding.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3888 is shown in the following table. The costs of this legislation fall within the budget functions 370 (commerce and housing credit) and 950 (undistributed offsetting receipts).

	By fiscal years, in millions of dollars—				
	1999	2000	2001	2002	2003
CHANGES IN DIRECT SPENDING <sup>1</sup>					
Estimated budget authority .....	600	1	1	0	0
Estimated outlays .....	600	1	1	0	0

<sup>1</sup> H.R. 3888 also would affect revenues and discretionary spending, but CBO estimates that those effects would be less than \$500,000 a year.

*Basis of estimate*

*Direct Spending*

CBO estimates that enacting the provisions in H.R. 3888 that apply to the C-block auction would increase direct spending by about \$600 million in fiscal year 1999. Awarding licenses to certain RSA applicants would result in a loss of offsetting receipts of about \$1 million in 2000. Other provisions in the bill could affect direct spending, but CBO estimates that the costs would not be significant.

C-block Licenses. CBO expects that the modifications authorized by title III would increase the subsidy for the C-block licenses relative to current law. Under title III, the FCC would retain the original down payments, but those using the bidding credits in the reauction would reduce their cash payments by the amount of the credit. Hence, granting these bidding credits would eliminate the possibility, under current law, that the FCC would retain the original down payment and collect the full market value of the licenses at the time of the reauction. Being able to reauction most of the C-block licenses in 1999 might accelerate the receipt of payments from licenses that otherwise would be tied up in bankruptcy courts, but CBO estimates that such savings would not offset the cost of

providing the bidding credits. Likewise, writing down the debt obligations of licenses “offering service to the public” who otherwise would pay the amounts scheduled under their existing agreements with the FCC would further reduce the proceeds expected under current law.

The budgetary effects of title III are measured on a credit-reform basis because, by accepting payments over time for the C-block licenses, the FCC has made direct loans to the licensees. Under credit reform procedures, the government recorded auction receipts of about \$10 billion from the C-block auction and created a separate account to record the subsidy for the loans, which in this case involves an allowance for defaults. By the end of fiscal year 1998, the Office of Management and Budget had recorded subsidies totaling \$5.6 billion, suggesting that the net proceeds from the C-block auction will not exceed \$4.4 billion (on a present-value basis) under current law. Legislative actions such as those in title III that would change the terms (and hence the subsidy costs) of existing loans are classified as loan modifications under credit reform. Any costs or savings resulting from such modifications are estimated on a discounted, cash-flow basis and are recorded in the fiscal year in which the legislation is enacted.

Estimates of the changes in subsidy costs must account for legal, regulatory, and market uncertainties. The FCC maintains that spectrum licenses should not be considered property protected by bankruptcy law. The issue remains before the courts, and the FCC continues to press its case. In addition, the response of licensees to new options provided by the bill cannot be known with certainty and is complicated by its interaction with developments in the bankruptcy courts. Finally, the market value of the licenses in any future reauction is also uncertain. CBO’s estimate takes account of those uncertainties by assigning a 50-percent chance that the courts will ultimately uphold the FCC’s position, which would allow the FCC to keep the original down payment, recover the licenses, and reauction the licenses for their full market value. We also assume that most, but not all, of the licensees that elected in June to resume payments will fulfill their current obligations. CBO estimates that enacting title III would reduce the expected value of the net proceeds from C-block licensees by about \$600 million. We assume that Next Wave, which accounts for nearly half of the value of all C-block licenses and has filed for bankruptcy protection, would be among those choosing to return their licenses in exchange for bidding credits. Our estimate of the costs associated with writing down the debt of licensees is based on information regarding licensees that are already providing service to the public (which represent loan obligations of about \$300 million) and an assumed reduction of about 75 percent from the current level of scheduled payments.

GWCS deadline. CBO estimates that repealing the September 30, 1998, deadline for this auction would have no budgetary impact because the FCC was unable to conduct the auction under current law for technical and economic reasons. Based on the FCC’s current plans, CBO expects this auction to occur sometime in the next four years.



RSA cellular licenses. CBO expects that, under current law, the FCC will award licenses in these three RSAs through a competitive auction and that the proceeds of these auctions will be comparable to the amounts paid for similar licenses in the past. Assuming that the three companies designated by the bill would satisfy the FCC's current guidelines, these licenses would instead be awarded without compensation. Therefore, CBO estimates that enacting title V would result in forgone offsetting receipts of about \$1 million in fiscal year 2000.

*Revenues*

Title I would establish new penalties for telecommunications carriers that make unauthorized changes to subscriber's selection of a carrier (frequently called "slamming"). This new penalty could increase receipts, but CBO estimates that any additional amounts collected would not be significant.

*Spending subject to appropriation*

Based on information from the FCC, CBO estimates that the commission would spend about \$3 million annually to implement this bill, assuming appropriation of the necessary amounts. The FCC's administrative costs would increase because it would be required to issue and enforce two new rules dealing with unauthorized changes in a subscriber's provider of telephone services. Under the bill, providers of telephone service would have an incentive to settle disputes among themselves and with customers concerning unauthorized changes in service, without FCC intervention. This estimate assumes that formal commission orders would not be required to resolve those cases in which the FCC is called upon to resolve disputes. Because the commission is authorized under current law to collect fees from the telecommunications industry sufficient to offset the cost of its enforcement program, CBO expects that the costs of title I would be offset by an increase in collections credited to annual appropriations for the FCC. Hence, we estimate that the net effect on discretionary spending would be negligible in each year.

Pay-as-you-go-considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go-procedures for legislation affecting direct spending or receipts. The net changes in outlays and governmental receipts that are subject to pay-as-you-go procedures are shown in the following table. For purposes of enforcing pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By fiscal years in millions of dollars—									
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Changes in outlays .....	600	1	0	0	0	0	0	0	0	0
Changes in receipts .....	0	0	0	0	0	0	0	0	0	0

Estimated impact on state, local, and tribal governments: The bill contains an intergovernmental mandate as defined in UMRA, because it would preempt state anti-slamming laws that impose more restrictive requirements than those imposed by the bill. According to the National Conference of State Legislatures, at least

10 states have anti-slamming laws. If their laws prescribe penalties or fines that are higher than those in the bill, these states would collect less than they would under current laws. Based on information about states' recent collections of fines, CBO estimates that costs to states would not exceed the threshold established in UMRA.

Estimated impact on the private sector: H.R. 3888 would impose a private-sector mandate, as defined by UMRA, on telecommunications carriers, including resellers of telecommunication services. CBO estimates that the cost of this mandate would not exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation).

