

105TH CONGRESS
1ST SESSION

S. 1410

To amend section 258 of the Communications Act of 1934 to enhance the protections against unauthorized changes in subscriber selections of telephone service providers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. REED introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend section 258 of the Communications Act of 1934 to enhance the protections against unauthorized changes in subscriber selections of telephone service providers, and for other purposes.

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

3 **SECTION 1. FINDINGS; PURPOSE.**

4 (a) FINDINGS.—Congress makes the following find-
5 ings:

6 (1) As the telecommunications industry has
7 moved toward competition in the provision of long
8 distance telephone services, consumers have increas-

1 ingly elected to change the carriers that provide
2 their long distance telephone services. As many as
3 50,000,000 consumers now change long distance
4 telephone service providers each year.

5 (2) The fluid nature of the market for long dis-
6 tance telephone services has also allowed an increas-
7 ing number of unauthorized changes of telephone
8 service providers to occur. Such changes have been
9 called “slamming”, a term which denotes any prac-
10 tice in which a consumer’s long distance telephone
11 service provider is changed without the consumer’s
12 knowledge or consent.

13 (3) Slamming accounts for the largest number
14 of consumer complaints received by the Common
15 Carrier Bureau of the Federal Communications
16 Commission. As many as 1,000,000 consumers are
17 subject to the unauthorized change of telephone
18 service providers each year.

19 (4) The increased costs which consumers face
20 as a result of the unauthorized change of telephone
21 service providers threaten to deprive consumers of
22 the financial benefits created by a competitive mar-
23 ketplace in telephone services.

24 (5) The burdens placed upon consumers by un-
25 authorized changes of telephone service providers

1 will expand exponentially as competition enters into
2 the markets for intraLATA and local telephone serv-
3 ices.

4 (6) The Telecommunications Act of 1996
5 sought to combat unauthorized changes of telephone
6 service providers by requiring that a provider who
7 changes a subscriber without authorization pay the
8 previously selected carrier an amount equal to all
9 charges paid by the subscriber after the change. The
10 Federal Communications Commission has proposed
11 regulations to implement this requirement. Imple-
12 menting these regulations will eliminate many of the
13 financial incentives to execute unauthorized changes
14 of telephone service providers. However, under cur-
15 rent and proposed regulations consumers have, and
16 will continue to face, difficulty in securing proof of
17 unauthorized changes. Thus, enforcement of the reg-
18 ulations will be impeded by a lack of tangible proof
19 of consumer consent to the change of telephone serv-
20 ice providers.

21 (7) The interests of consumers require that
22 telephone service providers maintain evidence of
23 their verification of consumer consent to changes in
24 telephone service providers. This evidence should
25 take the form of a consumer's written consent or a

1 recording of a consumer's oral consent obtained by
2 the telephone service provider or a third party.

3 (8) Both Congress and the Federal Commu-
4 nications Commission should continue to examine
5 electronic means by which consumers could most
6 readily change telephone service providers while en-
7 suring that such changes would result only from
8 consumer action evidencing express consent to such
9 changes.

10 (9) By providing consumers with a private right
11 of action in State court, if State law permits,
12 against those who have executed unauthorized
13 changes of telephone service providers, Congress in-
14 sures in a constitutional manner that neither Fed-
15 eral nor State courts will be overburdened with liti-
16 gation, while also providing the proper forum for
17 such actions given that competition will soon come
18 to all segments of the telephone service market.

19 (10) The majority of consumers who have been
20 subject to the unauthorized change of telephone
21 service do not seek redress through the Federal
22 Communications Commission. In light of the general
23 responsibilities of the States for consumer protec-
24 tion, as well as the prosecutions against unauthor-
25 ized changes already undertaken by the States, it is

1 essential that the States be allowed to pursue ac-
2 tions on behalf of their citizens, while also preserv-
3 ing the proper role of the Federal Communications
4 Commission in regulating the telecommunications in-
5 dustry.

6 (b) PURPOSES.—The purposes of this Act are—

7 (1) to protect consumers from unauthorized
8 changes of telephone service providers;

9 (2) to allow the efficient prosecution of legal ac-
10 tions against telephone service providers who de-
11 fraud consumers by transferring telephone service
12 providers without consumer consent; and

13 (3) to facilitate the ready selection of telephone
14 service providers by consumers.

