

105TH CONGRESS
1ST SESSION

H. R. 3050

To establish procedures and remedies for the prevention of fraudulent and deceptive practices in the solicitation of telephone service subscribers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 13, 1997

Mr. DINGELL introduced the following bill; which was referred to the
Committee on Commerce

A BILL

To establish procedures and remedies for the prevention of fraudulent and deceptive practices in the solicitation of telephone service subscribers, 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. SHORT TITLE.**

4 This Act may be cited as the “Slamming Prevention
5 and Consumer Protection Act of 1997”.

1 **TITLE I—IMPROVED COMMU-**
2 **NICATIONS ACT REMEDIES**
3 **FOR SLAMMING**

4 **SEC. 101. COMPLETION AND ENFORCEMENT OF FCC RULES.**

5 Section 258 of the Communications Act of 1984 (47
6 U.S.C. 258) is amended by adding at the end the follow-
7 ing:

8 “(c) **SUBSCRIBER CHANGES.**—The Commission’s
9 regulations under this section shall require any carrier
10 that submits or executes a change in a subscriber’s selec-
11 tion of a provider of telephone exchange service or tele-
12 phone toll service in violation of the verification procedures
13 prescribed by the Commission shall refund to the sub-
14 scriber (or discharge the subscriber from liability for) any
15 charges imposed for such service by such carrier during
16 the 3-month period after the change in the subscriber’s
17 selection is effected.

18 “(d) **NEGATIVE OPTION SELECTION PROHIBITED.**—
19 The Commission’s regulations under this section shall pro-
20 hibit any change in selection, or any verification of a
21 change in selection, without the affirmative request of the
22 subscriber. A subscriber’s failure to refuse a change in se-
23 lection, or failure to refuse to verify a change in selection,
24 shall not be deemed to be an affirmative request.

1 “(e) COMPLETION OF RULEMAKING.—The Commis-
2 sion shall complete all actions necessary, including any re-
3 consideration, to prescribe rules to implement and enforce
4 this section within two years after the date of enactment
5 of the Telecommunications Act of 1996.

6 “(f) PRIVATE RIGHT OF ACTION.—

7 “(1) IN GENERAL.—A subscriber whose selec-
8 tion of a provider of telephone exchange service or
9 telephone toll service is changed in violation of the
10 procedures prescribed under subsection (a) may,
11 within one year after the change, if otherwise per-
12 mitted by the laws or rules of court of a State, bring
13 in an appropriate court of that State an action—

14 “(A) for an order to revoke the change;

15 “(B) for an award of damages in an
16 amount equal to the greater of—

17 “(i) the actual monetary loss resulting
18 from the change; or

19 “(ii) an amount not to exceed \$500;

20 or

21 “(C) for relief under both subparagraphs

22 (A) and (B).

23 In any such action in which the plaintiff substan-
24 tially prevails the court may assess reasonable costs,
25 including attorneys’ fees, against the defendant.

1 “(2) INCREASED AWARD.—If the court finds
 2 that the defendant executed the change in willful
 3 and knowing violation of the procedures prescribed
 4 under subsection (a), the court may, in its discre-
 5 tion, increase the amount of the award under para-
 6 graph (1) to an amount equal to not more than
 7 three times the maximum amount awardable under
 8 subparagraph (B) of that paragraph.

9 “(g) NO PREEMPTION OF STATE LAW.—Nothing in
 10 this section shall preempt the availability of relief under
 11 State law for unauthorized changes of providers of intra-
 12 state telephone exchange service or telephone toll serv-
 13 ice.”.