H.R. 3888 would require carriers to comply with practices to prevent slamming (the changing of a consumer's provider of telephone service without his or her knowledge or consent) prescribed by either an industry-led council or the FCC. Based on information provided by a telecommunications trade association, CBO estimates that because requirements imposed by an industry-led council probably would be less costly and burdensome than FCC regulations, most carriers would choose to comply with the council's requirement. Since many carriers currently require, either voluntarily or because of state and federal law, some type of verification and notification of a subscriber's selection, the cost, if any, to those carriers would be minor. The aggregate direct cost of new rules to carriers that do not currently meet the likely standards also would not be great, although some such carriers may lose revenues if fewer customers subscribe to their service, but total industry revenues should not be affected. Furthermore, enactment of H.R. 3888, which would preempt some state regulations, would be less costly and onerous to the carriers than complying with a variety of state laws. Thus, CBO estimates that the aggregate cost to the carriers of compliance with anti-slamming practices would be well below the cost threshold for private-sector mandates.

Previous CBO estimate: On April 7, 1998, CBO prepared an estimate for S. 1618, a bill to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 12, 1998. The "slamming" provision in title I of H.R. 3888 is similar to S. 1618, but CBO estimated a higher FCC cost of about \$6 million a year for S. 1618 because that bill would require the commission to issue formal orders to resolve disputes.

Estimate prepared by: Federal Costs: Kathleen Gramp and Kim Cawley. Impact on State, Local, and Tribal Governments: Pepper Santalucia. Impact on the Private Sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title*

Section 1 of H.R. 3888 states that the legislation may be cited as the “Telecommunications Competition and Consumer Protection Act of 1998.”

## TITLE I—SLAMMING

*Section 101. Improved protection for consumers**(a) Consumer protection practices*

Subsection 101(a) re-writes section 258 of the Communications Act to promote industry self-regulation of changes in subscriber selections of carriers. While self-regulation is common practice in many industries, it has yet to be adopted by telecommunications providers in the context of protecting consumers from slamming. The Committee therefore has decided to take the lead and direct the FCC to implement a Code of Subscriber Protection Practices. Through the Code, the FCC shall serve as a “backstop,” ensuring that the Code is implemented and, where appropriate, regulating those carriers that choose not to participate and punishing those that otherwise violate its requirements. In order to preserve the Code’s appeal as an alternative to government regulation, the Committee expects that the FCC will implement a Code that is far less stringent and cumbersome than the FCC’s own rules (as delineated in new subsection 258(c)).

The slamming legislation has two other key elements. First, the Committee recognizes that some telecommunications providers may decide not to opt to abide by the code, or may have their ability to adhere to the code withdrawn by the Commission for failure to abide by its provisions. For these providers, the Committee has retained the approach adopted by the Subcommittee, whereby the Commission engages in strict and complete regulatory oversight. Second, States continue to have an important role in preventing slamming, and, to the maximum extent feasible, the Committee has retained their role.

New subsection 258(a) sets forth the new regulatory paradigm. In paragraph (a)(1), the FCC, within 180 days of the date of enactment of this Act, is directed to prescribe a Code of Subscriber Protection Practices governing changes in a subscriber's selection of a provider of telephone toll or exchange service. In prescribing this Code, the Commission is required to issue a public notice and seek comment from the Federal Trade Commission, telecommunications carriers, State commissions, and consumers. The Committee expects that the Commission will give great deference to any consensus proposal submitted by the groups with which the FCC is required to consult pursuant to paragraph (a)(1). As previously stated, the Committee expects that the Code resulting from this collaborative process will be significantly less stringent and cumbersome than the mandatory provisions of subsection (c), while effectively protecting consumers from the illegal practice of slamming.

In paragraph (a)(2), telecommunications carriers are required to choose between either participating in the Code, as delineated in subsection (b), or subjecting themselves to the regulatory requirements set forth in subsection (c). A carrier may also be subject to the regulatory requirements of subsection (c) if the FCC revokes or withdraws the carrier's election to abide by the Code as provided for in paragraph (b)(2). It should be noted that the requirements of new section 258 apply to resellers of telecommunications services because of their direct contact with subscribers, and because they can and do directly seek changes in subscriber selection. If a reseller is the party involved, then the underlying carrier is not to be held liable, as stated in subsection 258(h).

New paragraph 258(b)(1) sets forth the minimum requirements in the Code. Subparagraph (A) states that a telecommunications carrier electing to comply with the Code shall submit or execute a change in a subscriber's selection of a telephone exchange or toll service only in accordance with the provisions of the Code. Subparagraph (B) precludes a telecommunications carrier from using negative option marketing. Subparagraph (C) requires a telecommunications carrier to verify subscriber selections in accordance with the Code. Subparagraph (D) states that no telecommunications carrier or person acting on behalf of such carrier shall engage in unfair or deceptive acts or practices when soliciting a change from a subscriber. Subparagraph (E) requires telecommunications carriers to provide timely and accurate notification to the subscriber of a change in carrier selection.

Subparagraph (F) identifies carrier liabilities and consumer remedies for violations of the Code. Specifically, if a telecommunications carrier improperly changes a subscriber's selection of a telecommunications carrier, it shall at a minimum reimburse the subscriber for fees associated with switching the subscriber back to the original carrier, and provide a credit for any telecommunications charges incurred by the subscriber during the period, not to exceed 30 days, while the subscriber was improperly subscribed. The Code shall provide for procedures for subscribers to allege violations; for telecommunications carriers to rebut allegations; for subscribers without undue delay or expense to challenge a rebuttal; and for the

resolution of any administrative review within 75 days after the receipt of an appeal.

Subparagraph (G) requires telecommunications carriers to maintain a record of the verification process and to provide a copy to a subscriber immediately upon request. Subparagraph (H) directs telecommunications carriers to institute quality control programs to prevent inadvertent changes in a subscriber's selection. And subparagraph (I) mandates that telecommunications carriers shall provide the FCC with independent audits demonstrating their compliance with the Code. If the FCC finds there is evidence that a carrier is violating the Code, it may require more frequent audits for the offending carrier.

New paragraph 258(b)(2) sets forth the election process a telecommunications carrier must follow in notifying the FCC that it will comply with the Code. Either within 10 days after the Commission adopts rules implementing the Code or within 10 days of commencing operations as a telecommunications carrier, a carrier shall provide the FCC with a statement that it is electing to abide by the Code to govern its submission or execution of changes in customers' selections of providers of telephone exchange or toll service. A carrier's election may not be withdrawn unless the Commission finds there is good cause for doing so and that the withdrawal of such election is in the public interest. The Commission may revoke an election if it determines that a carrier has failed to adhere in good faith to the Code and that the revocation is in the public interest. Finally, any carrier that fails to elect to comply with the Code, including through withdrawal or revocation, shall have its subscriber selection process governed by subsection (c) and the Commission's regulations adopted to implement that subsection.

