

106TH CONGRESS
1ST SESSION

H. R. 2727

To amend the Communications Act of 1934 to improve protections against telephone service “slamming” and provide protections against telephone billing “cramming”, to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 5, 1999

Mr. BASS introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Communications Act of 1934 to improve protections against telephone service “slamming” and provide protections against telephone billing “cramming”, to provide the Federal Trade Commission jurisdiction over unfair and deceptive trade practices of telecommunications carriers, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Telephone Services
3 Consumer Protection Act”.

4 **SEC. 2. CONSUMER PROTECTIONS AGAINST TELEPHONE**
5 **SERVICE SLAMMING.**

6 (a) IN GENERAL.—Section 258 of the Communica-
7 tions Act of 1934 (47 U.S.C. 258) is amended to read
8 as follows:

9 **“SEC. 258. PROTECTIONS AGAINST UNAUTHORIZED**
10 **CHANGES IN SUBSCRIBER SELECTIONS OF**
11 **TELEPHONE EXCHANGE SERVICE OR TELE-**
12 **PHONE TOLL SERVICE.**

13 “(a) PROHIBITION ON UNAUTHORIZED CHANGES.—
14 No telecommunications carrier or reseller of telecommuni-
15 cations services shall submit or execute a change of a pro-
16 vider of telephone exchange service or telephone toll serv-
17 ice except in accordance with this section and such
18 verification procedures as the Commission shall prescribe.

19 “(b) VERIFICATION PROCEDURE REQUIREMENTS.—

20 “(1) IN GENERAL.—In order to verify a sub-
21 scriber’s selection of a telephone exchange service or
22 telephone toll service provider under this section, a
23 telecommunications carrier or reseller shall, at a
24 minimum, require the subscriber—

1 “(A) to affirm that the subscriber is au-
2 thorized to select the provider of that service
3 for the telephone number in question;

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

6 “(C) to affirm the subscriber’s intent to
7 select the provider as the provider of that serv-
8 ice;

9 “(D) to acknowledge that the selection of
10 the provider will result in a change in providers
11 of that service; and

12 “(E) to provide such other information as
13 the Commission considers appropriate for the
14 protection of the subscriber.

15 “(2) ADDITIONAL REQUIREMENTS.—The proce-
16 dures prescribed by the Commission to verify a sub-
17 scriber’s selection of a provider shall—

18 “(A) provide for a complete copy of
19 verification of a change in provider in oral,
20 written, or electronic form;

21 “(B) require the retention of such
22 verification in such manner and form and for
23 such time as the Commission considers appro-
24 priate; and

1 “(C) provide for a copy of the verification
2 to be made available to the subscriber con-
3 cerned on request.

4 “(3) PROTECTION OF FREEZE OPTION.—

5 “(A) PROTECTION.—The Commission may
6 not take action under this section to limit or
7 prevent a subscriber’s capability to require that
8 any change in the subscriber’s selection of a
9 provider of telephone exchange service or tele-
10 phone toll service not be carried out unless the
11 subscriber communicates the authorization for
12 the change to the subscriber’s service provider
13 in an express and direct manner.

14 “(B) PRESERVATION OF AUTHORITY RE-
15 LATING TO UNFAIR MARKETING OF FREEZE OP-
16 TIONS.—Nothing in this section shall be con-
17 strued to prohibit the Commission from pre-
18 venting the marketing or provision in an unfair
19 or anti-competitive manner of a capability to
20 preclude a change in a subscriber’s provider of
21 telephone exchange service or telephone toll
22 service without the subscriber’s affirmative con-
23 sent.

