

105TH CONGRESS
2^D SESSION

H. R. 3888

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

IN THE HOUSE OF REPRESENTATIVES

MAY 14, 1998

Mr. TAUZIN (for himself, Mr. BASS, Mr. GOODLATTE, Mr. GILLMOR, Mr. BURR of North Carolina, Mr. SKEEN, Mr. FRANKS of New Jersey, and Mr. BACHUS) introduced the following bill; which was referred to the Committee on Commerce

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. SHORT TITLE.**

4 This Act may be cited as the “Anti-slamming Amend-
5 ments Act”.

TITLE I—SLAMMING**SEC. 101. IMPROVED PROTECTION FOR CONSUMERS.**

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

“(a) PROHIBITION.—

“(1) IN GENERAL.—No telecommunications carrier or reseller of telecommunications services shall submit or execute a change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service except in accordance with this section and such verification procedures as the Commission shall prescribe.

“(2) VERIFICATION.—

“(A) IN GENERAL.—In order to verify a subscriber’s selection of a telephone exchange service or telephone toll service provider under this section, the telecommunications carrier or reseller shall, at a minimum, require the subscriber—

“(i) to affirm that the subscriber is authorized to select the provider of that service for the telephone number in question;

1 “(ii) to acknowledge the type of serv-
2 ice to be changed as a result of the selec-
3 tion;

4 “(iii) to affirm the subscriber’s intent
5 to select the provider as the provider of
6 that service;

7 “(iv) to acknowledge that the selection
8 of the provider will result in a change in
9 providers of that service; and

10 “(v) to provide such other information
11 as the Commission considers appropriate
12 for the protection of the subscriber.

13 “(B) ADDITIONAL REQUIREMENTS.—The
14 procedures prescribed by the Commission to
15 verify a subscriber’s selection of a provider
16 shall—

17 “(i) preclude the use of negative op-
18 tion marketing;

19 “(ii) provide for a complete copy of
20 verification of a change in telephone ex-
21 change service or telephone toll service pro-
22 vider in oral, written, or electronic form;

23 “(iii) require the retention of such
24 verification in such manner and form and

1 for such time as the Commission considers
2 appropriate;

3 “(iv) mandate that verification occur
4 in the same language as that in which the
5 change was solicited; and

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

8 “(3) ACTION BY UNAFFILIATED RESELLER NOT
9 IMPUTED TO CARRIER.—No telecommunications car-
10 rier may be found to be in violation of this section
11 solely on the basis of a violation of this section by
12 an unaffiliated reseller of that carrier’s services or
13 facilities.

14 “(4) FREEZE OPTION PROTECTED.—The Com-
15 mission may not take action under this section to
16 limit or inhibit a subscriber’s ability to require that
17 any change in the subscriber’s choice of a provider
18 of interexchange service not be effected unless the
19 change is expressly and directly communicated by
20 the subscriber to the subscriber’s existing telephone
21 exchange service provider.

22 “(5) APPLICATION TO WIRELESS.—This section
23 does not apply to a provider of commercial mobile
24 service.”.

1 (b) LIABILITY FOR CHARGES.—Subsection (b) of
2 such section is amended—

3 (1) by striking “(b) LIABILITY FOR
4 CHARGES.—Any telecommunications carrier” and
5 inserting the following:

6 “(b) LIABILITY FOR CHARGES.—

7 “(1) IN GENERAL.—Any telecommunications
8 carrier or reseller of telecommunications services”;

9 (2) by designating the second sentence as para-
10 graph (3) and inserting at the beginning of such
11 paragraph, as so designated, the following:

12 “(3) CONSTRUCTION OF REMEDIES.—”; and

13 (3) by inserting after paragraph (1), as des-
14 ignated by paragraph (1) of this subsection, the fol-
15 lowing:

16 “(2) SUBSCRIBER PAYMENT OPTION.—

17 “(A) IN GENERAL.—A subscriber whose
18 telephone exchange service or telephone toll
19 service is changed in violation of the provisions
20 of this section, or the procedures prescribed
21 under subsection (a), may elect to pay the car-
22 rier or reseller previously selected by the sub-
23 scriber for any such service received after the
24 change in full satisfaction of amounts due from

1 the subscriber to the carrier or reseller provid-
2 ing such service after the change.

3 “(B) PAYMENT RATE.—Payment for serv-
4 ice under subparagraph (A) shall be at the rate
5 for such service charged by the carrier or re-
6 seller previously selected by the subscriber con-
7 cerned.”.

