

LEGISLATIVE BILL 150

Approved by the Governor May 5, 1999

Introduced by C. Peterson, 35; Bromm, 23; Matzke, 47; Dw. Pedersen, 39; Suttle, 10; Thompson, 14; Baker, 44; Hudkins, 21; Janssen, 15; Jones, 43; D. Pederson, 42; Brown, 6; Redfield, 12; Landis, 46; Bruning, 3; Schimek, 27; Smith, 48

AN ACT relating to telecommunications; to amend sections 75-109, 75-604, 86-802, and 86-1407, Revised Statutes Supplement, 1998; to adopt the Telephone Consumer Slamming Prevention Act; to change provisions relating to common and contract carriers; to define terms; to harmonize provisions; to provide severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 11 of this act shall be known and may be cited as the Telephone Consumer Slamming Prevention Act.

Sec. 2. It is the policy of this state to ensure that all subscribers are protected from the unauthorized switching of a telecommunications company selected by the subscriber to provide telecommunications service.

Sec. 3. For purposes of the Telephone Consumer Slamming Prevention Act, the definitions found in section 86-802 shall be used.

Sec. 4. Except as provided in section 86-808, the Telephone Consumer Slamming Prevention Act shall apply to all telecommunications companies providing basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and any other telecommunications services to subscribers in this state.

Sec. 5. Except when a subscriber initiates or changes service by contacting the telecommunications company directly, no telecommunications company shall submit or execute a change in a subscriber's provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service without:

- (1) Written change authorization from the subscriber;
- (2) Toll-free electronic authorization placed from the telephone number which is the subject of the change order; or
- (3) Oral authorization obtained by an independent third party.

A separate and distinct authorization shall be required to submit or execute a change of service for any or all of the following services provided to subscribers in this state: Basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, or any other telecommunications services.

Sec. 6. Within thirty days after a subscriber changes his or her authorized provider of basic local exchange service, intra-LATA interexchange service, or inter-LATA interexchange service, the new authorized service provider shall provide to such subscriber written confirmation of such change. The written confirmation shall (1) describe clearly and simply the nature of the subscription change, (2) not be a part of, or attached to, any other document, (3) not contain any promotion, offer, or inducement, and (4) be mailed to the subscriber's billing address.

Sec. 7. (1) The procedures in this section shall apply only after a subscriber has determined that an unauthorized change has occurred in violation of section 5 of this act and the subscriber has paid charges to an allegedly unauthorized telecommunications company. Upon receiving notification from the subscriber or a company that a subscriber has been subjected to an unauthorized change and that the subscriber has paid charges to an allegedly unauthorized company, the properly authorized company shall, within thirty days, request from the allegedly unauthorized company proof of verification of the subscriber's authorization to change companies. Within ten days after receiving such request, the allegedly unauthorized company shall forward to the authorized company either:

- (a) Proof of verification of the subscriber's authorization to change companies; or
- (b) The following:
 - (i) An amount equal to all charges paid by the subscriber to the unauthorized company;
 - (ii) An amount equal to any charge required to return the subscriber to his or her properly authorized company, if applicable; and
 - (iii) Copies of any telephone bills issued from the unauthorized

company to the subscriber.

(2) If an authorized telecommunications company incurs any billing and collection expenses in collecting charges from the unauthorized company, the unauthorized company shall reimburse the authorized company for reasonable expenses.

(3) When a subscriber notifies the unauthorized company, rather than the authorized company, of an unauthorized change, the unauthorized company shall immediately notify the authorized company.

(4) Upon receipt from the unauthorized company of the amount described in subdivision (1)(b)(i) of this section, the authorized company shall provide a refund or credit to the subscriber of all charges paid in excess of what the authorized company would have charged the subscriber absent the unauthorized change. If the authorized company has not received from the unauthorized company an amount equal to charges paid by the subscriber to the unauthorized company, the authorized company is not required to provide any refund or credit. The authorized company shall, within sixty days after it receives notification of the unauthorized change, inform the subscriber if it has failed to collect any charges from the unauthorized company and inform the subscriber of his or her right to pursue a claim against the unauthorized company for a refund of all charges paid to the unauthorized company.

(5) When possible, the properly authorized company shall reinstate the subscriber in any premium program in which that subscriber was enrolled prior to the unauthorized change if that subscriber's participation in the premium program was terminated because of the unauthorized change. If the subscriber has paid charges to the unauthorized company, the properly authorized company shall also provide or restore to the subscriber any premiums to which the subscriber would have been entitled had the unauthorized change not occurred. The authorized company shall comply with the requirements of this subsection regardless of whether it is able to recover from the unauthorized company any charges that were paid by the subscriber.

