

SUBJECT: Prohibiting unauthorized switching of long distance carriers (slamming)

COMMITTEE: State Affairs— favorable, without amendment

VOTE: *(After recommitted)*
9 ayes — Wolens, Alvarado, Brimer, Carter, Craddick, Hilbert, Hunter, Longoria, McCall

0 nays

6 absent — S. Turner, Counts, Danburg, D. Jones, Ramsay, Stiles

SENATE VOTE: On final passage, April 1 — 30-0

WITNESSES: *(On similar bill, HB 1982)*
For — Edward Phelan, Sprint Communications; Mark Witcher, AT&T; Henry Flores, Texas Telephone Association; Jim Fitzpatrick, American Association of Retired Persons; Sandra Haverlah, Texas Citizen Action; Janee Briesmeister, Consumer's Union; Tom Smith, Public Citizen

Against — None

On — Bill Magness, Public Utility Commission, Suzi McClellan, Office of Public Utility Counsel

BACKGROUND : The Federal Communications Commission (FCC) has promulgated rules regulating the selection of telecommunications carriers, such as long distance telephone services. Carrier-initiated change orders may be verified in four ways to be considered valid:

- written authorization from the customer;
- toll-free electronic authorization placed from the telephone number that is the subject of the change order;
- oral authorization obtained by an independent third party; or
- mailing an information packet to the customer consistent with federal rules that contains a pre-paid postcard or mailer allowing the customer 14 days to cancel the change order.

DIGEST: SB 253 would allow the Public Utility Commission (PUC) to adopt rules regarding unauthorized switching of telecommunications utilities. The rules would have to be adopted by the PUC by November 1, 1997. The rules would have to be nondiscriminatory and competitively neutral.

The rules adopted by the PUC would have to:

- ensure that customers were protected from deceptive practices in obtaining authorizations and verifications;
- apply to all telecommunications service providers;
- be consistent with rules and regulation adopted by the FCC for selection and verification of telecommunications service providers; and
- require telecommunications utilities to maintain records of customer-initiated changes.

The rules would have to provide that if a change were made that was not consistent with the rules adopted by the PUC, the change would have to be reversed. If an unauthorized change occurred, the telecommunication service provider that initiated the change would be required to pay all costs associated with returning the customer to the original utility; pay the original utility any amount paid by the customer that should have been paid to the original utility for service had the customer not been changed; return to the customer any amount the customer paid over and above what the customer would have paid had the customer not been changed; and provide all billing records to the original utility for the period involved. All customers who were changed without authorization would be entitled to any benefits associated with service through the customer's original utility.

The rules adopted would have to provide that if the PUC found a utility to have repeatedly violated the selection rules, the utility could be ordered by the PUC to take corrective action, and the utility could be subject to administrative penalties. The proceeds of such penalties would have to be used for further enforcement of the selection rules. The rules would have to provide that if the utility was repeatedly and recklessly in violation of the selection rules, the PUC would be authorized to suspend, restrict or revoke the telecommunications company's certificate allowing the utility to provide service in Texas.

SB 253 would require a local exchange company that provides billing services for a customer's primary interexchange (long distance) carrier to print the name of the primary long distance carrier on the first page of the customer's bill. The PUC would be allowed to waive this requirement for good cause for local exchange carriers serving less than 31,000 access lines. Additionally, the bill would have to contain instructions on how a customer could contact the PUC if the customer believed the named carrier was not the customer's primary long distance carrier.

SB 253 would take effect September 1, 1997.

**SUPPORTERS
SAY:**

Unauthorized changes in long distance carriers, popularly called slamming, is an unwelcome by-product of the proliferation of long distance companies. Customers are often tricked into changing their long distance service when they sign up for certain contests or prizes. Other customers have been switched based on targeted marketing without any authorization whatsoever. While federal rules are supposed to prevent the unauthorized change of long distance service, state rules are needed to allow the PUC to require repayment of funds collected by an unauthorized carrier and to provide penalties for repeated violations.

SB 253 would require the PUC to develop rules to prevent slamming and penalize those companies that engage in the practice. Giving the PUC such authority would help to ensure that rules adopted were consistent with federal regulations and federal law. Under federal telecommunications law, any inconsistent regulations may be preempted over concerns of competitiveness. Adopting rules for verification of carrier changes that were more restrictive than FCC rules would subject Texas rules to federal preemption. Additionally, if certain PUC rules were not effective or were burdensome to telecommunications companies, those rules could be changed without waiting for the next legislative session. Also, if federal rulings allow competition for local phone service, the rules adopted by the PUC would include slamming by competitive local exchange companies.

One goal of the rules outlined in SB 253 is to ensure that the company initiating an unauthorized change of service (the slammer) does not gain any financial benefit from such actions. Any payment the slammer received would have to be paid back to the customer's original telecommunications

company, and any overage would be returned to the customer. Allowing such payments to be returned to the customer only could give those customers months of free long distance service and would provide an incentive for such customers not to report the slamming incident as soon as they discover it.

By requiring local exchange companies to include the name of the primary long distance provider on the first page of a bill, unauthorized changes could be discovered more quickly by customers. This would also allow the PUC to more easily track multiple changes to see if such changes are the result of intentional acts. While the rules required to be adopted would not limit the time a customer had to report a slamming violation, the addition of the long distance carrier on the first page would make it more difficult for customers to claim that they were unaware of an unauthorized change. Small, rural local exchange companies would be exempted from this requirement because many such companies frequently use only one page bills.

The penalties proposed by SB 253 would be consistent with other penalties imposed by the PUC. In order to get to the level of revocation of the telecommunications company's certificate of convenience and necessity, the company would have had to ignore corrective action and administrative penalties and repeatedly and recklessly engaged in prohibited conduct. Only the most egregious violators would be subject to penalties that affect their ability to provide telecommunications service in Texas.

**OPPONENTS
SAY:**

The prevention and punishment of slamming is very important to telecommunications customers in Texas; it should be fully addressed by the Legislature and not left up to an appointed commission. The PUC would be allowed to determine when conduct is considered to be reckless to qualify for a revocation of a telecommunications carrier's certificate of convenience and necessity. It would also have the ability to determine how long a customer had to complain of a suspected unauthorized change. These are questions of policy that the Legislature should address.

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OTHER
OPPONENTS
SAY:

While imposing penalties for slamming may help to deter established companies, the real problem that should be addressed is the prevention of slamming by instituting stricter rules for verifying switches in long distance service by fly-by-night companies.

NOTES:

SB 253 was recommitted on a point of order on May 19. The bill was reported favorably, without amendment, when originally reported and after recommital.