8 (c) RESOLUTION OF COMPLAINTS.—Section 258 of
9 the Communications Act of 1934 (47 U.S.C. 258) is
10 amended by adding at the end thereof the following:

11 “(c) NOTICE TO SUBSCRIBER.—Whenever there is a
12 change in a subscriber’s selection of a provider of tele-
13 phone exchange service or telephone toll service, the tele-
14 communications carrier or reseller selected shall notify the
15 subscriber in a specific and unambiguous writing, not
16 more than 15 days after the change is processed by the
17 telecommunications carrier or the reseller—

18 “(1) of the subscriber’s new carrier or reseller;

19 and

20 “(2) that the subscriber may request informa-
21 tion regarding the date on which the change was
22 agreed to and the name of the individual who au-
23 thorized the change.

24 “(d) RESOLUTION OF COMPLAINTS.—

25 “(1) PROMPT RESOLUTION.—

1 “(A) IN GENERAL.—The Commission shall
2 prescribe a period of time for a telecommuni-
3 cations carrier or reseller to resolve a complaint
4 by a subscriber concerning an unauthorized
5 change in the subscriber’s selection of a pro-
6 vider of telephone exchange service or telephone
7 toll service not in excess of 120 days after the
8 telecommunications carrier or reseller receives
9 notice from the subscriber of the complaint. A
10 subscriber may at any time pursue such a com-
11 plaint with the Commission, in a State or local
12 administrative or judicial body, or elsewhere.

13 “(B) UNRESOLVED COMPLAINTS.—If a
14 telecommunications carrier or reseller fails to
15 resolve a complaint within the time period pre-
16 scribed by the Commission, then, within 10
17 days after the end of that period, the tele-
18 communications carrier or reseller shall—

19 “(i) notify the subscriber in writing of
20 the subscriber’s right to file a complaint
21 with the Commission and of the subscrib-
22 er’s rights and remedies under this section;

23 “(ii) inform the subscriber in writing
24 of the procedures prescribed by the Com-
25 mission for filing such a complaint; and

1 “(iii) provide the subscriber a copy of
2 any evidence in the carrier’s or reseller’s
3 possession showing that the change in the
4 subscriber’s provider of telephone exchange
5 service or telephone toll service was sub-
6 mitted or executed in accordance with the
7 verification procedures prescribed under
8 subsection (a).

9 “(2) RESOLUTION BY COMMISSION.—

10 “(A) DETERMINATION OF VIOLATION.—

11 The Commission shall provide a simplified proc-
12 ess for resolving complaints under paragraph
13 (1)(B). The simplified procedure shall preclude
14 the use of interrogatories, depositions, discov-
15 ery, or other procedural techniques that might
16 unduly increase the expense, formality, and
17 time involved in the process. The Commission
18 shall determine whether there has been a viola-
19 tion of subsection (a) and shall issue a decision
20 or ruling at the earliest date practicable, but in
21 no event later than 150 days after the date on
22 which it received the complaint.

23 “(B) DETERMINATION OF DAMAGES AND

24 PENALTIES.—If the Commission determines
25 that there has been a violation of subsection

1 (a), it shall issue a decision or ruling determin-
2 ing the amount of the damages and penalties
3 at the earliest practicable date, but in no event
4 later than 90 days after the date on which it
5 issued its decision or ruling under subpara-
6 graph (A).

7 “(3) DAMAGES AWARDED BY COMMISSION.—If
8 a violation of subsection (a) is found by the Commis-
9 sion, the Commission may award damages equal to
10 the greater of \$500 or the amount of actual dam-
11 ages for each violation. The Commission may, in its
12 discretion, increase the amount of the award to an
13 amount equal to not more than 3 times the amount
14 available under the preceding sentence.

15 “(e) CIVIL PENALTIES.—

16 “(1) IN GENERAL.—Unless the Commission de-
17 termines that there are mitigating circumstances,
18 violation of subsection (a) is punishable by a forfeit-
19 ure of not less than \$40,000 for the first offense,
20 and not less than \$150,000 for each subsequent of-
21 fense.

22 “(2) FAILURE TO NOTIFY TREATED AS VIOLA-
23 TION OF SUBSECTION (a).—If a telecommunications
24 carrier or reseller fails to comply with the require-

1 ments of subsection (d)(1)(B), then that failure shall
2 be treated as a violation of subsection (a).

3 “(f) RECOVERY OF FORFEITURES.—The Commission
4 may take such action as may be necessary—

5 “(1) to collect any forfeitures it imposes under
6 this section; and

7 “(2) on behalf of any subscriber, to collect any
8 damages awarded the subscriber under this section.