New subsection 258(c) contains the requirements for carriers that either elect not to comply with the Code, or that have otherwise had their election withdrawn or revoked. Paragraph (1) requires these carriers to comply with the provisions in subsection (c), and the Commission's regulations adopted pursuant thereto, whenever submitting or executing a change in a subscriber's selection of a provider of telephone exchange or toll service.

Paragraph (2) identifies the verification procedures to be used by carriers not complying with the Code. Under subparagraph (2)(A), a telecommunications carrier submitting the change to an executing carrier shall, at a minimum, require the subscriber to: (i) affirm that the subscriber is authorized to select the provider of that service for the telephone number in question; (ii) acknowledge the type of service to be changed; (iii) affirm the intent to select the provider for that particular service; (iv) acknowledge that a change in providers will occur; and (v) provide such other information as the Commission considers appropriate for subscriber protection.

Subparagraph (2)(B) requires the Commission to ensure proper verification by: (i) precluding the use of negative option marketing; (ii) requiring the carrier to provide a complete copy of verification of a change in service provider in oral, written, or electronic form; (iii) requiring the retention of such verification in a form and manner the Commission determines to be appropriate; (iv) mandating that verification occur in the same language as that in which the

change was solicited; and (v) providing for verification to be made available to the subscriber upon request. Subparagraph (2)(C) states that when a carrier submits a change in a subscriber's selection, the carrier shall notify the subscriber clearly and in writing, not more than 15 days after the change is submitted to the executing carrier. Such notification shall include (i) the subscriber's new carrier, and (ii) the subscriber's right to request information about the date of the change and the name of the individual authorizing the change.

Paragraph (3) sets forth the liability provisions for changes made in violation of subsection (c). Subparagraph (3)(A) sets forth the written notification procedure the local exchange carrier must follow in the first bill issued after the effective date of the change. It requires that the executing carrier, in this bill, (i) prominently disclose the change in provider and the effective date of the change, (ii) display the name and toll-free number of any telecommunications carrier for such new service, and (iii) direct the subscriber to contact the executing carrier if the subscriber has reason to believe the change was not authorized and provide the toll-free number for such carrier.

Subparagraph (3)(B) directs an executing carrier, upon notification by a subscriber orally or in writing that a violation has occurred, to make an immediate change—without charge—in the subscriber's selection of provider for the service that is the subject of the allegation and restore the previous provider. The executing carrier shall also make an immediate credit to the subscriber's account for any charges for executing the original change. Finally, the executing carrier shall provide, if conducting the billing for the carrier that is the subject of the allegation, a credit to the subscriber's account for such service, in an amount equal to any charges for the telephone service that is the subject of the allegation during the period beginning on the date of the change and ending on the earlier of the date that the previous service is restored or 30 days after the date when the first bill was issued.

In cases where a telecommunications carrier does not use an executing carrier to conduct billing, subparagraph (3)(B) directs a carrier, upon notification by a subscriber orally or in writing that a violation has occurred, to provide an immediate credit to the subscriber's account for such service. The carrier shall (except as provided in clause (C)(iii)) discharge the subscriber from liability for an amount equal to any charges incurred for the service that is the subject of the allegation during the period that begins on the date of the change of service and that ends on the earlier of the date that the previous service is restored or 30 days after the date when the first bill was issued.

Subparagraph (3)(C) sets forth the procedures where telecommunications carriers that were the originally authorized providers of service can file a complaint and obtain relief. The Commission is directed to adopt procedures to implement this subparagraph and determine whether violations have occurred. These procedures shall permit a telecommunications carrier that was providing telephone exchange or toll service to a subscriber before the occurrence of the alleged violation to file a complaint seeking damages under clause (ii). They shall also permit the filing of a com-

plaint seeking damages by a telecommunications carrier that was providing services after the alleged violation and seeking a reinstatement of charges under clause (iii). In both instances, the complaint shall be filed not later than 6 months after the date on which the relevant subscriber submitted an allegation of a violation to the executing carrier. In addition, parties that file complaints may seek determinations with respect to multiple alleged violations.

Clause (ii) provides that if the Commission finds in favor of a telecommunications carrier that was providing service and determines that a violation has occurred, other than an inadvertent or unintentional violation, the Commission shall award damages to the complaining carrier in an amount equal to the sum of the gross amount of the charges that the carrier would have received from the subscriber during the violation plus \$500 per violation, and it shall award the subscriber that was the subject of the violation \$500. Clause (iii) provides that if the Commission finds that no violation has occurred, it shall order that any credit provided to the subscriber under clause (B)(ii) be reversed or that the carrier may resubmit a bill for the amount of the credit to the subscriber notwithstanding any discharge under clause (B)(ii). Clause (iv) requires the Commission to resolve complaints filed under the procedure not later than 6 months after filing.

Subparagraph (3)(D) directs the Commission to adopt rules requiring executing carriers to maintain information regarding each violation of subsection (c) for which the carrier has been notified. The information that shall be maintained includes: the effective date of the change of service involved in the alleged violation, the name of the provider of the service to which the change was made, the name, address, and telephone number of the subscriber who was the subject of the alleged violation, and the amount of any credit provided under clause (B)(ii). The FCC shall prescribe the computer formats for the maintenance of the information, and each executing carrier shall, on not less than a monthly basis, submit this information. Finally, the information submitted shall be made available upon request to any telecommunications carrier, and such carrier shall use such information solely for the purpose of investigating, filing, or resolving complaints under this section.

Paragraph (c)(4) sets forth the civil penalties for violations of subsection (c). Unless it finds mitigating circumstances, the Commission shall find that a first offense is punishable by a forfeiture of not less than \$40,000 and for each subsequent offense the amount shall be not less than \$150,000. The Commission has the discretion to determine the appropriate amount of the forfeiture and should base its determination upon the specific acts involved, for instance, by imposing the maximum forfeiture on carriers that act fraudulently with intent to profit. Paragraph (c)(5) gives the FCC the authority to take such action as may be necessary to collect on any forfeitures it imposes and, on behalf of any subscriber, to collect any damages awarded the subscriber under this subsection. Accordingly, the Commission may collect forfeitures directly, without having to go through the Department of Justice.

