

105TH CONGRESS  
2D SESSION

# S. 1618

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by telecommunications carriers, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 1998

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

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## A BILL

To amend the Communications Act of 1934 to improve the protection of consumers against “slamming” by 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,*

3 **SECTION 1. IMPROVED PROTECTION FOR CONSUMERS**  
4 **AGAINST “SLAMMING” BY TELECOMMUNI-**  
5 **CATIONS CARRIERS.**

6 (a) VERIFICATION OF AUTHORIZATION.—Subsection  
7 (a) of section 258 of the Communications Act of 1934 (47  
8 U.S.C. 258) is amended to read as follows:

9 “(a) PROHIBITION.—

1           “(1) IN GENERAL.—No telecommunications  
2 carrier shall submit or execute a change in a sub-  
3 scriber’s selection of a provider of telephone ex-  
4 change service or telephone toll service except in ac-  
5 cordance with this section and such verification pro-  
6 cedures as the Commission shall 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 section, the telecommunications carrier  
12 shall, at a minimum, require the subscriber—

13                   “(i) to acknowledge the type of service  
14 to be changed as a result of the selection;

15                   “(ii) to affirm the subscriber’s intent  
16 to select the provider as the provider of  
17 that service;

18                   “(iii) to affirm that the subscriber is  
19 authorized to select the provider of that  
20 service for the telephone number in ques-  
21 tion;

22                   “(iv) to acknowledge that the selection  
23 of the provider will result in a change in  
24 providers of that service;

1           “(v) to acknowledge that the individ-  
2           ual making the oral communication is the  
3           subscriber; and

4           “(vi) to provide such other informa-  
5           tion as the Commission considers appro-  
6           priate 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 verification of a  
14          change in telephone exchange service or  
15          telephone toll service provider in oral, writ-  
16          ten, or electronic form; and

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          “(3) INTRASTATE SERVICES.—Nothing in this  
22          section shall preclude any State commission from en-  
23          forcing such procedures with respect to intrastate  
24          services.

1           “(4) SECTION NOT TO APPLY TO WIRELESS.—

2           This section does not apply to a provider of commer-  
3           cial mobile service, as that term is defined in section  
4           332(d)(1) of this Act.”.

5           (b) RESOLUTION OF COMPLAINTS.—Section 258 of  
6           the Communications Act of 1934 (47 U.S.C. 258) is  
7           amended by adding at the end thereof the following:

8           “(c) NOTICE TO SUBSCRIBER.—Whenever there is a  
9           change in a subscriber’s selection of a provider of tele-  
10          phone exchange service or telephone toll service, the tele-  
11          communications carrier selected shall notify the subscriber  
12          in writing, not more than 15 days after the change is exe-  
13          cuted, of the change, the date on which the change was  
14          effected, and the name of the individual who authorized  
15          the change.

16          “(d) RESOLUTION OF COMPLAINTS.—

17                  “(1) PROMPT RESOLUTION.—

18                          “(A) IN GENERAL.—The Commission shall  
19                          prescribe a period of time, not in excess of 120  
20                          days, for a telecommunications carrier to re-  
21                          solve a complaint by a subscriber concerning an  
22                          unauthorized change in the subscriber’s selec-  
23                          tion of a provider of telephone exchange service  
24                          or telephone toll service.

1           “(B) UNRESOLVED COMPLAINTS.—If a  
2 telecommunications carrier fails to resolve a  
3 complaint within the time period prescribed by  
4 the Commission, then, within 10 days after the  
5 end of that period, the telecommunications car-  
6 rier shall—

7           “(i) notify the subscriber in writing of  
8 the subscriber’s right to file a complaint  
9 with the Commission concerning the unre-  
10 solved complaint, the subscriber’s rights  
11 under this section, and all other remedies  
12 available to the subscriber concerning un-  
13 authorized changes;

14           “(ii) inform the subscriber in writing  
15 of the procedures prescribed by the Com-  
16 mission for filing such a complaint; and

17           “(iii) provide the subscriber a copy of  
18 any evidence in the carrier’s possession  
19 showing that the change in the subscriber’s  
20 provider of telephone exchange service or  
21 telephone toll service was submitted or exe-  
22 cuted in accordance with the verification  
23 procedures prescribed under subsection (a).

