

106TH CONGRESS
1ST SESSION

S. 1084

To amend the Communications Act of 1934 to protect consumers from the unauthorized switching of their long-distance service.

IN THE SENATE OF THE UNITED STATES

MAY 19, 1999

Mr. MCCAIN (for himself, Mr. BRYAN, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend the Communications Act of 1934 to protect consumers from the unauthorized switching of their long-distance service.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Telecommunications
5 Competition and Consumer Protection Act of 1999”.

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 1999, 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 tele-

1 communications services) shall submit or execute a
2 change in a subscriber's selection of a provider of
3 telephone exchange service or telephone toll service
4 except in accordance with—

5 “(A) the Code, if such carrier elects to
6 comply with the Code in accordance with sub-
7 section (b)(2); or

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

10 “(i) the carrier does not elect to com-
11 ply with the Code under subsection (b)(2);
12 or

13 “(ii) such election is revoked or with-
14 drawn.

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

16 “(1) SUBSCRIBER PROTECTION PRACTICES.—

17 The Code required by subsection (a)(1) shall include
18 guidelines addressing the following:

19 “(A) IN GENERAL.—A telecommunications
20 carrier (including a reseller of telecommuni-
21 cations services) electing to comply with the
22 Code shall submit a change in a subscriber's se-
23 lection of a provider of telephone exchange serv-
24 ice or telephone toll service only in accordance
25 with the provisions of the Code.

1 “(B) NEGATIVE OPTION.—A telecommuni-
2 cations carrier shall not use negative option
3 marketing.

4 “(C) VERIFICATION.—A submitting carrier
5 shall verify the subscriber’s selection of the car-
6 rier in accordance with procedures specified in
7 the Code. The executing carrier may rely on the
8 submitting carrier’s verification in executing the
9 change or may, at its discretion, confirm the
10 verification of a change in the subscriber’s se-
11 lection with the customer.

12 “(D) UNFAIR AND DECEPTIVE ACTS AND
13 PRACTICES.—No telecommunications carrier,
14 nor any person acting on behalf of any such
15 carrier, shall engage in any unfair or deceptive
16 acts or practices in connection with the sollicita-
17 tion of a change in a subscriber’s selection of
18 a telecommunications carrier.

19 “(E) NOTIFICATION AND RIGHTS.—A tele-
20 communications carrier shall provide timely and
21 accurate notification to the subscriber in ac-
22 cordance with procedures specified in the Code.

23 “(F) SLAMMING LIABILITY AND REM-
24 EDIES.—

1 “(i) REQUIRED REIMBURSEMENT AND
2 CREDIT.—A telecommunications carrier
3 that has improperly changed the sub-
4 scriber’s selection of a telecommunications
5 carrier without authorization, shall at a
6 minimum—

7 “(I) reimburse the subscriber for
8 the fees associated with switching the
9 subscriber back to their original car-
10 rier; and

11 “(II) provide a credit for any
12 telecommunications charges incurred
13 by the subscriber during the period,
14 not to exceed 30 days, while that sub-
15 scriber was improperly presubscribed.

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

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

21 “(II) the telecommunications car-
22 rier may rebut such allegation;

23 “(III) the subscriber may, with-
24 out undue delay, burden, or expense,
25 challenge the rebuttal; and

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

4 “(G) RECORDKEEPING.—A telecommuni-
5 cations carrier shall make and maintain a
6 record of the verification process and shall pro-
7 vide a copy to the subscriber immediately upon
8 request.

9 “(H) QUALITY CONTROL.—A telecommuni-
10 cations carrier shall institute a quality control
11 program to prevent inadvertent changes in a
12 subscriber’s selection of a carrier.

13 “(I) INDEPENDENT AUDITS.—A tele-
14 communications carrier shall provide the Com-
15 mission with an independent audit regarding its
16 compliance with the Code at intervals pre-
17 scribed by the Code. The Commission may re-
18 quire a telecommunications carrier to provide
19 an independent audit on a more frequent basis
20 if there is evidence that such telecommuni-
21 cations carrier is violating the Code.