24 “(c) NOTICE TO SUBSCRIBERS OF CHANGES.—

1 “(1) IN GENERAL.—Whenever there is a change
2 in a subscriber’s selection of a provider of telephone
3 exchange service or telephone toll service, the tele-
4 communications carrier or reseller selected shall no-
5 tify the subscriber in a specific and unambiguous
6 writing, not more than 15 days after the change is
7 processed by the carrier or the reseller—

8 “(A) of the subscriber’s new carrier or re-
9 seller;

10 “(B) that the subscriber may request in-
11 formation regarding the date on which the
12 change was agreed to and the name of the indi-
13 vidual who authorized the change;

14 “(C) of a toll-free telephone number of the
15 new carrier or reseller that the subscriber may
16 call to request the information referred to in
17 subparagraph (B); and

18 “(D) of the rights of the subscriber under
19 subsection (d)(2) (relating to liability for the
20 change) and the time limitation under such sub-
21 section.

22 “(2) RESPONSE TO REQUEST.—A carrier or re-
23 seller receiving a request under paragraph (1)(B)
24 shall submit to the subscriber concerned, not later

1 than 15 days after the date of the request, the infor-
2 mation covered by the request.

3 “(d) FORFEITURE AND LIABILITY FOR UNAUTHOR-
4 IZED CHANGES.—

5 “(1) FORFEITURE.—Unless the Commission de-
6 termines there are mitigating circumstances, viola-
7 tion of subsection (a) is punishable by a forfeiture
8 of not less than \$40,000 for the first offense, and
9 not less than \$100,000 for each subsequent offense.

10 “(2) SUBSCRIBER LIABILITY.—

11 “(A) IN GENERAL.—In accordance with
12 such procedures as the Commission shall pre-
13 scribe, a subscriber whose telephone exchange
14 service or telephone toll service is changed in
15 violation of the provisions of this section or the
16 verification procedures under this section and
17 who provides notice of the change in accordance
18 with subparagraph (B), shall not be liable to
19 the telecommunications carrier or reseller pro-
20 viding such service for any charges for such
21 service during the period, not exceeding 90 days
22 after the date of the change, that such carrier
23 or reseller provides such service pursuant to
24 such change, or for any charges for such
25 change or a change to restore the previous such

1 service of the provider. In the case of a sub-
2 scriber who submits payment for service for
3 which the subscriber is not liable, pursuant to
4 this subparagraph, the procedures prescribed by
5 the Commission shall require the telecommuni-
6 cations carrier or reseller providing the service
7 to refund such payment to the subscriber.

8 “(B) NOTICE BY SUBSCRIBER OF UNAU-
9 THORIZED CHANGE.—Notice in accordance with
10 this subparagraph is notice that the sub-
11 scriber’s telephone exchange service or tele-
12 phone toll service was changed in violation of
13 the provisions of this section or the verification
14 procedures under this section, which is made
15 orally or in writing by the subscriber, not later
16 than 12 months after the date of such change,
17 to the telecommunications carrier or reseller
18 providing such service after the change.

19 “(3) RECOVERY OF FORFEITURE AND LIABIL-
20 ITY.—The Commission may take such action as may
21 be necessary to collect any forfeitures imposed under
22 paragraph (1).

23 “(4) CONSTRUCTION.—The remedies provided
24 by paragraphs (1) and (2) are in addition to any
25 other remedies available under law.

1 “(e) DISQUALIFICATION AND REINSTATEMENT.—

2 “(1) DISQUALIFICATION FROM CERTAIN ACTIVITIES
3 BASED ON CONVICTION.—

4 “(A) DISQUALIFICATION OF PERSONS.—

5 Subject to subparagraph (C), any person convicted
6 under section 2328 of title 18, United
7 States Code, in addition to any fines or imprisonment
8 under that section, may not carry out
9 any activities covered by section 214.

10 “(B) DISQUALIFICATION OF COMPANIES.—

11 Subject to subparagraph (C), any company substantially
12 controlled by a person convicted
13 under section 2328 of title 18, United States
14 Code, in addition to any fines or imprisonment
15 under that section, may not carry out any activities
16 covered by section 214.

17 “(C) REINSTATEMENT.—

18 “(i) IN GENERAL.—The Commission
19 may terminate the application of subparagraph
20 (A) to a person, or subparagraph
21 (B) to a company, if the Commission determines
22 that the termination would be in
23 the public interest.