9 “(g) CHANGE INCLUDES INITIAL SELECTION.—For
10 purposes of this section, the initiation of service to a sub-
11 scriber by a telecommunications carrier or a reseller shall
12 be treated as a change in a subscriber’s selection of a pro-
13 vider of telephone exchange service or telephone toll serv-
14 ice.”.

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

19 “(h) ACTIONS BY STATES.—

20 “(1) IN GENERAL.—The attorney general of a
21 State, or an official or agency designated by a
22 State—

23 “(A) may bring an action on behalf of its
24 residents to recover damages on their behalf
25 under subsection (d)(3); and

1 “(B) may bring an action for the assess-
2 ment of civil penalties under subsection (e),
3 and for purposes of such an action, subsections
4 (d)(3) and (e)(1) shall be applied by substituting
5 ‘the court’ for ‘the Commission’.

6 “(2) EXCLUSIVE JURISDICTION OF FEDERAL
7 COURTS.—The district courts of the United States,
8 the United States courts of any territory, and the
9 District Court of the United States for the District
10 of Columbia shall have exclusive jurisdiction over all
11 actions brought under this section. When a State
12 brings an action under this section, the court in
13 which the action is brought has pendant jurisdiction
14 of any claim brought under the law of that State.
15 Upon proper application, such courts shall also have
16 jurisdiction to issue writs of mandamus, or orders
17 affording like relief, commanding the defendant to
18 comply with the provisions of this section or regula-
19 tions prescribed under this section, including the re-
20 quirement that the defendant take such action as is
21 necessary to remove the danger of such violation.
22 Upon a proper showing, a permanent or temporary
23 injunction or restraining order shall be granted with-
24 out bond.

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

9 “(A) to intervene in the action;

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

12 “(C) to file petitions for appeal.

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

22 “(5) INVESTIGATORY POWERS.—For purposes
23 of bringing any civil action under this subsection,
24 nothing in this section shall prevent the attorney
25 general of a State, or an official or agency des-

1 ignated by a State, from exercising the powers con-
2 ferred on the attorney general or such official by the
3 laws of such State to conduct investigations or to
4 administer oaths or affirmations or to compel the at-
5 tendance of witnesses or the production of documen-
6 tary and other evidence.

7 “(i) STATE LAW NOT PREEMPTED.—

8 “(1) IN GENERAL.—Nothing in this section or
9 in the regulations prescribed under this section shall
10 preempt any State law that imposes more restrictive
11 requirements, regulations, damages, costs, or pen-
12 alties on changes in a subscriber’s service or selec-
13 tion of a provider of telephone exchange service or
14 telephone toll services than are imposed under this
15 section.

16 “(2) EFFECT ON STATE COURT PROCEED-
17 INGS.—Nothing contained in this section shall be
18 construed to prohibit an authorized State official
19 from proceeding in State court on the basis of an al-
20 leged violation of any general civil or criminal stat-
21 ute of such State or any specific civil or criminal
22 statute of such State not preempted by this section.

23 “(3) LIMITATIONS.—Whenever a complaint is
24 pending before the Commission involving a violation
25 of regulations prescribed under this section, no State

1 may, during the pendency of such complaint, insti-
2 tute a civil action against any defendant party to the
3 complaint for any violation affecting the same sub-
4 scriber alleged in the complaint.

5 “(j) REPORTS ON COMPLAINTS.—

6 “(1) REPORTS REQUIRED.—Each telecommuni-
7 cations carrier or reseller shall submit to the Com-
8 mission, quarterly, a report on the number of com-
9 plaints of unauthorized changes in providers of tele-
10 phone exchange service or telephone toll service that
11 are submitted to the carrier or reseller by its sub-
12 scribers. Each report shall specify each provider of
13 service complained of and the number of complaints
14 relating to such provider.

15 “(2) LIMITATION ON SCOPE.—The Commission
16 may not require any information in a report under
17 paragraph (1) other than the information specified
18 in the second sentence of that paragraph.

19 “(3) UTILIZATION.—The Commission shall use
20 the information submitted in reports under para-
21 graph (1) to identify telecommunications carriers or
22 resellers that engage in patterns and practices of un-
23 authorized changes in providers of telephone ex-
24 change service or telephone toll service.

25 “(k) DEFINITIONS.—For purposes of this section:

1 “(1) ATTORNEY GENERAL.—The term ‘attorney
2 general’ means the chief legal officer of a State.

3 “(2) SUBSCRIBER.—The term ‘subscriber’
4 means the person named on the billing statement or
5 account, or any other person authorized to make
6 changes in the providers of telephone exchange serv-
7 ice or telephone toll service.”.