22 “(2) ELECTION BY CARRIERS.—Each tele-
23 communications carrier electing to comply with the
24 Code shall file with the Commission within 20 days
25 after the adoption of the Code, or within 20 days

1 after commencing operations as a telecommuni-
2 cations carrier, a statement electing the Code to gov-
3 ern such carrier's submission or execution of a
4 change in a customer's selection of a provider of
5 telephone exchange service or telephone toll service.
6 Such election by a carrier may not be revoked or
7 withdrawn unless the Commission finds that there is
8 good cause therefor, including a determination that
9 the carrier has failed to adhere in good faith to the
10 applicable provisions of the Code, and that the rev-
11 ocation or withdrawal is in the public interest. Any
12 telecommunications carrier that fails to elect to com-
13 ply with the Code shall be deemed to have elected
14 to be governed by the subsection (c) and the Com-
15 mission's regulations thereunder.

16 “(3) PENALTIES AVAILABLE.—Nothing in this
17 subsection or in any regulations thereunder shall be
18 construed as limiting the application of section 503
19 to violations of the Code.

20 “(c) REGULATIONS OF CARRIERS NOT ELECTING TO
21 COMPLY WITH CODE.—

22 “(1) IN GENERAL.—A telecommunications car-
23 rier (including a reseller of telecommunications serv-
24 ices) that has not elected to comply with the Code
25 under subsection (b), or as to which the election has

1 been withdrawn or revoked, shall not submit or exe-
2 cute a change in a subscriber's selection of a pro-
3 vider of telephone exchange service or telephone toll
4 service except in accordance with this subsection and
5 such verification procedures as the Commission shall
6 prescribe.

7 “(2) VERIFICATION.—

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

14 “(i) to affirm that the subscriber is
15 authorized to select the provider of that
16 service for the telephone number in ques-
17 tion;

18 “(ii) to acknowledge the type of serv-
19 ice to be changed as a result of the selec-
20 tion;

21 “(iii) to affirm the subscriber's intent
22 to select the provider as the provider of
23 that service;

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

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

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

11 “(i) preclude the use of negative op-
12 tion marketing;

13 “(ii) provide for a complete copy of
14 verification of a change in telephone ex-
15 change service or telephone toll service pro-
16 vider in oral, written, or electronic form;

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

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

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

1 “(C) NOTICE TO SUBSCRIBER.—Whenever
2 a telecommunication carrier submits a change
3 in a subscriber’s selection of a provider of tele-
4 phone exchange service or telephone toll service,
5 such telecommunications carrier shall clearly
6 notify the subscriber in writing, not more than
7 15 days after the change is submitted to the
8 executing carrier—

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

10 and

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

15 “(3) LIABILITY FOR VIOLATIONS.—

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

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

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

4 “(iii) direct the subscriber to contact
5 the executing carrier if the subscriber be-
6 lieves that such change was not authorized
7 and that the change was made in violation
8 of this subsection, and contain the toll-free
9 number by which to make such contact.

10 “(B) AUTOMATIC SWITCH-BACK OF SERV-
11 ICE AND CREDIT TO CONSUMER OF CHARGES.—

12 “(i) OBLIGATIONS OF EXECUTING
13 CARRIER.—If a subscriber of telephone ex-
14 change service or telephone toll service
15 makes an allegation, orally or in writing, to
16 the executing carrier that a violation of
17 this subsection has occurred with respect
18 to such subscriber—

19 “(I) the executing carrier shall,
20 without charge to the subscriber, exe-
21 cute an immediate change in the pro-
22 vider of the telephone service that is
23 the subject of the allegation to restore
24 the previous provider of such service

1 for the subscriber, as reflected in the
2 records of the executing carrier;

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

8 “(III) if the executing carrier
9 conducts billing for the carrier that is
10 the subject of the allegation, the exe-
11 cuting carrier shall provide an imme-
12 diate credit to the subscriber’s ac-
13 count for such service, in an amount
14 equal to any charges for the telephone
15 service that is the subject of the alle-
16 gation incurred during the period—

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

21 “(bb) ending on the earlier
22 of the date that the subscriber is
23 restored to the previous provider,
24 or 30 days after the date the bill

1 described in subparagraph (A) is
2 issued; and

3 “(IV) the executing carrier shall
4 recover the costs of executing the
5 change in provider to restore the pre-
6 vious provider, and any credits pro-
7 vided under subclauses (II) and (III),
8 by recourse to the provider that is the
9 subject of the allegation.