14 **TITLE II—REGULATION OF UN-**
 15 **FAIR AND DECEPTIVE ACTS**
 16 **AND PRACTICES IN CONNEC-**
 17 **TION WITH SLAMMING**

18 **SEC. 201. FEDERAL TRADE COMMISSION REGULATIONS.**

19 (a) IN GENERAL.—

20 (1) REGULATIONS REQUIRED.—The Commis-
 21 sion shall prescribe rules in accordance with this
 22 subsection to prohibit unfair and deceptive acts and
 23 practices in any advertisement for or solicitation of
 24 any change in a subscriber’s selection of a provider
 25 of telephone exchange service or telephone toll serv-

1 ice. Such rules shall require that the person offering
2 or soliciting any change in the subscriber's selection
3 of the provider of a telephone exchange service or
4 telephone toll service—

5 (A) clearly and conspicuously disclose—

6 (i) that the offer or solicitation seeks
7 authority to change the subscriber's selec-
8 tion of the provider of a telephone ex-
9 change service or telephone toll service;
10 and

11 (ii) the cost of the use of telephone
12 exchange service or telephone toll service,
13 including the total cost or the cost per
14 minute and any other fees for that service,
15 including any cost imposed for changing
16 the subscriber's selection of service provid-
17 ers;

18 (B) not submit or execute a change in a
19 subscriber's selection of the provider of any
20 telephone exchange service or telephone toll
21 service in violation of the verification proce-
22 dures prescribed by the Federal Communica-
23 tions Commission pursuant to section 258 of
24 the Communications Act of 1934;

1 (C) in the case of an advertisement or so-
2 licitation which offers a prize or award or a
3 service or product at no cost or for a reduced
4 cost, clearly and conspicuously disclose the odds
5 of being able to receive such prize, award, serv-
6 ice, or product at no cost or reduced cost, or,
7 if such odds are not calculable in advance, dis-
8 close the factors determining such odds; and

9 (D) comply with such additional standards
10 as the Commission may prescribe to prevent
11 unfair or abusive practices.

12 (2) ACCESS TO INFORMATION.—The Commis-
13 sion shall by rule require a common carrier that uses
14 any person other than an employee of such carrier
15 to solicit changes in the provider of any telephone
16 exchange service or telephone toll service to make
17 available to the Commission any contracts, records,
18 and financial information maintained by such carrier
19 relating to the use of such person to make such so-
20 licitations.

21 (3) EVASIONS.—The rules issued by the Com-
22 mission under this section shall include provisions to
23 prohibit unfair or deceptive acts or practices that
24 evade such rules or undermine the rights provided to

1 telephone exchange service or telephone toll service
2 subscribers under this title.

3 (4) TREATMENT OF RULES.—A rule issued
4 under this subsection shall be treated as a rule is-
5 sued under section 18(a)(1)(B) of the Federal Trade
6 Commission Act (15 U.S.C. 57a(a)(1)(B)).

7 (b) RULEMAKING.—The Commission shall prescribe
8 the rules under subsection (a) within 270 days after the
9 date of enactment of this Act. Such rules shall be pre-
10 scribed in accordance with section 553 of title 5, United
11 States Code.

12 (c) ENFORCEMENT.—Any violation of any rule pre-
13 scribed under subsection (a) shall be treated as a violation
14 of a rule respecting unfair or deceptive acts or practices
15 under section 5 of the Federal Trade Commission Act (15
16 U.S.C. 45). Notwithstanding section 5(a)(2) of such Act
17 (15 U.S.C. 45(a)(2)), communications common carriers
18 shall be subject to the jurisdiction of the Commission for
19 purposes of this title.

20 **SEC. 202. ACTIONS BY STATES.**

21 (a) IN GENERAL.—Whenever an attorney general of
22 any State has reason to believe that the interests of the
23 residents of that State have been or are being threatened
24 or adversely affected because any person has engaged or
25 is engaging in a pattern or practice which violates any rule

1 of the Commission under section 201(a), the State may
2 bring a civil action on behalf of its residents in an appro-
3 priate district court of the United States to enjoin such
4 pattern or practice, to enforce compliance with such rule
5 of the Commission, to obtain damages on behalf of their
6 residents, or to obtain such further and other relief as the
7 court may deem appropriate.