New subsection 258(d) states that this section does not apply to any provider of commercial mobile services (as currently defined in

paragraph 332(d)(1) of the Communications Act). Given the absence on the record of a substantial number of slamming incidents in the commercial mobile service sector, the Committee has concluded that it is not necessary to extend H.R. 3888's anti-slamming requirements to wireless carriers.

New subsection 258(e) requires the FCC to oversee industry compliance with H.R. 3888. In particular, paragraph (e)(1) directs the Commission, every 6 months, to compile and publish a report ranking telecommunications carriers by the percentage of verified complaints (which shall exclude those generated by the carrier's unaffiliated resellers), compared to the number of changes in a subscriber's selection of a provider of telephone exchange and toll service. In addition, paragraph (e)(2) directs the Commission to investigate carriers that are listed among the five worst performers in its semiannual reports three times in succession. If the Commission finds that the carrier is misrepresenting adherence to the Code or is willfully and repeatedly changing subscribers' selections of providers, it shall find such carrier to be in violation of this section and shall fine the carrier up to \$1 million. Finally, paragraph (e)(3) directs the Commission, every two years, to review the Code of Subscriber Protection Practices to ensure its requirements adequately protect subscribers from improper changes in a subscriber's selection of a provider of telephone exchange or toll service.

New subsection 258(f) deals with actions by States. Paragraph (f)(1) provides that State attorneys general may bring a civil action against a carrier for a violation of the Code or subsection (c) in an appropriate district court of the United States to enjoin such violation, to enforce compliance with the Code, to obtain damages on behalf of their residents, or to obtain such further or other relief as the court may deem appropriate. Under paragraph (f)(2), the State shall notify the Commission before filing its complaint, unless that is not feasible, and provide the FCC with a copy of the complaint. The Commission may intervene in such action, shall be heard on all matters arising therein, and shall have the right to file petitions for appeal. Paragraph (f)(3) requires that the venue for actions brought by the State be in the district where the defendant is found or is an inhabitant or transacts business or where the violation is alleged to have occurred or be occurring. Process in such cases may be served in any district in which the defendant is an inhabitant or wherever the defendant may be found.

Paragraph (f)(4) notes that, when bringing a civil action, a State attorney general may exercise any powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence. Paragraph (f)(5) provides that nothing in subsection (f) shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State. Pursuant to paragraph (f)(6), whenever the FCC has instituted a civil action for a violation of this section, no State may, during the pendency of such action, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint. Finally, paragraph (f)(7) recognizes that, in addi-



tion to actions brought by a State attorney general under paragraph (1), such an action may be brought by other authorized officers of such State.

New subsection 258(g) also addresses the role of the States. The Committee recognizes the important role that State commissions and attorneys general can play in thwarting slamming, and thus intends not to limit their duties unreasonably. At the same time, the Committee recognizes that carriers may incur increased and unnecessary costs if they are compelled to abide by a balkanized statutory and regulatory regime. Thus subsection (g) provides that nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes requirements, regulations, damages, costs, or penalties on changes in a subscriber's selection of a provider of telephone exchange or toll service that are less restrictive than those imposed under this section. In addition, except as provided in paragraph (f)(6), nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general or specific statute of such State not preempted by this section.

New subsection 258(h) states that for purposes of this section, the initiation of service to a subscriber shall be treated as a change in a subscriber's selection of a provider. Moreover, a carrier may not be found in violation of this section solely on the basis of a violation of this section by an unaffiliated reseller of that carrier's services or facilities.

New subsection 258(i) lists several key definitions. Paragraph (i)(1) defines a "subscriber" as a person named on the billing statement or account or any other person authorized to make changes in the providers of telephone exchange or toll service. Paragraph (i)(2) defines an "executing carrier" as, with respect to any change in the provider of telephone exchange or toll service, the exchange carrier that executed such change. And paragraph (i)(3) states that the term "attorney general" means the chief legal officer of a State.

*(b) NTIA study of third-party administration*

Within 180 days of the enactment of this Act, the National Telecommunications and Information Administration shall report to the House Committee on Commerce and the Senate Committee on Commerce, Science, and Transportation on the feasibility and desirability of establishing a neutral third-party administration system to prevent illegal changes in telephone subscriber carrier selections. The study shall include: an analysis of the cost of establishing independent databases or clearinghouses, either nationally or regionally, to verify and submit changes in carrier selections; the additional cost to carriers, per change in carrier selection, to fund the ongoing operation of such databases or clearinghouses; and the advantages and disadvantages of utilizing such databases or clearinghouses.

## TITLE II—SPAMMING

*Section 201. Sense of the Congress*

Section 201 sets forth a sense of the Congress resolution regarding the practice of sending consumers unsolicited commercial electronic mail (or “e-mail”), often in bulk. This practice, commonly referred to as “spamming,” has been a serious concern to the Committee because spam congests the Internet and other electronic networks. In addition, some Internet Service Providers (ISPs) charge users based on time spent on using their network. Time spent by consumers deleting and preventing spam costs consumers money.

Thus, the Committee, for now, seeks to reduce the practice of spamming without imposing government mandates on the Internet and other electronic networks. Accordingly, the sense of Congress outlined in section 201 calls on the private sector to adopt, implement, and enforce measures that prevent and deter spam. The Committee expects that the private sector will view Congress’ charge as a useful opportunity to reduce spam voluntarily.

## TITLE III—AUCTION RESCISSION AND RE-AUCTION

*Section 301. Re-auction of C-block licenses*

Subsection 301(a) unwinds the C-block auctions that began on December 18, 1995, and July 3, 1996, by directing the Commission, in accordance with the provisions of subsection (b), to rescind a licensee’s (as that term is defined in paragraph (f)(4)) authority to utilize frequencies assigned pursuant to the C-block auction, and cancel the associated debt obligations the licensee assumed under the C-block installment payment program, upon the election of that licensee.

Subsection 301(b) sets out specific requirements to which the Commission must adhere in implementing the rescission policy embodied in subsection (a). In particular, paragraph (b)(1) provides that any licensee making an election pursuant to subsection (a) must do so with regard to all of its licenses or none of them. An exception is provided that permits licensees that have commenced service to the public in one or more business trading areas (BTAs) to retain such licenses, while surrendering non-built-out BTAs, and have the indebtedness associated with the retained licenses adjusted pursuant to subsection (c).