8 (e) REPORT ON CARRIERS EXECUTING UNAUTHOR-
9 IZED CHANGES OF TELEPHONE SERVICE.—

10 (1) REPORT.—Not later than October 31,
11 1998, the Federal Communications Commission
12 shall submit to Congress a report on unauthorized
13 changes of subscribers’ selections of providers of
14 telephone exchange service or telephone toll service.

15 (2) ELEMENTS.—The report shall include the
16 following:

17 (A) A list of the 10 telecommunications
18 carriers or resellers that, during the 1-year pe-
19 riod ending on the date of the report, were sub-
20 ject to the highest number of complaints of hav-
21 ing executed unauthorized changes of subscrib-
22 ers from their selected providers of telephone
23 exchange service or telephone toll service when
24 compared with the total number of subscribers
25 served by such carriers or resellers.

1 (B) The telecommunications carriers or re-
2 sellers, if any, assessed forfeitures under section
3 258(e) of the Communications Act of 1934 (as
4 added by subsection (c)), during that period, in-
5 cluding the amount of each such forfeiture and
6 whether the forfeiture was assessed as a result
7 of a court judgment or an order of the Commis-
8 sion or was secured pursuant to a consent de-
9 cree.

10 **SEC. 102. ADDITIONAL ENFORCEMENT AUTHORITY.**

11 Section 504 of the Communications Act of 1934 (47
12 U.S.C. 504) is amended by adding at the end thereof the
13 following: “Notwithstanding the preceding sentence, the
14 failure of a person to pay a forfeiture imposed for violation
15 of section 258(a) may be used as a basis for revoking,
16 denying, or limiting that person’s operating authority
17 under section 214 or 312.”.

18 **SEC. 103. OBLIGATIONS OF BILLING AGENTS.**

19 (a) IN GENERAL.—Part I of title II of the Commu-
20 nications Act of 1934 (47 U.S.C. 201 et seq.) is amended
21 by adding at the end thereof the following:

22 **“SEC. 231. OBLIGATIONS OF TELEPHONE BILLING AGENTS.**

23 “(a) IN GENERAL.—A billing agent, including a tele-
24 communications carrier or reseller, who issues a bill for

1 telephone exchange service or telephone toll service to a
2 subscriber shall—

3 “(1) state on the bill—

4 “(A) the name and toll-free telephone
5 number of any telecommunications carrier or
6 reseller for the subscriber’s telephone exchange
7 service and telephone toll service;

8 “(B) the identity of the presubscribed car-
9 rier or reseller; and

10 “(C) the charges associated with each car-
11 rier’s or reseller’s provision of telecommuni-
12 cations service during the billing period;

13 “(2) for services other than those described in
14 paragraph (1), state on a separate page—

15 “(A) the name of any company whose
16 charges are reflected on the subscriber’s bill;

17 “(B) the services for which the subscriber
18 is being charged by that company;

19 “(C) the charges associated with that com-
20 pany’s provision of service during the billing pe-
21 riod;

22 “(D) the toll-free telephone number that
23 the subscriber may call to dispute that compa-
24 ny’s charges; and

1 **“SEC. 277. JURISDICTION OVER BILLING SERVICE PROVID-**
2 **ERS.**

3 “The Commission has jurisdiction to assess and re-
4 cover any penalty imposed under title V of this Act against
5 an entity not a telecommunications carrier or reseller to
6 the extent that entity provides billing services for the pro-
7 vision of telecommunications services, or for services other
8 than telecommunications services that appear on a sub-
9 scriber’s telephone bill for telecommunications services,
10 but the Commission may assess and recover such penalties
11 only if that entity knowingly or willfully violates the provi-
12 sions of this Act or any rule or order of the Commission.”.

13 **SEC. 105. REPORT; STUDY.**

14 (a) IN GENERAL.—The Federal Communications
15 Commission shall issue a report within 180 days after the
16 date of enactment of this Act on the telemarketing and
17 other solicitation practices used by telecommunications
18 carriers or resellers or their agents or employees for the
19 purpose of changing the telephone exchange service or
20 telephone toll service provider of a subscriber.

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

24 (1) the extent to which imposing penalties on
25 telemarketers would deter unauthorized changes in a

1 subscriber's selection of a provider of telephone ex-
2 change service or telephone toll service;

3 (2) the need for rules requiring third-party ver-
4 ification of changes in a subscriber's selection of
5 such a provider and independent third party admin-
6 istration of presubscribed interexchange carrier
7 changes; and

8 (3) whether wireless carriers should continue to
9 be exempt from the requirements imposed by section
10 258 of the Communications Act of 1934 (47 U.S.C.
11 258).