(6) The Public Service Commission may from time to time review and adjust the reimbursement procedures in a manner consistent with federal law.

Sec. 8. If the Public Service Commission finds that a telecommunications company has violated section 7 of this act, the commission shall order the company to take corrective action as necessary and the company may be subject to administrative penalties pursuant to section 9 of this act. Any money collected by the commission pursuant to this section shall be remitted to the State Treasurer for credit to the permanent school fund.

Sec. 9. (1) The Public Service Commission may, after hearing, impose an administrative penalty for a violation of the Telephone Consumer Slamming Prevention Act. The penalty for a violation shall not exceed two thousand dollars. Every violation associated with a specific access line within the state shall be considered a separate and distinct violation.

(2) The amount of an administrative penalty shall be based on:

(a) The nature, circumstances, extent, and gravity of a prohibited act;

(b) The history of previous violations;

(c) The amount necessary to deter future violations; and

(d) Any efforts to correct the violation.

(3) Any administrative penalty may be appealed, and the appeal shall be in accordance with sections 75-136 to 75-139.

Sec. 10. The Public Service Commission shall adopt and promulgate competitively neutral rules and regulations to implement the Telephone Consumer Slamming Prevention Act, including rules and regulations that:

(1) Ensure that subscribers are protected from deceptive practices in the obtaining of authorizations and verifications required by section 5 of this act;

(2) Are applicable to all basic local exchange service, intra-LATA interexchange service, inter-LATA interexchange service, and other telecommunications services provided by telecommunications companies in this state;

(3) Maintain records, provide procedures, and establish performance standards for telecommunications companies with respect to changes in an authorized telecommunications company pursuant to the act;

(4) Establish and administer a slamming complaint system for subscribers of telecommunications service and enforce the provisions of the act; and

(5) Are consistent with the rules and regulations prescribed by the Federal Communications Commission for the selection of telecommunications companies. The Public Service Commission may adopt and promulgate rules and regulations consistent with any regulations of the Federal Communications Commission which are consistent with the purposes of the act.

Sec. 11. (1) No telecommunications company shall initiate or bill additional telecommunications services not required by the Public Service Commission to be offered and for which the subscriber did not explicitly request or subscribe. If (a) a charge is assessed on a per-use basis for a service described in this subsection and (b) the subscriber notifies the providing telecommunications company that the subscriber did not utilize the service or the subscriber did not authorize the utilization of the service, the providing telecommunications company shall initiate a refund of the charge or apply the charge as a credit to the subscriber's next monthly bill.

(2) If a providing telecommunications company receives a notification pursuant to subdivision (1)(b) of this section, the company shall inform the subscriber of the ability to block services from future use by the subscriber and shall block the services from future use by the subscriber if the subscriber so requests. If a subscriber requests that the company not block the service or later requests to have the block lifted, the subscriber shall be responsible for charges caused by the future utilization of such service. The company shall not charge a reoccurring fee for blocking such service.

Sec. 12. Section 75-109, Revised Statutes Supplement, 1998, is amended to read:

75-109. (1) Except as provided in sections 19-4603, 86-803, and 86-808, the commission shall regulate and exercise general control as provided by law over all common and contract carriers, ~~which term is hereby defined as all carriers, including contract carriers,~~ engaged in the transportation of freight or passengers for hire or furnishing ~~communication~~ telecommunications services for hire in Nebraska intrastate commerce.

(2) The commission is authorized to do all things reasonably necessary and appropriate to implement the federal Telecommunications Act of 1996, Public Law 104-104, including section 252 of the act which establishes specific procedures for negotiation and arbitration of interconnection agreements between telecommunications companies. Interconnection agreements approved by the commission pursuant to section 252 of the act may contain such enforcement mechanisms and procedures that the commission determines to be consistent with the establishment of fair competition in Nebraska telecommunications markets. The authority granted to the commission pursuant to this subsection shall be broadly construed in a manner consistent with the federal Telecommunications Act of 1996.

Sec. 13. Section 75-604, Revised Statutes Supplement, 1998, is amended to read:

75-604. (1) Except as provided in section 86-805, no person, firm, partnership, limited liability company, corporation, cooperative, or association shall offer any telecommunications service or shall construct new telecommunications facilities in or extend existing telecommunications facilities into the territory of another telecommunications company for the purpose of providing any telecommunications service as either a telecommunications common carrier or telecommunications contract carrier without first making an application for and receiving from the commission a certificate of convenience and necessity as a telecommunications common carrier or a permit as a telecommunications contract carrier, after due notice and hearing under the rules and regulations of the commission. The required certificate for telecommunications common carriers and required permit for telecommunications contract carriers are necessary to preserve the integrity of a ubiquitous network, to preserve and advance universal service, and to ensure the delivery of essential and emergency telecommunications services.