Paragraph (b)(2) provides all persons initially authorized to utilize 30 MHz C-block frequencies an opportunity to reverse actions they have taken concerning their licenses in response to the FCC’s orders in WT Docket No. 97–82 for purposes of making the election specified in subsection (a). Paragraph (b)(2) is designed to provide persons who have responded to the Commission’s C-block restructuring orders by taking actions that have affected their authorizations or their status under the FCC’s C-block rules an opportunity to restore their previous status in order to make the election permitted under subsection (a). Such persons include, for example, those who have surrendered licenses in whole or part by making an election pursuant to one of the FCC’s C-block restructuring orders in WT Docket No. 97–82, or who are currently in bankruptcy proceedings and have not yet made an election. This is central to

achieving the legislative intentions to extend everyone a fresh start. The Committee intends that the FCC will interpret the term “all licensees” literally; “all licensees” means all licensees, without exception.

Paragraph (b)(3) provides that licensees that elect to have their frequency authorizations and indebtedness rescinded shall be granted a full bidding credit in an amount equal to the sum of all down payments, installment payments and interest payments made prior to the effective date of this legislation. Such credits may be utilized in bidding on the right to apply for any C-block license, including a license a bidder may have held previously. The FCC must commence the reauction of C-block licenses no later than March 24, 1999.

Paragraph (b)(4) provides that bidding credits shall be freely transferable, in whole or in part, among entities that meet the eligibility standards for participating in C-block auctions pursuant to paragraph (b)(7). Paragraph (b)(5) provides that bidding credits are not refundable. Paragraph (b)(6) provides that installment payments are not to be utilized in C-block reauctions. Such auctions shall be conducted on a “cash-on-the-barrel” basis.

Paragraph (b)(7) limits eligibility to participate in C-block spectrum auctions undertaken pursuant to this legislation in order to preserve the “small business” nature of the initial C-block auction. This paragraph accommodates the possibility that entities that participated in the initial C-block auctions that began on December 18, 1995, and July 3, 1996, may have since grown to the point where they may no longer qualify under the eligibility rules in effect for those auctions. Paragraph (b)(8) requires the Commission to take final action within 60 days after the C-block re-auction on license applications filed by entities the FCC has named as winning bidders. This paragraph is designed to avoid a repeat of the lengthy delays in license processing that characterized the aftermath of the initial C-block auctions.

Subsection 301(c) is designed to ensure fair treatment of the small number of C-block licensees that have been able to commence commercial operations, notwithstanding the problems confronting the C-block as a whole. Under subsection (c), such licensees may retain licenses in any BTA in which they have begun offering service to the public prior to the start of the reauction. This subsection requires the Commission, following the C-block reauction, to restructure the indebtedness associated with such licenses, upon the request of the licensee, so that such debt is approximately equal to the winning bids for BTA’s with comparable populations. The adjustment would take into account all amounts such licensees already have paid for their licenses prior to the reauction.

Subsection 301(d) requires the Commission to adopt a final order in WT Docket No. 97–82 implementing the requirements of this section within 30 days of its enactment. Subsection 301(e) directs the Commission to suspend all payments due in connection with the C-block auctions that began on December 18, 1995, and July 3, 1996, until completion of the reauction required by this section. Subsection 301(f) contains definitions used in Title III of H.R. 3888.

## TITLE IV—GWCS AUCTION DEADLINE

*Section 401. Elimination of arbitrary auction deadline*

The Omnibus Budget Reconciliation Act of 1993 (OBRA '93) required the FCC to auction and license at least 10 MHz of transferred government spectrum by August 10, 1998. The Commission partially fulfilled its statutory requirement in 1997 when, pursuant to the Omnibus Consolidated Appropriations Act of 1997, it auctioned and licensed five MHz of transferred government spectrum for so-called “wireless communications service.” The FCC had intended to fulfill its responsibility to auction the remaining five MHz through an auction of 25 MHz for so-called “general wireless communications service” (GWCS).

The FCC, however, never held its GWCS auction because of an apparent lack of demand for the frequencies allocated for GWCS (i.e., 4660–4685 MHz). See letter from The Honorable William E. Kennard, Chairman, Federal Communications Commission, to The Honorable Tom Bliley, Chairman, United States House of Representatives, at 1 (April 23, 1998) (noting that “[t]he public provided no written responses” to FCC request for public comment in preparation for GWCS auction). Consequently, as of August 11, 1998, the FCC was in violation of OBRA '93. Section 401 of H.R. 3888 rectifies the FCC’s legal status by eliminating the deadline established by OBRA '93.

## TITLE V—REINSTATEMENT OF CERTAIN APPLICANTS

*Section 501. Reinstatement of applicants as tentative selectees*

Section 501 provides for the issuing of permanent licenses in three rural service areas (RSAs) by directing the FCC to reinstate each applicant it had originally selected as tentative selectees for a license, and to permit each applicant to amend its application to update factual information and to comply with the rules of the Commission.

*Section 502. Continuation of license proceeding*

Subsection 502(a) requires the Commission to award licenses in the three RSAs that are the subject of Title V within 90 days of enactment. Subsection 502(b) provides that the Commission’s cellular service rules are applicable to the applicants as they initiate cellular service. Subsection 502(b) also accelerates the offering of service in the Minnesota and Florida RSAs by requiring the applicants to build-out their cellular systems in three years, rather than five years as required by the FCC’s rules. Finally, subsection 502(b) confirms that the Commission’s waiver authority is applicable to the accelerated build-out schedule.

Subsection 502(c) directs the applicants, upon grant of the licenses by the FCC, to provide each public school, library, police, fire, and emergency medical service entity in their license area with free local cellular service. Subsection 502(c) provides that the free service may be used only in connection with the official business of these public safety and educational entities when they are using the cellular service in the applicant’s license area. Subsection 502(d) directs the applicants to provide cellular service free of

charge to public safety personnel during emergencies which require the activation of the Emergency Alert System in their service areas.

Subsection 502(e) prohibits applicants from disclosing any location information which may be generated through a subscriber's use of a cellular telephone, except as otherwise provided under Federal law. This prohibition will protect the privacy of the applicants' subscribers but is not intended to supersede any other Federal law which may govern the disclosure of a cellular user's location, such as, but not limited to, the Commission's E911 regulations.

Subsection 502(f) provides that if an applicant is ineligible for the grant of a license after the FCC has provided the applicant with the opportunity to amend its application, the Commission may auction these RSA licenses pursuant to the Communications Act of 1934. This section will ensure that these RSA licenses are being utilized to provide service to the public as rapidly as possible.