12 (c) RULEMAKING.—If the Commission determines
13 that particular telemarketing or other solicitation prac-
14 tices are being used with the intention to mislead, deceive,
15 or confuse subscribers and that they are likely to mislead,
16 deceive, or confuse subscribers, then the Commission shall
17 initiate a rulemaking to prohibit the use of such practices
18 within 120 days after the completion of its report.

1 **TITLE II—SWITCHLESS**
2 **RESELLERS**

3 **SEC. 201. REQUIREMENT FOR SURETY BONDS FROM TELE-**
4 **COMMUNICATIONS CARRIERS OPERATING AS**
5 **SWITCHLESS RESELLERS.**

6 Part I of title II of the Communications Act of 1934
7 (47 U.S.C. 201 et seq.), as amended by section 103 of
8 this Act, is amended by adding at the end the following:

9 **“SEC. 232. SURETY BONDS FROM TELECOMMUNICATIONS**
10 **CARRIERS OPERATING AS SWITCHLESS RE-**
11 **SELLERS.**

12 “(a) REQUIREMENT.—Under such regulations as the
13 Commission shall prescribe, any telecommunications car-
14 rier operating or seeking to operate as a switchless reseller
15 shall furnish to the Commission a surety bond in a form
16 and an amount determined by the Commission to be satis-
17 factory for purposes of this section.

18 “(b) SURETY.—A surety bond furnished pursuant to
19 this section shall be issued by a surety corporation that
20 meets the requirements of section 9304 of title 31, United
21 States Code.

22 “(c) CLAIMS AGAINST BOND.—A surety bond fur-
23 nished under this section shall be available to pay the fol-
24 lowing:

1 “(1) Any fine or penalty imposed against the
2 carrier concerned while operating as a switchless re-
3 seller as a result of a violation of the provisions of
4 section 258 (relating to unauthorized changes in
5 subscriber selections to telecommunications carriers).

6 “(2) Any penalty imposed against the carrier
7 under this section.

8 “(3) Any other fine or penalty, including a for-
9 feiture penalty, imposed against the carrier under
10 this Act.

11 “(d) RESIDENT AGENT.—A telecommunications car-
12 rier operating as a switchless reseller that is not domiciled
13 in the United States shall designate a resident agent in
14 the United States for receipt of service of judicial and ad-
15 ministrative process, including subpoenas.

16 “(e) PENALTIES.—

17 “(1) SUSPENSION.—The Commission may sus-
18 pend the right of any telecommunications carrier to
19 operate as a switchless reseller—

20 “(A) for failure to furnish or maintain the
21 surety bond required by subsection (a);

22 “(B) for failure to designate an agent as
23 required by subsection (d); or

24 “(C) for a violation of section 258 while
25 operating as a switchless reseller.

1 “(2) ADDITIONAL PENALTIES.—In addition to
2 suspension under paragraph (1), any telecommuni-
3 cations carrier operating as a switchless reseller that
4 fails to furnish or maintain a surety bond under this
5 section shall be subject to any forfeiture provided for
6 under sections 503 and 504.

7 “(f) BILLING SERVICES FOR UNBONDED
8 SWITCHLESS RESELLERS.—

9 “(1) PROHIBITION.—No common carrier or bill-
10 ing agent may provide billing services for any serv-
11 ices provided by a switchless reseller unless the
12 switchless reseller—

13 “(A) has furnished the bond required by
14 subsection (a); and

15 “(B) in the case of a switchless reseller not
16 domiciled in the United States, has designated
17 an agent under subsection (d).

18 “(2) PENALTY.—

19 “(A) PENALTY.—Any common carrier or
20 billing agent that knowingly and willfully pro-
21 vides billing services to a switchless reseller in
22 violation of paragraph (1) shall be liable to the
23 United States for a civil penalty not to exceed
24 \$50,000.

1 “(B) APPLICABILITY.—For purposes of
2 subparagraph (A), the provision of services to
3 any particular reseller in violation of paragraph
4 (1) shall constitute a separate violation of that
5 paragraph.

6 “(3) COMMISSION AUTHORITY TO ASSESS AND
7 COLLECT PENALTIES.—The Commission shall have
8 the authority to assess and collect any penalty pro-
9 vided for under this subsection upon a finding by the
10 Commission of a violation of paragraph (1).

11 “(g) RETURN OF BONDS.—

12 “(1) REVIEW.—

13 “(A) IN GENERAL.—The Commission may
14 from time to time review the activities of a tele-
15 communications carrier that has furnished a
16 surety bond under this section for purposes of
17 determining whether or not to retain the bond
18 under this section.

19 “(B) STANDARDS OF REVIEW.—The Com-
20 mission shall prescribe any standards applicable
21 to its review of activities under this paragraph.

