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TELECOMMUNICATIONS

Telephone Slamming and Its Harmful Effects

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Telecommunications: Telephone Slamming and Its Harmful Effects

Madam Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss the results of our investigation to determine (1) what entities engage in intentional telephone slamming—a form of telecommunications fraud and abuse; (2) how they go about it; and (3) what federal and state regulatory entities and the telecommunications industry are doing about it.[1] I will also discuss our case study concerning an individual whose known companies apparently slammed 544,000 consumers in one effort.

Slamming is the unauthorized switching of a consumer from the long-distance provider of choice to another provider. It can harm consumers in a number of ways, such as by paying higher, sometimes exorbitant, rates and experiencing frustration at having to correct the problems resulting from being slammed. Slamming also results in losses to long-distance providers and other industry firms when slammers take their profits and leave unpaid bills, sometimes amounting to millions of dollars.

- All three types of long-distance providers—facility-based carriers, switching resellers, and switchless resellers[2]—have economic incentives to engage in slamming. Switchless resellers, which have the most to gain and the least to lose, slam most frequently.
- Intentional slamming[3] is accomplished in deceptive ways, such as by misleading consumers and falsifying or forging documents.
- The Federal Communications Commission (FCC), state regulatory agencies, and the industry each rely on the others to be the main forces in the fight against slamming. Thus, few of their efforts are extensive. To illustrate, the FCC has adopted some antislamming measures but effectively does little to protect consumers. Most states have some antislamming measures, but their extent varies widely. And industry's measures appear to be more market-driven than consumer-oriented. In fact, the most effective antislamming measure appears to be one that consumers can

[1]See also Telecommunications: Telephone Slamming and Its Harmful Effects (GAO/OSI-98-10, Apr. 21, 1998).

[2]Facility-based carriers, e.g., AT&T (American Telephone and Telegraph), MCI Telecommunications Corporation, and Sprint, have the physical equipment including hard lines and switching stations necessary to take in and forward calls. Switching resellers lease capacity on a facility-based carrier's long-distance lines, resell long-distance services, and have one or more switching stations. Switchless resellers also lease capacity and resell long-distance services but have no equipment and little or no substantive investment in their companies.

[3]Sometimes, legitimate mistakes are made in transcribing data that result in slamming, but these mistakes are not paramount to the slamming issue and can be easily rectified.

take—contacting their local exchange carrier and “freezing” their long-distance provider from unwanted change.

- Daniel H. Fletcher, the owner/operator of the switchless resellers in our case study, apparently entered the industry in 1993 and began large-scale slamming in 1995. By 1996, when most industry firms had stopped dealing with the Fletcher companies, they had slammed or attempted to slam hundreds of thousands of consumers, billed their customers at least $20 million, and left industry firms with at least $3.8 million in unpaid bills.

What Entities Engage in Slamming and Why?

According to representatives of the FCC, numerous state regulatory agencies, and the industry, those who most frequently engage in intentional slamming are switchless resellers. They have the least to lose by using deceptive or fraudulent practices because they have no substantive investment in the industry. Nevertheless, the economic incentives for slamming are shared by all long-distance providers.

How Is Slamming Accomplished?

Anyone with a telephone must select a long-distance provider, or Primary Interexchange Carrier (PIC), through the appropriate local exchange carrier. Consumers can change their PIC again through the local carrier or through a long-distance provider with a written or verbal authorization.[4] Intentional slamming is then possible because the legitimate authorizations can easily be subverted. For example, the written authorization, or letter of agency (LOA), can be changed or forged. In addition, unscrupulous telemarketers or providers can use deceptive marketing practices and mislead consumers into signing an authorization. Or consumers can be slammed without being contacted, such as when a slammer obtains telephone numbers from a telephone book and submits them to the local carrier for changing—and then presents forged LOAs if asked for the authorizations.

What Have the FCC, State Agencies, and the Industry Done to Fight Slamming?

Although the FCC, most state regulatory agencies, and the telecommunications industry have some antislamming rules and practices, each of the three entities relies on the others to be the main forces in the antislamming battle. Indeed, of the antislamming measures, those by some states are the most extensive. The FCC does not review information that potential long-distance providers submit with their tariff filings, which are

[4]Such written authorization is obtained by using a letter of agency (LOA), whose sole purpose is to authorize a local exchange carrier to initiate a PIC change for the consumer. The LOA must be signed and dated by the subscriber requesting the change. (47 C.F.R. section 64.1150(b)) Verbal authorizations are usually initiated by a telemarketer.

required before the companies can begin service. Moreover, the FCC lags far behind some states in the amount of fines imposed on companies for slamming.

Antislamming Measures

The FCC first adopted antislamming measures in 1985[5] and revised or amended them in 1992, 1995, and 1997.[6] However, we found no FCC practice that would help ensure that applicants who become long-distance providers, or other common carriers, have satisfactory records of integrity and business ethics. To illustrate, long-distance providers are now required to file a tariff—or schedule of services, rates, and charges—with the FCC.[7] State regulators and the industry rely on an entity's filed tariff as a key credential that signifies legitimacy. However, according to knowledgeable FCC officials, the FCC merely accepts a tariff filing and does not review the applicant's information provided with the filing. For example, to test FCC oversight of the tariff filing process, we easily filed a tariff using fictitious information and avoided paying FCC's $600 filing fee. Our fictitious switchless reseller—PSI Communications—could now slam consumers with little chance of adverse consequences. In short, FCC's tariff-filing procedure is no deterrent to a determined slammer. Neither does it provide states, the telecommunications industry, or the public with any assurance concerning a long-distance provider's legitimacy.