10 “(ii) OBLIGATIONS OF CARRIERS NOT
11 BILLING THROUGH EXECUTING CAR-
12 RIERS.—If a subscriber of telephone ex-
13 change service or telephone toll service
14 transmits, orally or in writing, to any car-
15 rier that does not use an executing carrier
16 to conduct billing an allegation that a vio-
17 lation of this subsection has occurred with
18 respect to such subscriber, the carrier shall
19 provide an immediate credit to the sub-
20 scriber’s account for such service, and the
21 subscriber shall, except as provided in sub-
22 paragraph (C)(iii), be discharged from li-
23 ability, for an amount equal to any charges
24 for the telephone service that is the subject

1 of the allegation incurred during the
2 period—

3 “(I) beginning upon the date of
4 the change of service that is the sub-
5 ject of the allegation; and

6 “(II) ending on the earlier of the
7 date that the subscriber is restored to
8 the previous provider, or 30 days after
9 the date the bill described in subpara-
10 graph (A) is issued.

11 “(iii) TIME LIMITATION.—This sub-
12 paragraph shall apply only to allegations
13 made by subscribers before the expiration
14 of the 1-year period that begins on the
15 issuance of the bill described in subpara-
16 graph (A).

17 “(C) PROCEDURE FOR CARRIER REM-
18 EDY.—

19 “(i) IN GENERAL.—The Commission
20 shall, by rule, establish a procedure for
21 rendering determinations with respect to
22 violations of this subsection. Such proce-
23 dure shall permit such determinations to
24 be made upon the filing of (I) a complaint
25 by a telecommunications carrier that was

1 providing telephone exchange service or
2 telephone toll service to a subscriber before
3 the occurrence of an alleged violation, and
4 seeking damages under clause (ii), or (II)
5 a complaint by a telecommunications car-
6 rier that was providing services after the
7 alleged violation, and seeking a reinstatement
8 of charges under clause (iii). Either
9 such complaint shall be filed not later than
10 6 months after the date on which any sub-
11 scriber whose allegation is included in the
12 complaint submitted an allegation of the
13 violation to the executing carrier under
14 subparagraph (B)(i). Either such com-
15 plaint may seek determinations under this
16 paragraph with respect to multiple alleged
17 violations in accordance with such proce-
18 dures as the Commission shall establish in
19 the rules prescribed under this subpara-
20 graph.

21 “(ii) DETERMINATION OF VIOLATION
22 AND REMEDIES.—In a proceeding under
23 this subparagraph, if the Commission de-
24 termines that a violation of this subsection
25 has occurred, other than an inadvertent or

1 unintentional violation, the Commission
2 shall award damages—

3 “(I) to the telecommunications
4 carrier filing the complaint, in an
5 amount equal to the sum of (aa) the
6 gross amount of charges that the car-
7 rier would have received from the sub-
8 scriber during the violation, and (bb)
9 \$500 per violation; and

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

13 “(iii) DETERMINATION OF NO VIOLA-
14 TION.—If the Commission determines that
15 a violation of this subsection has not oc-
16 curred, the Commission shall order that
17 any credit provided to the subscriber under
18 subparagraph (B)(ii) be reversed, or that
19 the carrier may resubmit a bill for the
20 amount of the credit to the subscriber not-
21 withstanding any discharge under subpara-
22 graph (B)(ii).

23 “(iv) SPEEDY RESOLUTION OF COM-
24 PLAINTS.—The procedure established
25 under this subparagraph shall provide for

1 a determination of each complaint filed
2 under the procedure not later than 6
3 months after filing.