22 “(C) FIRST REVIEW.—The Commission
23 may not first review the activities of a carrier
24 under subparagraph (A) before the date that is

1 3 years after the date on which the carrier fur-
2 nishes the bond concerned under this section.

3 “(2) RETURN.—The Commission may return a
4 surety bond as a result of a review under this sub-
5 section.

6 “(h) DEFINITIONS.—In this section:

7 “(1) BILLING AGENT.—The term ‘billing agent’
8 means any entity (other than a telecommunications
9 carrier) that provides billing services for services
10 provided by a telecommunications carrier, or other
11 services, if charges for such services appear on the
12 bill of a subscriber for telecommunications services.

13 “(2) SWITCHLESS RESELLER.—The term
14 ‘switchless reseller’ means a telecommunications car-
15 rier that resells the switched telecommunications
16 service of another telecommunications carrier with-
17 out the use of any switching facilities under its own
18 ownership or control.

19 “(i) DETARIFFING AUTHORITY NOT IMPAIRED.—
20 Nothing in this section is intended to prohibit the Com-
21 mission from adopting rules providing for the permissive
22 detariffing of long-distance telephone companies, if the
23 Commission determines that such permissive detariffing
24 would otherwise serve the public interest, convenience, and
25 necessity.”.

TITLE III—SPAMMING**SEC. 301. REQUIREMENTS RELATING TO TRANSMISSIONS
OF UNSOLICITED COMMERCIAL ELECTRONIC
MAIL.**

(a) INFORMATION TO BE INCLUDED IN TRANSMISSIONS.—

(1) IN GENERAL.—A person who transmits an unsolicited commercial electronic mail message shall cause to appear in each such electronic mail message the information specified in paragraph (2).

(2) COVERED INFORMATION.—The following information shall appear at the beginning of the body of an unsolicited commercial electronic mail message under paragraph (1):

(A) The name, physical address, electronic mail address, and telephone number of the person who initiates transmission of the message.

(B) The name, physical address, electronic mail address, and telephone number of the person who created the content of the message, if different from the information under subparagraph (A).

(C) A statement that further transmissions of unsolicited commercial electronic mail to the recipient by the person who initiates trans-

1 mission of the message may be stopped at no
2 cost to the recipient by sending a reply to the
3 originating electronic mail address with the
4 word “remove” in the subject line.

5 (b) ROUTING INFORMATION.—All Internet routing
6 information contained within or accompanying an elec-
7 tronic mail message described in subsection (a) must be
8 accurate, valid according to the prevailing standards for
9 Internet protocols, and accurately reflect message routing.

10 (c) EFFECTIVE DATE.—The requirements in this sec-
11 tion shall take effect 30 days after the date of enactment
12 of this Act.

13 **SEC. 302. FEDERAL OVERSIGHT OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.**
14

15 (a) TRANSMISSIONS.—

16 (1) IN GENERAL.—Upon notice from a person
17 of the person’s receipt of electronic mail in violation
18 of a provision of section 301 or 305, the Commis-
19 sion—

20 (A) may conduct an investigation to deter-
21 mine whether or not the electronic mail was
22 transmitted in violation of such provision; and

23 (B) if the Commission determines that the
24 electronic mail was transmitted in violation of
25 such provision, may—

1 (i) impose upon the person initiating
2 the transmission a civil fine in an amount
3 not to exceed \$15,000;

4 (ii) commence in a district court of
5 the United States a civil action to recover
6 a civil penalty in an amount not to exceed
7 \$15,000 against the person initiating the
8 transmission;

9 (iii) commence an action in a district
10 court of the United States a civil action to
11 seek injunctive relief; or

12 (iv) proceed under any combination of
13 the authorities set forth in clauses (i), (ii),
14 and (iii).

15 (2) DEADLINE.—The Commission may not take
16 action under paragraph (1)(B) with respect to a
17 transmission of electronic mail more than 2 years
18 after the date of the transmission.

19 (b) ADMINISTRATION.—

20 (1) NOTICE BY ELECTRONIC MEANS.—The
21 Commission shall establish an Internet web site with
22 an electronic mail address for the receipt of notices
23 under subsection (a).

24 (2) INFORMATION ON ENFORCEMENT.—The
25 Commission shall make available through the Inter-

1 net web site established under paragraph (1) infor-
2 mation on the actions taken by the Commission
3 under subsection (a)(1)(B).

4 (3) ASSISTANCE OF OTHER FEDERAL AGEN-
5 CIES.—Other Federal agencies may assist the Com-
6 mission in carrying out its duties under this section.