24           “(2) RESOLUTION BY COMMISSION.—The Com-  
25 mission shall provide a simplified process for resolv-

1 ing complaints under paragraph (1)(B). The sim-  
2 plified procedure shall preclude the use of interroga-  
3 tories, depositions, discovery, or other procedural  
4 techniques that might unduly increase the expense,  
5 formality, and time, involved in the process. The  
6 Commission shall issue an order resolving any such  
7 complain at the earliest date practicable, but in no  
8 event later than—

9 “(A) 150 days after the date on which it  
10 received the complaint, with respect to liability  
11 issues; and

12 “(B) 90 days after the date on which it re-  
13 solves a complaint, with respect to damages  
14 issues, if such additional time is necessary.

15 “(3) DAMAGES AWARDED BY COMMISSION.—In  
16 resolving a complaint under paragraph (1)(B), the  
17 Commission may award damages equal to the great-  
18 er of \$500 or the amount of actual damages. The  
19 Commission may, in its discretion, increase the  
20 amount of the award to an amount equal to not  
21 more than 3 times the amount available under the  
22 preceding sentence.

23 “(e) PENALTY.—

24 “(1) IN GENERAL.—Unless the Commission de-  
25 termines that there are mitigating circumstances,

1 violation of subsection (a) is punishable by a fine  
2 of not less than \$40,000 for the first offense, and  
3 not less than \$150,000 for each subsequent offense.

4 “(2) FAILURE TO NOTIFY TREATED AS VIOLA-  
5 TION OF SUBSECTION (a).—If a telecommunications  
6 carrier fails to comply with the requirements of sub-  
7 section (d)(1)(B), then that failure shall be treated  
8 as a violation of subsection (a).

9 “(f) RECOVERY OF FINES.—The Commission may  
10 take such action as may be necessary—

11 “(1) to collect any fines it imposes under this  
12 section; and

13 “(2) on behalf of any subscriber, any damages  
14 awarded the subscriber under this section.”.

15 (c) STATE RIGHT-OF-ACTION.—Section 258 of the  
16 Communications Act of 1934 (47 U.S.C. 258), as amend-  
17 ed by subsection (b), is amended by adding at the end  
18 thereof the following:

19 “(g) ACTIONS BY STATES.—

20 “(1) AUTHORITY OF STATES.—Whenever the  
21 attorney general of a State, or an official or agency  
22 designated by a State, has reason to believe that a  
23 telecommunications carrier has engaged or is engag-  
24 ing in a pattern or practice of changing telephone  
25 exchange service or telephone toll service provider

1 without authority from subscribers in that State in  
2 violation of this section or the regulations prescribed  
3 under this section, the State may bring a civil action  
4 on behalf of its residents to enjoin such unauthor-  
5 ized changes, an action to recover for actual mone-  
6 etary loss or receive \$500 in damages for each viola-  
7 tion, or both such actions. If the court finds the de-  
8 fendant willfully or knowingly violated such regula-  
9 tions, the court may, in its discretion, increase the  
10 amount of the award to an amount equal to not  
11 more than 3 times the amount available under the  
12 preceding sentence.

13 “(2) EXCLUSIVE JURISDICTION OF FEDERAL  
14 COURTS.—The district courts of the United States,  
15 the United States courts of any territory, and the  
16 District Court of the United States for the District  
17 of Columbia shall have exclusive jurisdiction over all  
18 civil actions brought under this subsection. Upon  
19 proper application, such courts shall also have juris-  
20 diction to issue writs of mandamus, or orders afford-  
21 ing like relief, commanding the defendant to comply  
22 with the provisions of this section or regulations pre-  
23 scribed under this section, including the requirement  
24 that the defendant take such action as is necessary  
25 to remove the danger of such violation. Upon a prop-

1 er showing, a permanent or temporary injunction or  
2 restraining order shall be granted without bond.