*Section 503. Prohibition on transfer*

Section 503 prohibits the applicants from transferring ownership in the licenses they are awarded pursuant to this Title for five years. This section will not restrict the ability of the applicants from entering into agreements or partnerships which will improve cellular telephone service in these rural license areas, provided that such agreements conform with the Commission's transfer of control rules.

*Section 504. Definitions*

Section 504 defines certain terms used in Title V of H.R. 3888.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**COMMUNICATIONS ACT OF 1934**

\* \* \* \* \*

**TITLE II—COMMON CARRIERS**

\* \* \* \* \*

**PART II—DEVELOPMENT OF COMPETITIVE MARKETS**

\* \* \* \* \*

**[SEC. 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 accord-

ance with such verification procedures as the Commission 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 Commission may prescribe. The remedies provided by this subsection are in addition to any other remedies available by law.]

**SEC. 258. ILLEGAL CHANGES IN SUBSCRIBER SELECTIONS OF CARRIERS.**

(a) **ALTERNATIVE MODES OF REGULATION.**—

(1) **INDUSTRY/COMMISSION CODE.**—*Within 180 days after the date of enactment of the Telecommunications Competition and Consumer Protection Act of 1998, the Commission, after consulting with the Federal Trade Commission and representatives of telecommunications carriers providing telephone toll service and telephone exchange service, State commissions, and consumers, and considering any proposals developed by such representatives, shall prescribe, after notice and public comment and in accordance with subsection (b), a Code of Subscriber Protection Practices (hereinafter in this section referred as the “Code”) governing changes in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.*

(2) **OBLIGATION TO COMPLY.**—*No telecommunications carrier (including a reseller of telecommunications services) 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—*

(A) *the Code, if such carrier elects to comply with the Code in accordance with subsection (b)(2); or*

(B) *the requirements of subsection (c), if—*

(i) *the carrier does not elect to comply with the Code under subsection (b)(2); or*

(ii) *such election is revoked or withdrawn.*

(b) **MINIMUM PROVISIONS OF THE CODE.**—

(1) **SUBSCRIBER PROTECTION PRACTICES.**—*The Code required by subsection (a)(1) shall include provisions addressing the following:*

(A) **IN GENERAL.**—*A telecommunications carrier (including a reseller of telecommunications services) electing to comply with the Code shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service only in accordance with the provisions of the Code.*

(B) **NEGATIVE OPTION.**—*A telecommunications carrier shall not use negative option marketing.*

(C) **VERIFICATION.**—*A telecommunications carrier shall verify the subscriber’s selection of the carrier in accordance with procedures specified in the Code.*

(D) *UNFAIR AND DECEPTIVE ACTS AND PRACTICES.*—No telecommunications carrier, nor any person acting on behalf of any such carrier, shall engage in any unfair or deceptive acts or practices in connection with the solicitation of a change in a subscriber's selection of a telecommunications carrier.

(E) *NOTIFICATION AND RIGHTS.*—A telecommunications carrier shall provide timely and accurate notification to the subscriber in accordance with procedures specified in the Code.

(F) *SLAMMING LIABILITY AND REMEDIES.*—

(i) *REQUIRED REIMBURSEMENT AND CREDIT.*—A telecommunications carrier that has improperly changed the subscriber's selection of a telecommunications carrier without authorization, shall at a minimum—

(I) reimburse the subscriber for the fees associated with switching the subscriber back to their original carrier; and

(II) provide a credit for any telecommunications charges incurred by the subscriber during the period, not to exceed 30 days, while that subscriber was improperly presubscribed.

(ii) *PROCEDURES.*—The Code shall prescribe procedures by which—

(I) a subscriber may make an allegation of a violation under clause (i);

(II) the telecommunications carrier may rebut such allegation;

(III) the subscriber may, without undue delay, burden, or expense, challenge the rebuttal; and

(IV) resolve any administrative review of such an allegation within 75 days after receipt of an appeal.

(G) *RECORDKEEPING.*—A telecommunications carrier shall make and maintain a record of the verification process and shall provide a copy to the subscriber immediately upon request.

(H) *QUALITY CONTROL.*—A telecommunications carrier shall institute a quality control program to prevent inadvertent changes in a subscriber's selection of a carrier.

(I) *INDEPENDENT AUDITS.*—A telecommunications carrier shall provide the Commission with an independent audit regarding its compliance with the Code at intervals prescribed by the Code. The Commission may require a telecommunications carrier to provide an independent audit on a more frequent basis if there is evidence that such telecommunications carrier is violating the Code.

(2) *ELECTION BY CARRIERS.*—Each telecommunications carrier electing to comply with the Code shall file with the Commission within 10 days after the adoption of the Code, or within 10 days after commencing operations as a telecommunications carrier, a statement electing the Code to govern such carrier's submission or execution of a change in a customer's selection of a provider of telephone exchange service or telephone toll service.

*Such election by a carrier may not be revoked or withdrawn unless the Commission finds that there is good cause therefor, including a determination that the carrier has failed to adhere in good faith to the applicable provisions of the Code, and that the revocation or withdrawal is in the public interest. Any telecommunications carrier that fails to elect to comply with the Code shall be deemed to have elected to be governed by the subsection (c) and the Commission's regulations thereunder.*

(c) *REGULATIONS OF CARRIERS NOT COMPLYING WITH CODE.—*

(1) *IN GENERAL.—A telecommunications carrier (including a reseller of telecommunications services) that has not elected to comply with the Code under subsection (b), or as to which the election has been withdrawn or revoked, shall not 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 this subsection and such verification procedures as the Commission shall prescribe.*

(2) *VERIFICATION.—*

(A) *IN GENERAL.—In order to verify a subscriber's selection of a telephone exchange service or telephone toll service provider under this subsection, the telecommunications carrier submitting the change to an executing carrier shall, at a minimum, require the subscriber—*

*(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question;*

*(ii) to acknowledge the type of service to be changed as a result of the selection;*

*(iii) to affirm the subscriber's intent to select the provider as the provider of that service;*

*(iv) to acknowledge that the selection of the provider will result in a change in providers of that service; and*

*(v) to provide such other information as the Commission considers appropriate for the protection of the subscriber.*

(B) *ADDITIONAL REQUIREMENTS.—The procedures prescribed by the Commission to verify a subscriber's selection of a provider shall—*

*(i) preclude the use of negative option marketing;*

*(ii) provide for a complete copy of verification of a change in telephone exchange service or telephone toll service provider in oral, written, or electronic form;*

*(iii) require the retention of such verification in such manner and form and for such time as the Commission considers appropriate;*

*(iv) mandate that verification occur in the same language as that in which the change was solicited; and*