7 **SEC. 303. ACTIONS BY STATES.**

8 (a) IN GENERAL.—Whenever the attorney general of
9 a State has reason to believe that the interests of the resi-
10 dents of the State have been or are being threatened or
11 adversely affected because any person is engaging in a pat-
12 tern or practice of the transmission of electronic mail in
13 violation of a provision of section 301 or 305, the State,
14 as *parens patriae*, may bring a civil action on behalf of
15 its residents to enjoin such transmission, to enforce com-
16 pliance with such provision, to obtain damages or other
17 compensation on behalf of its residents, or to obtain such
18 further and other relief as the court considers appropriate.

19 (b) NOTICE TO COMMISSION.—

20 (1) NOTICE.—The State shall serve prior writ-
21 ten notice of any civil action under this section on
22 the Commission and provide the Commission with a
23 copy of its complaint, except that if it is not feasible
24 for the State to provide such prior notice, the State

1 shall serve written notice immediately on instituting
2 such action.

3 (2) RIGHTS OF COMMISSION.—On receiving a
4 notice with respect to a civil action under paragraph
5 (1), the Commission shall have the right—

6 (A) to intervene in the action;

7 (B) upon so intervening, to be heard in all
8 matters arising therein; and

9 (C) to file petitions for appeal.

10 (c) ACTIONS BY COMMISSION.—Whenever a civil ac-
11 tion has been instituted by or on behalf of the Commission
12 for violation of a provision of section 301 or 305, no State
13 may, during the pendency of such action, institute a civil
14 action under this section against any defendant named in
15 the complaint in such action for violation of any provision
16 as alleged in the complaint.

17 (d) CONSTRUCTION.—For purposes of bringing a civil
18 action under subsection (a), nothing in this section shall
19 prevent an attorney general from exercising the powers
20 conferred on the attorney general by the laws of the State
21 concerned to conduct investigations or to administer oaths
22 or affirmations or to compel the attendance of witnesses
23 or the production of documentary or other evidence.

24 (e) VENUE; SERVICE OF PROCESS.—Any civil action
25 brought under subsection (a) in a district court of the

1 United States may be brought in the district in which the
2 defendant is found, is an inhabitant, or transacts business
3 or wherever venue is proper under section 1391 of title
4 28, United States Code. Process in such an action may
5 be served in any district in which the defendant is an in-
6 habitant or in which the defendant may be found.

7 (f) ACTIONS BY OTHER STATE OFFICIALS.—Nothing
8 in this section may be construed to prohibit an authorized
9 State official from proceeding in State court on the basis
10 of an alleged violation of any civil or criminal statute of
11 the State concerned.

12 (g) DEFINITIONS.—In this section:

13 (1) ATTORNEY GENERAL.—The term “attorney
14 general” means the chief legal officer of a State.

15 (2) STATE.—The term “State” means any
16 State of the United States, the District of Columbia,
17 Puerto Rico, Guam, American Samoa, the United
18 States Virgin Islands, the Commonwealth of the
19 Northern Mariana Islands, the Republic of the Mar-
20 shall Islands, the Federated States of Micronesia,
21 the Republic of Palau, and any possession of the
22 United States.

23 **SEC. 304. INTERACTIVE COMPUTER SERVICE PROVIDERS.**

24 (a) EXEMPTION FOR CERTAIN TRANSMISSIONS.—

1 (1) EXEMPTION.—Section 301 or 305 shall not
2 apply to a transmission of electronic mail by an
3 interactive computer service provider unless—

4 (A) the provider initiates the transmission;

5 or

6 (B) the transmission is not made to its
7 own customers.

8 (2) CONSTRUCTION.—Nothing in this sub-
9 section may be construed to require an interactive
10 computer service provider to transmit or otherwise
11 deliver any electronic mail message.

12 (b) ACTIONS BY INTERACTIVE COMPUTER SERVICE
13 PROVIDERS.—

14 (1) IN GENERAL.—In addition to any other
15 remedies available under any other provision of law,
16 any interactive computer service provider adversely
17 affected by a violation of a provision of section 301
18 or 305 may, within 1 year after discovery of the vio-
19 lation, bring a civil action in a district court of the
20 United States against a person who violates such
21 provision. Such an action may be brought to enjoin
22 the violation, to enforce compliance with such provi-
23 sion, to obtain damages, or to obtain such further
24 and other relief as the court considers appropriate.

25 (2) DAMAGES.—

1 (A) IN GENERAL.—The amount of dam-
2 ages in an action under this subsection for a
3 violation specified in paragraph (1) may not ex-
4 ceed \$15,000 per violation.