4 “(D) MAINTENANCE OF INFORMATION.—

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

10 “(ii) CONTENTS.—The information
11 required to be maintained pursuant to this
12 paragraph shall include, for each alleged
13 violation of this subsection, the effective
14 date of the change of service involved in
15 the alleged violation, the name of the pro-
16 vider of the service to which the change
17 was made, the name, address, and tele-
18 phone number of the subscriber who was
19 subject to the alleged violation, and the
20 amount of any credit provided under sub-
21 paragraph (B)(ii).

22 “(iii) FORM.—The Commission shall
23 prescribe one or more computer data for-
24 mats for the maintenance of information
25 under this paragraph, which shall be de-

1 signed to facilitate submission and com-
2 pilation pursuant to this subparagraph.

3 “(iv) MONTHLY REPORTS.—Each exe-
4 cuting carrier shall, on not less than a
5 monthly basis, submit the information
6 maintained pursuant to this subparagraph
7 to the Commission.

8 “(v) ACCESS TO INFORMATION.—The
9 Commission shall make the information
10 submitted pursuant to clause (iv) available
11 upon request to any telecommunications
12 carrier. Any telecommunications carrier ob-
13 taining access to such information shall
14 use such information exclusively for the
15 purposes of investigating, filing, or resolv-
16 ing complaints under this section.

17 “(4) CIVIL PENALTIES.—Unless the Commis-
18 sion determines that there are mitigating cir-
19 cumstances, violation of this subsection is punishable
20 by a forfeiture penalty under section 503 of not less
21 than \$40,000 for the first offense, and not less than
22 \$150,000 for each subsequent offense.

23 “(5) RECOVERY OF FORFEITURES.—The Com-
24 mission may take such action as may be necessary—

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

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

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

8 “(e) COMMISSION REQUIREMENTS.—

9 “(1) SEMIANNUAL REPORTS.—Every 6 months,
10 the Commission shall compile and publish a report
11 ranking telecommunications carriers by the percent-
12 age of verified complaints, excluding those generated
13 by the carrier’s unaffiliated resellers, compared to
14 the number of the carrier’s changes in a subscriber’s
15 selection of a provider of telephone exchange service
16 and telephone toll service.

17 “(2) INVESTIGATION.—If a telecommunications
18 carrier is listed among the 5 worst performers based
19 upon the percentage of verified complaints, excluding
20 those generated by the carrier’s unaffiliated re-
21 sellers, compared to its number of carrier selection
22 changes in the semiannual reports 3 times in succes-
23 sion, the Commission shall investigate the carrier’s
24 practices regarding subscribers’ selections of pro-
25 viders of telephone exchange service and telephone

1 toll service. If the Commission finds that the carrier
2 is misrepresenting adherence to the Code or is will-
3 fully and repeatedly changing subscribers' selections
4 of providers, the Commission shall find such carrier
5 to be in violation of this section and shall impose a
6 civil penalty on the carrier under section 503 of up
7 to \$1,000,000.

8 “(3) CODE REVIEW.—Every 2 years, the Com-
9 mission shall review the Code to ensure its require-
10 ments adequately protect subscribers from improper
11 changes in a subscriber's selection of a provider of
12 telephone exchange service and telephone toll service.

13 “(f) ACTIONS BY STATES.—

14 “(1) IN GENERAL.—Whenever an attorney gen-
15 eral of any State has reason to believe that the in-
16 terests of the residents of that State have been or
17 are being threatened or adversely affected because
18 any person has violated the Code or subsection (c),
19 or any rule or regulation prescribed by the Commis-
20 sion under subsection (c), the State may bring a
21 civil action on behalf of its residents in an appro-
22 priate district court of the United States to enjoin
23 such violation, to enforce compliance with such
24 Code, subsection, rule, or regulation, to obtain dam-
25 ages on behalf of their residents, or to obtain such

1 further and other relief as the court may deem ap-
2 propriate.

3 “(2) NOTICE.—The State shall serve prior writ-
4 ten notice of any civil action under paragraph (1)
5 upon the Commission and provide the Commission
6 with a copy of its complaint, except that if it is not
7 feasible for the State to provide such prior notice,
8 the State shall serve such notice immediately upon
9 instituting such action. Upon receiving a notice re-
10 specting a civil action, the Commission shall have
11 the right (A) to intervene in such action, (B) upon
12 so intervening, to be heard on all matters arising
13 therein, and (C) to file petitions for appeal.