15 **SEC. 2. ENHANCEMENT OF PROTECTIONS AGAINST UNAU-**
16 **THORIZED CHANGES IN SUBSCRIBER SELEC-**
17 **TIONS OF TELEPHONE SERVICE PROVIDERS.**

18 (a) VERIFICATION OF AUTHORIZATION.—

19 (1) IN GENERAL.—Subsection (a) of section
20 258 of the Communications Act of 1934 (47 U.S.C.
21 258) is amended—

22 (A) by striking “(a) PROHIBITION.—No
23 telecommunications” and inserting the follow-
24 ing:

25 “(a) PROHIBITION.—

1 “(1) IN GENERAL.—No telecommunications”;

2 (B) in paragraph (1), as so designated, by
 3 inserting after the first sentence the following:
 4 “Such procedures shall require the verification
 5 of a subscriber’s selection of a provider in writ-
 6 ten or oral form (including a signature or voice
 7 recording) and shall require the retention of
 8 such verification in such manner and form and
 9 for such time as the Commission considers ap-
 10 propriate.”; and

11 (C) by adding at the end the following:

12 “(2) VERIFICATION.—

13 “(A) IN GENERAL.—For purposes of para-
 14 graph (1), the verification of a subscriber’s se-
 15 lection of a telephone exchange service or tele-
 16 phone toll service provider shall take the form
 17 of a written or oral communication (in the same
 18 language as the solicitation of the selection) in
 19 which the subscriber—

20 “(i) acknowledges the type of service
 21 to be changed as a result of the selection;

22 “(ii) affirms the subscriber’s intent to
 23 select the provider as the provider of that
 24 service;

1 “(iii) affirms that the subscriber is
2 authorized to select the provider of that
3 service for the telephone number in ques-
4 tion;

5 “(iv) acknowledges that the selection
6 of the provider will result in a change in
7 providers of that service;

8 “(v) acknowledges that only one pro-
9 vider may provide that service for that
10 telephone number; and

11 “(vi) provides such other information
12 as the Commission considers appropriate
13 for the protection of the subscriber.

14 “(B) REQUIREMENTS FOR ORAL VERIFICA-
15 TIONS.—An oral verification of a change in tele-
16 phone service providers under this paragraph—

17 “(i) may not be made in the same
18 communication in which the change is so-
19 licit;

20 “(ii) may be made only to a qualified
21 and independent agent (as determined in
22 accordance with regulations prescribed by
23 the Commission) of the provider concerned;
24 and

1 “(iii) shall include a prompt and clear
 2 disclosure by the agent that the purpose of
 3 the telephone call is to verify that the sub-
 4 scribe has consented to the change.

5 “(C) CONFIRMATION OF CHANGE.—A pro-
 6 vider submitting or executing a change in tele-
 7 phone service providers shall notify the sub-
 8 scribe concerned by mail of the change not
 9 later than 5 business days after the date on
 10 which the change is executed. The confirmation
 11 shall be provided in the language in which the
 12 change was solicited.

13 “(D) AVAILABILITY OF VERIFICATIONS.—
 14 A provider shall make available to a subscriber
 15 a copy of a verification under this paragraph
 16 upon the request of the subscriber or an au-
 17 thorized representative of the subscriber.”.

18 (2) REGULATIONS.—The Federal Communica-
 19 tions Commission shall complete the adoption of the
 20 regulations required under section 258(a) of the
 21 Communications Act of 1934 by reason of the
 22 amendments made by paragraph (1) not later than
 23 270 days after the date of enactment of this Act.

24 (b) ADDITIONAL REMEDIES.—Such section is further
 25 amended by adding at the end the following:

1 “(c) PRIVATE RIGHT OF ACTION.—

2 “(1) PRIVATE RIGHT.—A person or entity may,
3 if otherwise permitted by the laws or rules of court
4 of a State, bring in an appropriate court of that
5 State—

6 “(A) an action based on a violation of sub-
7 section (a) or the regulations prescribed under
8 such subsection to enjoin such violation;

9 “(B) an action to recover for actual mone-
10 tary loss from such a violation or to receive
11 \$1,000 in damages for each such violation,
12 whichever is greater; or

13 “(C) both such actions.

14 “(2) TREBLE DAMAGES.—If the court finds
15 that the defendant willfully or knowingly violated
16 subsection (a) or the regulations prescribed under
17 such subsection, the court may, in its discretion, in-
18 crease the amount of the award to an amount equal
19 to not more than 3 times the amount available
20 under paragraph (1)(B).

21 “(3) COSTS OF LITIGATION.—The court, in is-
22 suing any final order in an action brought pursuant
23 to this subsection may award costs of litigation (in-
24 cluding reasonable attorney and expert witness fees)

1 to the prevailing plaintiff whenever the court deter-
2 mines that such award is appropriate.