24 “(ii) EFFECTIVE DATE.—The termination
25 of the applicability of subparagraph

1 (A) to a person, or subparagraph (B) to a
2 company, under clause (i) may not take ef-
3 fect earlier than 5 years after the date on
4 which the applicable subparagraph applied
5 to the person or company concerned.

6 “(2) CERTIFICATION REQUIREMENT.—Any per-
7 son described in subparagraph (A) of paragraph (1),
8 or company described in subparagraph (B) of that
9 paragraph, not reinstated under subparagraph (C)
10 of that paragraph shall include with any application
11 to the Commission under section 214 a certification
12 that the person or company, as the case may be, is
13 described in such subparagraph (A) or (B).

14 “(f) STATE LAW NOT PREEMPTED.—

15 “(1) IN GENERAL.—Nothing in this section
16 shall be construed to preempt any State law that im-
17 poses more restrictive requirements, regulations,
18 damages, costs, or penalties on changes in a sub-
19 scriber’s service or selection of a provider of tele-
20 phone exchange service or telephone toll services
21 than are imposed under this section.

22 “(2) EFFECT ON STATE COURT PRO-
23 CEEDINGS.—Nothing in this section shall be con-
24 strued to prohibit an authorized State official from
25 proceeding in State court on the basis of an alleged

1 violation of any general civil or criminal statute of
2 such State or any specific civil or criminal statute
3 of such State not preempted by this section.

4 “(g) REPORTS ON COMPLAINTS.—

5 “(1) REQUIREMENT.—Each local exchange car-
6 rier shall submit to the Commission on a quarterly
7 basis a report on the number of complaints of unau-
8 thorized changes in providers of telephone exchange
9 service or telephone toll service that are submitted to
10 such carrier by its subscribers. Each report shall
11 specify each provider of service complained of and
12 the number of complaints relating to such provider.

13 “(2) LIMITATION ON SCOPE.—The Commission
14 may not require any information in a report under
15 paragraph (1) other than the information specified
16 in the second sentence of that paragraph.

17 “(3) UTILIZATION.—The Commission shall use
18 the information submitted in reports under para-
19 graph (1) to identify telecommunications carriers or
20 resellers that engage in patterns and practices of un-
21 authorized changes in providers of telephone ex-
22 change service or telephone toll service.

23 “(4) TERMINATION AUTHORITY.—The Commis-
24 sion may terminate the requirement in paragraph
25 (1) upon a determination by the Commission that

1 the number of complaints submitted to local ex-
2 change carriers regarding the changes described in
3 that paragraph has decreased by a significant
4 amount.”.

5 (b) CRIMINAL PENALTY.—

6 (1) IN GENERAL.—Chapter 113A of title 18,
7 United States Code, is amended by adding at the
8 end the following:

9 **“§ 2328. Unauthorized changes in telephone exchange**
10 **or telephone toll service**

11 “Any person who submits or executes a change in a
12 provider of telephone exchange service or telephone toll
13 service not authorized by the subscriber concerned in will-
14 ful violation of the provisions of section 258 of the Com-
15 munications Act of 1934 (47 U.S.C. 258), or the proce-
16 dures prescribed under subsection (a) of that section—

17 “(1) shall be fined in accordance with this title,
18 imprisoned not more than 1 year, or both; but

19 “(2) if previously convicted under this section
20 at the time of a subsequent offense, shall be fined
21 in accordance with this title, imprisoned not more
22 than 5 years, or both, for such subsequent offense.”.

23 (2) CLERICAL AMENDMENT.—The chapter anal-
24 ysis for chapter 113A of title 18, United States

1 Code, is amended by adding at the end the fol-
2 lowing:

“2328. Unauthorized changes in telephone exchange or telephone toll service.”.