3 “(3) RIGHTS OF COMMISSION.—The State shall  
4 serve prior written notice of any such civil action  
5 upon the Commission and provide the Commission  
6 with a copy of its complaint, except in any case  
7 where such prior notice is not feasible, in which case  
8 the State shall serve such notice immediately upon  
9 instituting such action. The Commission shall have  
10 the right—

11 “(A) to intervene in the action;

12 “(B) upon so intervening, to be heard on  
13 all matters arising therein; and

14 “(C) to file petitions for appeal.

15 “(4) VENUE; SERVICE OF PROCESS.—Any civil  
16 action brought under this subsection in a district  
17 court of the United States may be brought in the  
18 district wherein the defendant is found or is any in-  
19 habitant or transacts business or wherein the viola-  
20 tion occurred or is occurring, and process in such  
21 cases may be served in any district in which the de-  
22 fendant is an inhabitant or where the defendant may  
23 be found.

24 “(5) INVESTIGATORY POWERS.—For purposes  
25 of bringing any civil action under this subsection,

1 nothing in this section shall prevent the attorney  
2 general of a State, or an official or agency des-  
3 ignated by a State, from exercising the powers con-  
4 ferred on the attorney general or such official by the  
5 laws of such State to conduct investigations or to  
6 administer oaths or affirmations or to compel the  
7 attendance of witnesses or the production of docu-  
8 mentary and other evidence.

9 “(6) EFFECT ON STATE COURT PROCEED-  
10 INGS.—Nothing contained in this subsection shall be  
11 construed to prohibit an authorized State official  
12 from proceeding in State court on the basis of an al-  
13 leged violation of any general civil or criminal stat-  
14 ute of such State.

15 “(7) LIMITATION.—Whenever the Commission  
16 has instituted a civil action for violation of regula-  
17 tions prescribed under this section, no State may,  
18 during the pendency of such action instituted by the  
19 Commission, subsequently institute a civil action  
20 against any defendant named in the Commission’s  
21 complaint for any violation as alleged in the Com-  
22 mission’s complaint.

23 “(8) DEFINITION.—As used in this subsection,  
24 the term ‘attorney general’ means the chief legal of-  
25 ficer of a State.

1       “(h) STATE LAW NOT PREEMPTED.—Nothing in this  
2 section or in the regulations prescribed under this section  
3 shall preempt any State law that imposes more restrictive  
4 intrastate requirements or regulations on, or which pro-  
5 hibits unauthorized changes in, a subscriber’s selection of  
6 a provider of telephone exchange service or telephone toll  
7 service.”.

8       **SEC. 2. REPORT ON TELEMARKETING PRACTICES.**

9       (a) IN GENERAL.—The Federal Communications  
10 Commission shall issue a report within 180 days after the  
11 date of enactment of this Act on the telemarketing prac-  
12 tices used by telecommunications carriers or their agents  
13 or employees for the purpose of soliciting changes by sub-  
14 scribers of their telephone exchange service or telephone  
15 toll service provider.

16       (b) SPECIFIC ISSUES.—As part of the report required  
17 under subsection (a), the Commission shall include find-  
18 ings on—

19               (1) the extent to which imposing penalties on  
20 telemarketers would deter unauthorized changes in a  
21 subscriber’s selection of a provider of telephone ex-  
22 change service or telephone toll service;

23               (2) the need for rules requiring third-party ver-  
24 ification of changes in a subscriber’s selection of  
25 such a provider; and

1           (3) whether wireless carriers should continue to  
2       be exempt from the verification and retention re-  
3       quirements imposed by section 258(a)(2)(B)(iii) of  
4       the Communications Act of 1934 (47 U.S.C.  
5       258(a)(2)(B)(iii)).

6       (c) RULEMAKING.—If the Commission determines  
7       that particular telemarketing practices are being used with  
8       the intention to mislead, deceive, or confuse subscribers  
9       and that they are likely to mislead, deceive, or confuse  
10      subscribers, then the Commission shall initiate a rule-  
11      making to prohibit the use of such practices within 120  
12      days after the completion of its report.

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