3 “(d) ACTIONS BY STATES.—

4 “(1) AUTHORITY OF STATES.—

5 “(A) IN GENERAL.—Whenever the attor-
6 ney general of a State, or an official or agency
7 designated by a State, has reason to believe
8 that any person has engaged or is engaging in
9 an activity or practice of activities with respect
10 to residents of that State in violation of sub-
11 section (a) or the regulations prescribed under
12 such subsection, the State may bring a civil ac-
13 tion on behalf of its residents to enjoin such ac-
14 tivities, an action to recover for the greater of
15 actual monetary loss or \$1,000 in damages for
16 each violation, or both such actions.

17 “(B) TREBLE DAMAGES.—If the court
18 finds the defendant willfully or knowingly vio-
19 lated such subsection or regulations, the court
20 may, in its discretion, increase the amount of
21 the award to an amount equal to not more than
22 3 times the amount available under the sub-
23 paragraph (A).

24 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
25 COURTS.—

1 “(A) IN GENERAL.—The district courts of
2 the United States, the United States courts of
3 any territory, and the District Court of the
4 United States for the District of Columbia shall
5 have exclusive jurisdiction over all civil actions
6 brought under this subsection.

7 “(B) ADDITIONAL RELIEF.—Upon proper
8 application, such courts shall also have jurisdic-
9 tion to issue writs of mandamus, or orders af-
10 fording like relief, commanding the defendant
11 to comply with the provisions of subsection (a)
12 or regulations prescribed under such subsection,
13 including the requirement that the defendant
14 take such action as is necessary to remove the
15 danger of such violation. Upon a proper show-
16 ing, a permanent or temporary injunction or re-
17 straining order shall be granted without bond.

18 “(3) RIGHTS OF COMMISSION.—

19 “(A) NOTICE.—The State shall serve prior
20 written notice of any such civil action upon the
21 Commission and provide the Commission with a
22 copy of its complaint, except in any case where
23 such prior notice is not feasible, in which case
24 the State shall serve such notice immediately
25 upon instituting such action.

1 “(B) RIGHTS.—The Commission shall have
2 the right—

3 “(i) to intervene in any action covered
4 by subparagraph (A);

5 “(ii) upon so intervening, to be heard
6 on all matters arising therein; and

7 “(iii) to file petitions for appeal.

8 “(4) VENUE; SERVICE OF PROCESS.—Any civil
9 action brought under this subsection in a district
10 court of the United States may be brought in the
11 district wherein the defendant or victim is found,
12 wherein the defendant is an inhabitant or transacts
13 business, or wherein the violation occurred or is oc-
14 curring, and process in such cases may be served in
15 any district in which the defendant is an inhabitant
16 or where the defendant may be found.

17 “(5) INVESTIGATORY POWERS.—For purposes
18 of bringing a civil action under this subsection, noth-
19 ing in this subsection shall prevent the attorney gen-
20 eral of a State, or an official or agency designated
21 by a State, from exercising the powers conferred on
22 the attorney general or such official by the laws of
23 such State to conduct investigations or to administer
24 oaths or affirmations or to compel the attendance of

1 witnesses or the production of documentary and
2 other evidence.

3 “(6) EFFECT ON STATE COURT PROCEED-
4 INGS.—Nothing in this subsection shall be construed
5 to prohibit any official authorized by State law from
6 proceeding in State court on the basis of an alleged
7 violation of any civil or criminal statute of such
8 State.

9 “(7) LIMITATION.—Whenever the Commission
10 has instituted a civil action for violation of sub-
11 section (a) or there regulations prescribed under
12 such subsection, no State may, during the pendency
13 of such action instituted by the Commission, subse-
14 quently institute a civil action against any defendant
15 named in the Commission’s complaint for any viola-
16 tion as alleged in the Commission’s complaint.

17 “(8) DEFINITION.—In this subsection, the term
18 ‘attorney general’ means the chief legal officer of a
19 State.”.

20 **SEC. 3. REPORT ON ELECTRONIC MEANS FOR VERIFYING**
21 **SUBSCRIBER AUTHORIZATIONS OF SELEC-**
22 **TIONS OF TELEPHONE SERVICE PROVIDERS.**

23 Not later than December 31, 1999, the Federal Com-
24 munications Commission shall submit to Congress a re-
25 port on the technological feasibility and practicability of

1 permitting subscribers to authorize changes in telephone
2 service providers by electronic means (including authoriza-
3 tion by electronic mail or by use of personal identification
4 numbers or other security mechanisms) without thereby
5 increasing the likelihood of unauthorized changes in such
6 providers.