(2) If a telecommunications company holds a certificate of convenience and necessity as a telecommunications common carrier, it shall not be required to obtain a permit as a telecommunications contract carrier.

(3) The commission may waive applicability of subsection (1) of this section as to the provision of intra-LATA interexchange services by duly adopted and promulgated rules and regulations applicable to all telecommunications companies providing such services, and after such waiver, certification for and provision of intra-LATA interexchange services shall be governed by the statutes, rules, and regulations for certification for and provision of inter-LATA interexchange services.

(4) The commission may establish such just and reasonable classifications of groups of telecommunications common carriers and telecommunications contract carriers taking into consideration the special nature of the services performed by such carriers. The commission may adopt and promulgate such just and reasonable rules, regulations, and requirements to be observed by a carrier so classified or grouped as the commission deems necessary or desirable and in the public interest.

Sec. 14. Section 86-802, Revised Statutes Supplement, 1998, is

amended to read:

86-802. For purposes of sections 75-109, 75-604, 75-609, 75-609.01, and 86-801 to 86-811, unless the context otherwise requires:

(1) Basic local exchange rate means the flat monthly charge for an access line, whether the service is provided on a flat or measured basis, imposed by a telecommunications company for basic local exchange service, but does not include any charges or taxes imposed by or resulting from action by a governmental body which are billed by a telecommunications company to its customers;

(2) Basic local exchange service means the access and transmission of two-way switched voice communications within a local exchange area;

(3) Business service means telecommunications service which is used for occupational, professional, or institutional purposes;

(4) Class of subscribers means a group of customers for which a telecommunications company has established a distinct pricing plan for telecommunications service;

(5) Commission means the Public Service Commission;

(6) Extended area service means a telecommunications service which groups two or more exchanges to allow subscribers of one exchange in the group to place and receive two-way switched communications to and from subscribers in one or more other exchanges in the group without an interexchange toll charge;

(7) Federal act means the federal Communications Act of 1934, as amended, including the federal Telecommunications Act of 1996, Public Law 104-104;

(8) Interexchange service means the access and transmission of communications between two or more local exchange areas, except for two-way switched communications between local exchanges that are grouped for extended area service;

(9) Inter-LATA interexchange service means interexchange service originating and terminating in different LATAs;

(10) Intra-LATA interexchange service means interexchange service originating and terminating within the same LATA;

(11) LATA means local access transport area as defined by applicable federal law, rules, or regulations;

(12) Local exchange area means a territorial unit established by a telecommunications company for the administration of telecommunications service within a specific area generally encompassing a city, town, or village and its environs as described in maps filed with and approved by the Public Service Commission;

(13) Residence service means telecommunications service which is furnished to a dwelling and which is used for personal or domestic purposes and not for business, professional, or institutional purposes;

(14) Telecommunications means the transmission, between or among points specified by the subscriber, of information of the subscriber's choosing, without a change in the form or content of the information as sent or received;

(15) Telecommunications common carrier means a provider of telecommunications services for hire which offers its services to the general public at large in Nebraska intrastate commerce;

(16) Telecommunications company means any person, firm, partnership, limited liability company, corporation, association, or governmental entity offering telecommunications service for a fee in Nebraska intrastate commerce;

(17) Telecommunications contract carrier means a provider of telecommunications services for hire, other than as a common carrier, in Nebraska intrastate commerce; and

(18) ~~(16)~~ Telecommunications service means the offering of telecommunications for a fee.

Sec. 15. Section 86-1407, Revised Statutes Supplement, 1998, is amended to read:

86-1407. The fund may be administered by a neutral third-party administrator. The commission shall oversee the preparation and selection process of the administrator through a request for proposal process established by the commission. If a third-party administrator is selected, the administrator shall serve at the will of the commission. The administrator shall: Gather the necessary data to estimate fund obligations; notify telecommunications companies of their obligations to the fund; collect and distribute money from the fund in accordance with the Nebraska Telecommunications Universal Service Fund Act and the rules and regulations established by the commission; and notify the commission of any violations of the act and rules and regulations by telecommunications companies with respect to the fund. The commission shall audit the administrator to ensure the

duties are being performed in accordance with the act and its rules and regulations. Any telecommunications company not meeting its obligation to the fund shall not be eligible to receive payments from the fund, shall be subject to administrative penalties to be determined by the commission, and shall be subject to the revocation of any certificate or permit issued pursuant to section 75-604 or any predecessor statute.

Sec. 16. If any section of this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 17. Original sections 75-109, 75-604, 86-802, and 86-1407, Revised Statutes Supplement, 1998, are repealed.

Sec. 18. Since an emergency exists, this act takes effect when passed and approved according to law.