3 **SEC. 3. CONSUMER PROTECTIONS AGAINST TELEPHONE**
4 **BILLING CRAMMING.**

5 Part II of title II of the Communications Act of 1934
6 (47 U.S.C. 251 et seq.) is amended by inserting after sec-
7 tion 258 the following new section:

8 **“SEC. 258A. SUBSCRIBER PROTECTIONS RELATING TO**
9 **TELEPHONE BILLING.**

10 “(a) PROHIBITION ON KNOWING SUBMISSION OF UN-
11 AUTHORIZED CHARGES.—

12 “(1) IN GENERAL.—No person, including a bill-
13 ing agent or telephone exchange service or telephone
14 toll service provider, may cause a charge to be in-
15 cluded on a subscriber’s bill for telephone exchange
16 service or telephone toll service unless such charge
17 has been specifically and knowingly authorized by
18 the subscriber or is otherwise authorized or required
19 by law.

20 “(2) SCOPE OF PROHIBITION.—The prohibition
21 in paragraph (1) shall apply to any submission of a
22 charge for purposes of the inclusion of the charge on
23 the bill of a subscriber, including the submission of
24 the charge to another entity by direct or indirect
25 means.

1 “(3) REGULATIONS.—The Commission may
2 prescribe regulations for purposes of carrying out
3 this subsection.

4 “(b) OBLIGATIONS OF BILLING AGENTS.—A billing
5 agent, including a telecommunications carrier or reseller
6 of telecommunications services, who issues a bill for tele-
7 phone exchange service or telephone toll service to a sub-
8 scriber shall—

9 “(1) state on the bill—

10 “(A) the name and toll-free telephone
11 number of any telecommunications carrier or
12 reseller for the subscriber’s telephone exchange
13 service and telephone toll service;

14 “(B) the identity of each presubscribed
15 carrier or reseller of telecommunications serv-
16 ices; and

17 “(C) the charges associated with each car-
18 rier’s or reseller’s provision of telecommuni-
19 cations service during the billing period;

20 “(2) for services other than services described
21 in paragraph (1), state on a separate page—

22 “(A) the name of any company whose
23 charges are reflected on the subscriber’s bill;

24 “(B) the services for which the subscriber
25 is being charged by that company;

1 “(C) the charges associated with that com-
2 pany’s provision of service during the billing pe-
3 riod;

4 “(D) the toll-free telephone number that
5 the subscriber may call to dispute that com-
6 pany’s charges; and

7 “(E) that disputes about that company’s
8 charges will not result in disruption of tele-
9 phone exchange service or telephone toll service;
10 and

11 “(3) show the mailing address of any tele-
12 communications carrier or reseller or other company
13 whose charges are reflected on the bill.

14 “(c) ADDITIONAL REQUIREMENTS RELATING TO
15 BILLING.—

16 “(1) PROHIBITION ON DISRUPTION OF TELE-
17 PHONE SERVICE BASED ON DISPUTE OF CERTAIN
18 CHARGES.—A provider of telephone exchange service
19 or telephone toll service may not cease or otherwise
20 disrupt the provision of such service to a subscriber
21 in the event of the subscriber’s dispute of a charge
22 for any service other than telephone exchange service
23 or telephone toll service that is included on the sub-
24 scriber’s bill for such service.

1 “(2) TOLL-FREE NUMBER FOR DISPUTE OF
2 CERTAIN CHARGES.—Any provider of services cov-
3 ered by subsection (b)(2) shall ensure the availability
4 of a toll-free telephone number that a subscriber
5 issued a bill including a charge for such services
6 may call in order to resolve disputes relating to the
7 charge. Such number may be the number of the pro-
8 vider or the agent that issued the bill.

9 “(d) SUBSCRIBER LIABILITY.—

10 “(1) IN GENERAL.—In accordance with such
11 procedures as the Commission shall prescribe, a sub-
12 scriber of telephone exchange service or telephone
13 toll service whose bill for such service includes a
14 charge for a service covered by subsection (b) in vio-
15 lation of the provisions of section or the procedures
16 prescribed under this section and who provides no-
17 tice of the charge in accordance with paragraph (2)
18 of this subsection, shall not be liable to the entity
19 providing such service for any charges for providing
20 such service during the period, not exceeding 180
21 days after the date of the initiation of the service for
22 which the charge is made, that such entity provides
23 such service. In the case of a subscriber who submits
24 payment for service for which the subscriber is not
25 liable, pursuant to this paragraph, the procedures

1 prescribed by the Commission shall require the enti-
2 ty providing the service to refund such payment to
3 the subscriber.