While most state regulatory agencies have some licensing procedures and requirements for an entity to become a long-distance provider, those procedures/requirements vary widely. For example, in Georgia—a state with more restrictive measures—a switchless reseller must, among other activities, undergo two reviews and wait a period of time before receiving a permanent certificate. The telecommunications industry, to some extent, also attempts to weed out companies involved in slamming. For example, various facility-based carriers, generally based on their marketing

[5]In a 1985 policy statement (50 Fed. Reg. 25,982 (June 24, 1985)), the FCC decided that allowing customers to select long-distance carriers rather than automatically assigning them to one provider would benefit the public interest. Providers would then have incentive to provide consumers with helpful information and competitive services, which the consumers could use to make informed choices.

[6]47 C.F.R. section 64.1100 (1992); 47 C.F.R. section 64.1150; and 47 C.F.R. section 64.1150(g) (1997).

[7]Under section 203 of The Telecommunications Act of 1934, each common carrier must file a tariff with the Commission. However, under section 203 (b), the Commission has discretion to modify this requirement. In 1996, the FCC promulgated a regulation (47 C.F.R. section 61.20), under which nondominant long-distance providers (e.g., providers without the power to control prices) were exempted from the requirement to file tariffs. However, the regulation was stayed in 1997 as a result of MCI Telecommunications Corp. v. FCC, No. 96-1459. Therefore, all common carriers must file tariffs at the Commission.

philosophies and not consumer protection, undertake different antislamming measures including the use of third parties to verify requests for a PIC change.

However, what appears to be the most effective antislamming measure of all can be effected by consumers themselves—a PIC freeze. An individual consumer can contact the local exchange carrier and ask that the consumer's choice of long-distance provider be "frozen." The consumer can lift the freeze at any time by recontacting the local carrier.

Penalties Imposed on Slammers

FCC's punitive actions against slammers are far less extensive than those of some state regulatory agencies in the same general time period. For example, in 1997, the FCC obtained consent decrees from nine companies nationwide that paid $1,245,000 in fines for slamming. But in May 1997, the California Public Utilities Commission suspended one firm for 3 years for slamming, fined it $2 million, and ordered it to refund another $2 million to its customers. Further, in 1997, the FCC issued a Notice of Apparent Liability to another firm amounting to $80,000 for apparent slamming. But in February 1998, the Florida Public Service Commission voted to require the same firm to show cause why it should not be fined $500,000 for slamming.

Case Study

We did a limited investigation of four of Daniel H. Fletcher's eight known companies[8] that operated as switchless resellers between 1993, when he apparently entered the business, and 1996. Through each company, Mr. Fletcher apparently slammed or attempted to slam many thousands of consumers, including 544,000 at one time. This one effort occurred after (1) Sprint cancelled its business relationships with two Fletcher companies—Christian Church Network, Inc. and Long Distance Services, Inc.—and (2) Mr. Fletcher transferred the two companies' customer base, through a third Fletcher company—Phone Calls, Inc. (PCI), to another long-distance provider for servicing. As further evidence of the extent of Mr. Fletcher's dealings, industry records, although incomplete, indicate that between 1993 and 1996 the Fletcher companies billed their customers over $20 million in long-distance charges.

By mid-1996, industry firms, including such large facility-based carriers as Sprint, began to end their business relationships with Mr. Fletcher's

[8]The eight switchless resellers were CCN, Inc.; Christian Church Network, Inc., doing business as Church Discount Group, Inc.; Discount Calling Card, Inc.; Donation Long Distance, Inc.; Long Distance Services, Inc.; Monthly Discounts, Inc.; Monthly Phone Services, Inc.; and Phone Calls, Inc.

companies because of his customer's slamming complaints and/or his companies' nonpayment for long-distance network usage. AT&T recognized a problem with Mr. Fletcher and his business practices during April 1996, but it continued service to Long Distance Services, Inc. until November 1, 1997, when it discontinued service for nonpayment for network usage.

Mr. Fletcher's companies have also come under regulatory scrutiny by several states and the FCC. For example, in 1997 the Florida Public Service Commission cancelled the right of the Fletcher-controlled PCI to do business in the state and fined it $860,000 for slamming. In June 1997, the FCC, citing numerous complaints and evidence of forged or falsified LOAs, issued an Order to Show Cause and Notice of Opportunity for Hearing regarding Mr. Fletcher and his eight companies. In that order, the FCC, in effect, directed Mr. Fletcher and his companies to show cause why the FCC should not require them to stop providing long-distance services without prior FCC consent and why the companies' operating authority should not be revoked. Since Mr. Fletcher waived his right to an evidentiary hearing when he did not provide the FCC a written appearance, stating he would appear for such hearing, the FCC could have entered the order citing its final enforcement action. However, the FCC did not finalize its order until after we briefed it on our findings, in April 1998.

It appears that all eight known Fletcher-controlled companies were out of business by the end of 1996. However, our investigation identified several instances of Mr. Fletcher's continued involvement since then in the telecommunications industry. Because Mr. Fletcher knowingly used false information to conceal his identity and the location of his companies and residence(s), he has not been located.

Madam Chairman, this completes my prepared statement. I would be happy to respond to any questions that you or other members of the Subcommittee may have.

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