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

22 “(4) INVESTIGATORY POWERS.—For purposes
23 of bringing any civil action under paragraph (1),
24 nothing in this Act shall prevent the attorney gen-
25 eral from exercising the powers conferred on the at-

1 torney general by the laws of such State to conduct
2 investigations or to administer oaths or affirmations
3 or to compel the attendance of witnesses or the pro-
4 duction of documentary and other evidence.

5 “(5) EFFECT ON STATE COURT PRO-
6 CEEDINGS.—Nothing contained in this subsection
7 shall prohibit an authorized State official from pro-
8 ceeding in State court on the basis of an alleged vio-
9 lation of any general civil or criminal statute of such
10 State.

11 “(6) LIMITATION.—Whenever the Commission
12 has instituted a civil action for violation of this sec-
13 tion or any rule or regulation thereunder, no State
14 may, during the pendency of such action instituted
15 by the Commission, institute a civil action against
16 any defendant named in the Commission’s complaint
17 for violation of any rule as alleged in the Commis-
18 sion’s complaint.

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

25 “(g) STATE LAW NOT PREEMPTED.—

1 “(1) IN GENERAL.—Nothing in this section or
2 in the regulations prescribed under this section shall
3 preempt any State law that imposes more restrictive
4 requirements, regulations (including an option pro-
5 tecting a subscriber’s choice of a provider of tele-
6 phone exchange service or telephone toll service from
7 being switched without the subscriber’s express con-
8 sent), damages, costs, or penalties on changes in a
9 subscriber’s service or selection of a provider of tele-
10 phone exchange service or telephone toll services
11 than are imposed under this section.

12 “(2) PRESERVATION OF COMMISSION AUTHOR-
13 ITY WITH RESPECT TO UNFAIR MARKETING OF SUB-
14 SCRIBER SELECTION FREEZES.—Notwithstanding
15 paragraph (1), the Commission shall prescribe rules
16 to prevent the marketing or provision in an unfair
17 or deceptive manner of an option protecting a sub-
18 scriber’s choice of a provider of telephone exchange
19 service or telephone toll service from being switched
20 without the subscriber’s express consent.

21 “(h) RULES OF CONSTRUCTION.—

22 “(1) CHANGE INCLUDES INITIAL SELECTION.—
23 For purposes of this section, the initiation of tele-
24 phone toll service to a subscriber by a telecommuni-

1 cations carrier shall be treated as a change in selec-
2 tion of a provider of telephone toll service.

3 “(2) ACTION BY UNAFFILIATED RESELLER NOT
4 IMPUTED TO CARRIER.—No telecommunications car-
5 rier may be found in violation of this section solely
6 on the basis of a violation of this section by an unaf-
7 filiated reseller of that carrier’s services or facilities.

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

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

14 “(2) EXECUTING CARRIER.—The term ‘exe-
15 cuting carrier’ means, with respect to any change in
16 the provider of local exchange service or telephone
17 toll service, the local exchange carrier that executed
18 such change.

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

21 (b) NTIA STUDY OF THIRD-PARTY ADMINISTRA-
22 TION.—Within 180 days of enactment of this Act, the Na-
23 tional Telecommunications and Information Administra-
24 tion shall report to the Committee on Commerce of the
25 House of Representatives and the Committee on Com-

1 merce, Science, and Transportation of the Senate on the
2 feasibility and desirability of establishing a neutral third-
3 party administration system to prevent illegal changes in
4 telephone subscriber carrier selections. The study shall
5 include—

6 (1) an analysis of the cost of establishing a sin-
7 gle national or several independent databases or
8 clearinghouses to verify and submit changes in car-
9 rier selections;

10 (2) the additional cost to carriers, per change
11 in carrier selection, to fund the ongoing operation of
12 any or all such independent databases or clearing-
13 houses; and

14 (3) the advantages and disadvantages of uti-
15 lizing independent databases or clearinghouses for
16 verifying and submitting carrier selection changes.

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