*(v) provide for verification to be made available to a subscriber on request.*

(C) *NOTICE TO SUBSCRIBER.—Whenever a telecommunication carrier submits a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, such telecommunications carrier shall clearly notify*



*the subscriber in writing, not more than 15 days after the change is submitted to the executing carrier—*

*(i) of the subscriber's new carrier; and*

*(ii) that the subscriber may request information regarding the date on which the change was agreed to and the name of the individual who authorized the change.*

**(3) LIABILITY FOR VIOLATIONS.—**

**(A) NOTIFICATION OF CHANGE.—***The first bill issued after the effective date of a change in a subscriber's provider of telephone exchange service or telephone toll service by the executing carrier for such change shall—*

*(i) prominently disclose the change in provider and the effective date of such change;*

*(ii) contain the name and toll-free number of any telecommunications carrier for such new service; and*

*(iii) direct the subscriber to contact the executing carrier if the subscriber believes that such change was not authorized and that the change was made in violation of this subsection, and contain the toll-free number by which to make such contact.*

**(B) AUTOMATIC SWITCH-BACK OF SERVICE AND CREDIT TO CONSUMER OF CHARGES.—**

*(i) OBLIGATIONS OF EXECUTING CARRIER.—If a subscriber of telephone exchange service or telephone toll service makes an allegation, orally or in writing, to the executing carrier that a violation of this subsection has occurred with respect to such subscriber—*

*(I) the executing carrier shall, without charge to the subscriber, execute an immediate change in the provider of the telephone service that is the subject of the allegation to restore the previous provider of such service for the subscriber;*

*(II) the executing carrier shall provide an immediate credit to the subscriber's account for any charges for executing the original change of service provider; and*

*(III) if the executing carrier conducts billing for the carrier that is the subject of the allegation, the executing carrier shall provide an immediate credit to the subscriber's account for such service, in an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—*

*(aa) beginning upon the date of the change of service that is the subject of the allegation; and*

*(bb) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in subparagraph (A) is issued.*

*(ii) OBLIGATIONS OF CARRIERS NOT BILLING THROUGH EXECUTING CARRIERS.—If a subscriber of telephone exchange service or telephone toll service transmits, oral-*

ly or in writing, to any carrier that does not use an executing carrier to conduct billing an allegation that a violation of this subsection has occurred with respect to such subscriber, the carrier shall provide an immediate credit to the subscriber's account for such service, and the subscriber shall, except as provided in subparagraph (C)(iii), be discharged from liability, for an amount equal to any charges for the telephone service that is the subject of the allegation incurred during the period—

(I) beginning upon the date of the change of service that is the subject of the allegation; and

(II) ending on the earlier of the date that the subscriber is restored to the previous provider, or 30 days after the date the bill described in paragraph (1) is issued.

(iii) *TIME LIMITATION.*—This subparagraph shall apply only to allegations made by subscribers before the expiration of the 1-year period that begins on the issuance of the bill described in subparagraph (A).

(C) *PROCEDURE FOR CARRIER REMEDY.*—

(i) *IN GENERAL.*—The Commission shall, by rule, establish a procedure for rendering determinations with respect to violations of this subsection. Such procedure shall permit such determinations to be made upon the filing of (I) a complaint by a telecommunications carrier that was providing telephone exchange service or telephone toll service to a subscriber before the occurrence of an alleged violation, and seeking damages under clause (ii), or (II) a complaint by a telecommunications carrier that was providing services after the alleged violation, and seeking a reinstatement of charges under clause (iii). Either such complaint shall be filed not later than 6 months after the date on which any subscriber whose allegation is included in the complaint submitted an allegation of the violation to the executing carrier under subparagraph (B)(ii). Either such complaint may seek determinations under this paragraph with respect to multiple alleged violations in accordance with such procedures as the Commission shall establish in the rules prescribed under this subparagraph.

(ii) *DETERMINATION OF VIOLATION AND REMEDIES.*—In a proceeding under this subparagraph, if the Commission determines that a violation of this subsection has occurred, other than an inadvertent or unintentional violation, the Commission shall award damages—

(I) to the telecommunications carrier filing the complaint, in an amount equal to the sum of (aa) the gross amount of charges that the carrier would have received from the subscriber during the violation, and (bb) \$500 per violation; and

(II) to the subscriber that was subjected to the violation, in the amount of \$500.

(iii) *DETERMINATION OF NO VIOLATION.*—If the Commission determines that a violation of this subsection has not occurred, the Commission shall order that any credit provided to the subscriber under subparagraph (B)(ii) be reversed, or that the carrier may resubmit a bill for the amount of the credit to the subscriber notwithstanding any discharge under subparagraph (B)(ii).

(iv) *SPEEDY RESOLUTION OF COMPLAINTS.*—The procedure established under this subparagraph shall provide for a determination of each complaint filed under the procedure not later than 6 months after filing.

(D) *MAINTENANCE OF INFORMATION.*—

(i) *IN GENERAL.*—The Commission shall, by rule, require each executing carrier to maintain information regarding each alleged violation of this subsection of which the carrier has been notified.

(ii) *CONTENTS.*—The information required to be maintained pursuant to this paragraph shall include, for each alleged violation of this subsection, the effective date of the change of service involved in the alleged violation, the name of the provider of the service to which the change was made, the name, address, and telephone number of the subscriber who was subject to the alleged violation, and the amount of any credit provided under subparagraph (B)(ii).

(iii) *FORM.*—The Commission shall prescribe one or more computer data formats for the maintenance of information under this paragraph, which shall be designed to facilitate submission and compilation pursuant to this subparagraph.

(iv) *MONTHLY REPORTS.*—Each executing carrier shall, on not less than a monthly basis, submit the information maintained pursuant to this subparagraph to the Commission.

(v) *ACCESS TO INFORMATION.*—The Commission shall make the information submitted pursuant to clause (iv) available upon request to any telecommunications carrier. Any telecommunications carrier obtaining access to such information shall use such information exclusively for the purposes of investigating, filing, or resolving complaints under this section.

(4) *CIVIL PENALTIES.*—Unless the Commission determines that there are mitigating circumstances, violation of this subsection is punishable by a forfeiture of not less than \$40,000 for the first offense, and not less than \$150,000 for each subsequent offense.

(5) *RECOVERY OF FORFEITURES.*—The Commission may take such action as may be necessary—

(A) to collect any forfeitures it imposes under this subsection; and

(B) on behalf of any subscriber, to collect any damages awarded the subscriber under this subsection.

(d) *APPLICATION TO WIRELESS.*—This section does not apply to a provider of commercial mobile service.