5 (B) RELATIONSHIP TO OTHER DAM-
6 AGES.—Damages awarded for a violation under
7 this subsection are in addition to any other
8 damages awardable for the violation under any
9 other provision of law.

10 (C) COST AND FEES.—The court may, in
11 issuing any final order in any action brought
12 under paragraph (1), award costs of suit, rea-
13 sonable costs of obtaining service of process,
14 reasonable attorney fees, and expert witness
15 fees for the prevailing party.

16 (3) VENUE; SERVICE OF PROCESS.—Any civil
17 action brought under paragraph (1) in a district
18 court of the United States may be brought in the
19 district in which the defendant or in which the inter-
20 active computer service provider is located, is an in-
21 habitant, or transacts business or wherever venue is
22 proper under section 1391 of title 28, United States
23 Code. Process in such an action may be served in
24 any district in which the defendant is an inhabitant
25 or in which the defendant may be found.

1 (c) INTERACTIVE COMPUTER SERVICE PROVIDER
2 DEFINED.—In this section, the term “interactive com-
3 puter service provider” has the meaning given the term
4 “interactive computer service” in section 230(e)(2) of the
5 Communications Act of 1934 (47 U.S.C. 230(e)(2)).

6 **SEC. 305. RECEIPT OF TRANSMISSIONS BY PRIVATE PER-**
7 **SONS.**

8 (a) TERMINATION OF TRANSMISSIONS.—A person
9 who receives from any other person an electronic mail
10 message requesting the termination of further trans-
11 mission of commercial electronic mail shall cease the initi-
12 ation of further transmissions of such mail to the person
13 making the request.

14 (b) AFFIRMATIVE AUTHORIZATION OF TRANS-
15 MISSIONS.—

16 (1) IN GENERAL.—Subject to paragraph (2), a
17 person may authorize another person to initiate
18 transmissions of unsolicited commercial electronic
19 mail to the person.

20 (2) AVAILABILITY OF TERMINATION.—A person
21 initiating transmissions of electronic mail under
22 paragraph (1) shall include, with each transmission
23 of such mail to a person authorizing the trans-
24 mission under that paragraph, the information speci-
25 fied in section 301(a)(2)(C).

1 (c) CONSTRUCTIVE AUTHORIZATION OF TRANS-
2 MISSIONS.—

3 (1) IN GENERAL.—Subject to paragraphs (2)
4 and (3), a person who secures a good or service
5 from, or otherwise responds electronically to, an
6 offer in a transmission of unsolicited commercial
7 electronic mail shall be deemed to have authorized
8 the initiation of transmissions of unsolicited com-
9 mercial electronic mail from the person who initiated
10 the transmission.

11 (2) NO AUTHORIZATION FOR REQUESTS FOR
12 TERMINATION.—An electronic mail request to cease
13 the initiation of further transmissions of electronic
14 mail under subsection (a) shall not constitute au-
15 thorization for the initiation of further electronic
16 mail under this subsection.

17 (3) AVAILABILITY OF TERMINATION.—A person
18 initiating transmissions of electronic mail under
19 paragraph (1) shall include, with each transmission
20 of such mail to a person deemed to have authorized
21 the transmission under that paragraph, the informa-
22 tion specified in section 301(a)(2)(C).

23 (d) EFFECTIVE DATE OF TERMINATION REQUIRE-
24 MENTS.—Subsections (a), (b)(2), and (c)(3) shall take ef-
25 fect 30 days after the date of enactment of this Act.

1 **SEC. 306. DEFINITIONS.**

2 In this title:

3 (1) **COMMERCIAL ELECTRONIC MAIL.**—The
4 term “commercial electronic mail” means any elec-
5 tronic mail that—

6 (A) contains an advertisement for the sale
7 of a product or service;

8 (B) contains a solicitation for the use of a
9 telephone number, the use of which connects
10 the user to a person or service that advertises
11 the sale of or sells a product or service; or

12 (C) promotes the use of or contains a list
13 of one or more Internet sites that contain an
14 advertisement referred to in subparagraph (A)
15 or a solicitation referred to in subparagraph
16 (B).

17 (2) **COMMISSION.**—The term “Commission”
18 means the Federal Trade Commission.

19 (3) The term “initiate the transmission” in the
20 case of an electronic mail message means to origi-
21 nate the electronic mail message, and does not en-
22 compass any intervening interactive computer service
23 whose facilities may have been used to relay, handle,
24 or otherwise retransmit the electronic mail message,
25 unless the intervening interactive computer service

- 1 provider knowingly and intentionally retransmits any
- 2 electronic mail in violation of section 301 or 305.

○