4 “(2) NOTICE BY SUBSCRIBER OF UNAUTHOR-
5 IZED CHANGE.—Notice in accordance with this para-
6 graph is notice that the subscriber’s bill for tele-
7 phone exchange service or telephone toll service con-
8 tained a charge for a service covered by subsection
9 (b) in violation of the provisions of this section or
10 the procedures under this section, which is made
11 orally or in writing by the subscriber, not later than
12 12 months after the date of the initiation of such
13 service, to the provider of the service or the agent
14 that issued the subscriber’s bill.

15 “(e) FORFEITURE FOR VIOLATIONS.—

16 “(1) FORFEITURE.—Unless the Commission de-
17 termines there are mitigating circumstances, viola-
18 tion of subsection (a) is punishable by a forfeiture
19 of not less than \$40,000 for the first offense, and
20 not less than \$100,000 for each subsequent offense.

21 “(2) RECOVERY.—The Commission may take
22 such action as may be necessary to collect any for-
23 feitures imposed under paragraph (1).

24 “(f) STATE LAW NOT PREEMPTED.—

1 “(1) IN GENERAL.—Nothing in this section
2 shall be construed to preempt any State law that im-
3 poses more restrictive requirements, regulations,
4 damages, costs, or penalties on the inclusion on sub-
5 scriber bills of charges for telephone exchange serv-
6 ice or telephone toll service than are imposed under
7 this section.

8 “(2) EFFECT ON STATE COURT PRO-
9 CEEDINGS.—Nothing in this section shall be con-
10 strued to prohibit an authorized State official from
11 proceeding in State court on the basis of an alleged
12 violation of any general civil or criminal statute of
13 such State or any specific civil or criminal statute of
14 such State not preempted by this section.

15 “(g) REPORTS ON COMPLAINTS.—

16 “(1) REQUIREMENT.—Each local exchange car-
17 rier shall submit to the Commission on a quarterly
18 basis a report on the number of complaints of the
19 inclusion of unauthorized charges on the bills of its
20 subscribers that are submitted to such carrier by its
21 subscribers. Each report shall specify the basis of
22 each charge complained of and the number of com-
23 plaints arising from such basis.

24 “(2) LIMITATION ON SCOPE.—The Commission
25 may not require any information in a report under

1 paragraph (1) other than the information specified
2 in the second sentence of that paragraph.

3 “(3) UTILIZATION.—The Commission shall use
4 the information submitted in reports under para-
5 graph (1) to identify telephone exchange service and
6 telephone toll service providers that engage in pat-
7 terns and practices of including unauthorized
8 charges in their bills for such service.

9 “(4) TERMINATION AUTHORITY.—The Commis-
10 sion may terminate the requirement in paragraph
11 (1) upon a determination by the Commission that
12 the number of complaints submitted to local ex-
13 change carriers regarding the inclusion of charges
14 described in that paragraph has decreased by a sig-
15 nificant amount.”.

16 **SEC. 4. FEDERAL COMMUNICATIONS COMMISSION JURIS-**
17 **DICTION OVER TELEPHONE SERVICE BILL-**
18 **ING PROVIDERS AND CERTAIN OTHER SERV-**
19 **ICE PROVIDERS.**

20 Part II of title II of the Communications Act of 1934
21 (47 U.S.C. 251 et seq.), as amended by section 3(a) of
22 this Act, is further amended by inserting after section
23 258A the following new section:

1 **“SEC. 258B. JURISDICTION OVER TELEPHONE SERVICE**
2 **BILLING PROVIDERS AND CERTAIN OTHER**
3 **SERVICE PROVIDERS.**

4 “(a) IN GENERAL.—Subject to subsections (b) and
5 (c), the Commission may assess and recover any penalty,
6 fine, or forfeiture provided for under this Act and may
7 impose any other sanction provided for under this Act (in-
8 cluding an order to cease and desist under section 312(b))
9 against any entity that is not a telecommunications carrier
10 for a violation of or failure to comply with any provision
11 of this Act, or any rule, regulation, or order under this
12 Act, to the extent that such entity—

13 “(1) provides billing services for the provision
14 of telephone exchange service or telephone toll serv-
15 ice;

16 “(2) provides billing services for services for
17 which charges appear on a subscriber’s bill for tele-
18 phone exchange service or telephone toll service; or

19 “(3) provides services for which charges appear
20 on a subscriber’s bill for telephone exchange service
21 or telephone toll service.

22 “(b) LIMITATION.—The Commission may not exer-
23 cise the authority in subsection (a) with regard to an enti-
24 ty unless the Commission determines that the entity has
25 willfully or knowingly violated or failed to comply with a

1 provision of this Act or a rule, regulation, or order under
2 this Act.

3 “(c) ENFORCEMENT ACTIONS.—

4 “(1) IN GENERAL.—The Commission may un-
5 dertake any action provided for under this Act for
6 purposes of the enforcement of a penalty, fine, for-
7 feiture, or other sanction under subsection (a).

8 “(2) CERTAIN FORFEITURE ACTIONS.—In de-
9 termining and imposing a forfeiture penalty under
10 section 503(b) utilizing the authority in subsection
11 (a), the Commission shall not be subject to the re-
12 quirements set forth in paragraph (5) of such sec-
13 tion.”.

14 **SEC. 5. FEDERAL TRADE COMMISSION JURISDICTION OVER**
15 **UNFAIR OR DECEPTIVE PRACTICES OF TELE-**
16 **COMMUNICATIONS CARRIERS.**

17 Section 5(a) of the Federal Trade Commission Act
18 (15 U.S.C. 45(a)) is amended by adding at the end the
19 following:

20 “(4) Notwithstanding the exception in paragraph (2),
21 the Commission is empowered to prevent telecommuni-
22 cations carriers (as that term is defined in section 3(44)
23 of the Communications Act of 1934 (47 U.S.C. 153(44)))
24 from using unfair or deceptive acts or practices in or af-
25 fecting commerce. The power of the Commission under

1 this paragraph is in addition to any power or authority
2 of the Federal Communications Commission over tele-
3 communications carriers under the Communications Act
4 of 1934.”.

5 **SEC. 6. PROVISION TO FEDERAL TRADE COMMISSION OF**
6 **FEDERAL COMMUNICATIONS COMMISSION**
7 **INFORMATION ON TELEPHONE SERVICES**
8 **FRAUD.**

9 (a) REQUIREMENT.—Part II of title II of the Com-
10 munications Act of 1934 (47 U.S.C. 251 et seq.) is
11 amended by adding at the end the following:

12 **“SEC. 262. PROVISION TO FEDERAL TRADE COMMISSION OF**
13 **FEDERAL COMMUNICATIONS COMMISSION**
14 **INFORMATION ON TELEPHONE SERVICES**
15 **FRAUD.**

16 “Not later than 180 days after the date of the enact-
17 ment of the Telephone Services Consumer Protection Act,
18 and every month thereafter, the Commission shall provide
19 to the Federal Trade Commission any information col-
20 lected by the Commission as a result of complaints to the
21 Commission regarding telephone services fraud, including
22 the following:

23 “(1) The submission or execution of an unau-
24 thorized change of provider of telephone exchange
25 service or telephone toll service.

1 viding telephone exchange service or telephone toll service,
2 State commissioners, and consumers of telephone service.

3 (c) REPORT.—The Federal Communications Com-
4 mission shall submit to Congress a report on the results
5 of the study not later than 6 months after the date of
6 the enactment of this Act.

○