(e) *COMMISSION REQUIREMENTS.*—

(1) *SEMIANNUAL REPORTS.*—Every 6 months, the Commission shall compile and publish a report ranking telecommunications carriers by the percentage of verified complaints, excluding those generated by the carrier's unaffiliated resellers, compared to the number of changes in a subscriber's selection of a provider of telephone exchange service and telephone toll service.

(2) *INVESTIGATION.*—If a telecommunications carrier is listed among the 5 worst performers based upon the percentage of verified complaints, excluding those generated by the carrier's unaffiliated resellers, compared to its number of carrier selection changes in the semiannual reports 3 times in succession, the Commission shall investigate the carrier's practices regarding subscribers' selections of providers of telephone exchange service and telephone toll service. If the Commission finds that the carrier is misrepresenting adherence to the Code or is willfully and repeatedly changing subscribers' selections of providers, it shall find such carrier to be in violation of this section and shall fine the carrier up to \$1,000,000.

(3) *CODE REVIEW.*—Every 2 years, the Commission shall review the Code to ensure its requirements adequately protect subscribers from improper changes in a subscriber's selection of a provider of telephone exchange service and telephone toll service.

(f) *ACTIONS BY STATES.*—

(1) *IN GENERAL.*—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has violated the Code or subsection (c), or any rule or regulation prescribed by the Commission under subsection (c), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such violation, to enforce compliance with such Code, subsection, rule, or regulation, to obtain damages on behalf of their residents, or to obtain such further and other relief as the court may deem appropriate.

(2) *NOTICE.*—The State shall serve prior written notice of any civil action under paragraph (1) upon the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Commission shall have the right (A) to intervene in such action, (B) upon so intervening, to be heard on all matters arising therein, and (C) to file petitions for appeal.

(3) *VENUE.*—Any civil action brought under this section in a district court of the United States may be brought in the district wherein the defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in any district in which the

defendant is an inhabitant or wherever the defendant may be found.

(4) *INVESTIGATORY POWERS.*—For purposes of bringing any civil action under this section, nothing in this Act shall prevent the attorney general from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(5) *EFFECT ON STATE COURT PROCEEDINGS.*—Nothing contained in this subsection shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State.

(6) *LIMITATION.*—Whenever the Commission has instituted a civil action for violation of this section or any rule or regulation thereunder, no State may, during the pendency of such action instituted by the Commission, subsequently institute a civil action against any defendant named in the Commission's complaint for violation of any rule as alleged in the Commission's complaint.

(7) *ACTIONS BY OTHER STATE OFFICIALS.*—In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State for protection of consumers.

(g) *STATE LAW NOT PREEMPTED.*—

(1) *IN GENERAL.*—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes requirements, regulations, damages, costs, or penalties on changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service that are less restrictive than those imposed under this section.

(2) *EFFECT ON STATE COURT PROCEEDINGS.*—Except as provided in subsection (f)(6), nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

(h) *RULES OF CONSTRUCTION.*—

(1) *CHANGE INCLUDES INITIAL SELECTION.*—For purposes of this section, the initiation of service to a subscriber by a telecommunications carrier shall be treated as a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.

(2) *ACTION BY UNAFFILIATED RESELLER NOT IMPUTED TO CARRIER.*—No telecommunications carrier may be found in violation of this section solely on the basis of a violation of this section by an unaffiliated reseller of that carrier's services or facilities.

(i) *DEFINITIONS.*—For purposes of this section:

(1) *SUBSCRIBER.*—The term "subscriber" means the person named on the billing statement or account, or any other person

authorized to make changes in the providers of telephone exchange service or telephone toll service.

(2) EXECUTING CARRIER.—The term “executing carrier” means, with respect to any change in the provider of local exchange service or telephone toll service, the local exchange carrier that executed such change.

(3) ATTORNEY GENERAL.—The term “attorney general” means the chief legal officer of a State.

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### TITLE III—PROVISIONS RELATING TO RADIO

#### PART I—GENERAL PROVISIONS

\* \* \* \* \*

##### SEC. 309. ACTION UPON APPLICATIONS; FORM OF AND CONDITIONS ATTACHED TO LICENSES.

(a) \* \* \*

\* \* \* \* \*

(j) USE OF COMPETITIVE BIDDING.—

(1) \* \* \*

\* \* \* \* \*

(9) USE OF FORMER GOVERNMENT SPECTRUM.—The Commission shall [ , not later than 5 years after the date of enactment of this subsection, ] issue licenses and permits pursuant to this subsection for the use of bands of frequencies that—

(A) in the aggregate span not less than 10 megahertz; and

(B) have been reassigned from Government use pursuant to part B of the National Telecommunications and Information Administration Organization Act.

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#### ADDITIONAL VIEWS OF HON. JOHN D. DINGELL

Title I of H.R. 3888 is a good bipartisan compromise that will end the slamming epidemic. H.R. 3888 is a novel, two-pronged approach that provides telecommunications companies with an alternative to traditional regulation. The industry, in conjunction with consumer groups and state regulators, will have the opportunity to develop and submit its own voluntary "Code of Subscriber Protection Practices" to the Federal Communications Commission for approval. The concept of an industry "code" is designed to reward good actors with less regulations. If companies choose not to adopt the code, or act in bad faith, they will be subject to a higher regulatory burden. Members of the industry are free to choose their own destiny under the bill. Consumers will be the winners in any event.

I still harbor serious concerns about the absence of a consumer protection provision that was dropped from the bill in the final hours before Full Committee markup. The Primary Interexchange Carrier ("PIC") freeze provision would have prevented the FCC from interfering with the ability of a consumer to freeze his or her local or long distance carrier. That means that slammers would have significantly less opportunity for wrongdoing. More importantly, it would give consumers the most effective tool available to combat slamming: self-prevention.

At the consumer's option, he or she could specify that no changes be made to his or her service without first giving affirmative permission to the local telephone company that makes such switches. It empowers the consumer to protect himself, without undue regulation by the government.

Why the strongest available measure to combat slamming is now absent from a bill designed to put an end to this illegal practice is a bewilderment to me.

I also have serious concerns that the rights of the States to protect their citizens are being trampled upon by this legislation. Title I preempts States from enacting laws that provide any more protection against slamming than is contained within the four corners of this bill. This encroachment on State authority is unnecessary and unwise, because it will impede States from taking aggressive action in places where slamming is at its worst. I am not convinced that a one size fits all solution is the ultimate answer, if State lawmakers wish to protect their own citizens as they see fit.

JOHN D. DINGELL.

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