8 (b) NOTICE.—The State shall serve prior written no-
9 tice of any civil action under subsection (a) upon the Com-
10 mission and provide the Commission with a copy of its
11 complaint, except that if it is not feasible for the State
12 to provide such prior notice, the State shall serve such
13 notice immediately upon instituting such action. Upon re-
14 ceiving a notice respecting a civil action, the Commission
15 shall have the right (1) to intervene in such action, (2)
16 upon so intervening, to be heard on all matters arising
17 therein, and (3) to file petitions for appeal.

18 (c) VENUE.—Any civil action brought under this sec-
19 tion in a district court of the United States may be
20 brought in the district wherein the defendant is found or
21 is an inhabitant or transacts business or wherein the viola-
22 tion occurred or is occurring, and process in such cases
23 may be served in any district in which the defendant is
24 an inhabitant or wherever the defendant may be found.

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

8 (e) EFFECT ON STATE COURT PROCEEDINGS.—
9 Nothing contained in this section shall prohibit an author-
10 ized State official from proceeding in State court on the
11 basis of an alleged violation of any general civil or criminal
12 antifraud statute of such State.

13 (f) LIMITATION.—Whenever the Commission has in-
14 stituted a civil action for violation of any rule or regulation
15 under this Act, no State may, during the pendency of such
16 action instituted by the Commission, subsequently insti-
17 tute a civil action against any defendant named in the
18 Commission’s complaint for violation of any rule as alleged
19 in the Commission’s complaint.

20 (g) ACTIONS BY OTHER STATE OFFICIALS.—

21 (1) Nothing contained in this section shall pro-
22 hibit an authorized State official from proceeding in
23 State court on the basis of an alleged violation of
24 any general civil or criminal statute of such State.

1 (2) In addition to actions brought by an attor-
2 ney general of a State under subsection (a), such an
3 action may be brought by officers of such State who
4 are authorized by the State to bring actions in such
5 State for protection of consumers and who are des-
6 ignated by the Commission to bring an action under
7 subsection (a) against persons that the Commission
8 has determined have or are engaged in a pattern or
9 practice which violates a rule of the Commission
10 under section 201(a).

11 **SEC. 203. ADMINISTRATION AND APPLICABILITY OF TITLE.**

12 (a) **IN GENERAL.**—Except as otherwise provided in
13 section 202, this title shall be enforced by the Commission
14 under the Federal Trade Commission Act (15 U.S.C. 41
15 et seq.). Consequently, no activity which is outside the ju-
16 risdiction of that Act shall be affected by this Act, except
17 for purposes of this title.

18 (b) **ACTIONS BY THE COMMISSION.**—The Commis-
19 sion shall prevent any person from violating a rule of the
20 Commission under section 201 in the same manner, by
21 the same means, and with the same jurisdiction, powers,
22 and duties as though all applicable terms and provisions
23 of the Federal Trade Commission Act (15 U.S.C. 41 et
24 seq.) were incorporated into and made a part of this title.
25 Any person who violates such rule shall be subject to the

1 penalties and entitled to the privileges and immunities
2 provided in the Federal Trade Commission Act in the
3 same manner, by the same means, and with the same ju-
4 risdiction, power, and duties as though all applicable terms
5 and provisions of the Federal Trade Commission Act were
6 incorporated into and made a part of this title.

7 **SEC. 204. DEFINITIONS.**

8 For purposes of this title:

9 (1) The terms “telephone exchange service” and
10 “telephone toll service” have the meaning provided
11 in section 3 of the Communications Act of 1934.

12 (2) The term “attorney general” means the
13 chief legal officer of a State.

14 (3) The term “State” means any State of the
15 United States, the District of Columbia, Puerto
16 Rico, the Northern Mariana Islands, and any terri-
17 tory or possession of the United States.

18 (4) The term “Commission” means the Federal
19 Trade Commission.

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