

the form of detention orders against different products destined for the United States market, found to have been made with forced labor, including products from the People's Republic of China.

(4) The United States Customs Service does not currently have the tools to obtain the timely and in-depth verification necessary to identify and interdict products made with forced labor that are destined for the United States market.

SEC. ____ AUTHORIZATION FOR ADDITIONAL CUSTOMS PERSONNEL TO MONITOR THE IMPORTATION OF PRODUCTS MADE WITH FORCED LABOR.

There are authorized to be appropriated for monitoring by the United States Customs Service of the importation into the United States of products made with forced labor, the importation of which violates section 307 of the Tariff Act of 1930 or section 1761 of title 18, United States Code, \$2,000,000 for fiscal year 1999.

SEC. ____ REPORTING REQUIREMENT ON FORCED LABOR PRODUCTS DESTINED FOR THE UNITED STATES MARKET.

(a) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner of Customs shall prepare and transmit to Congress a report on products made with forced labor that are destined for the United States market.

(b) CONTENTS OF REPORT.—The report under subsection (a) shall include information concerning the following:

(1) The extent of the use of forced labor in manufacturing products destined for the United States market.

(2) The volume of products made with forced labor, destined for the United States market, that is in violation of section 307 of the Tariff Act of 1930 or section 1761 of the title 18, United States Code, and is seized by the United States Customs Service.

(3) The progress of the United States Customs Service in identifying and interdicting products made with forced labor that are destined for the United States market.

SEC. ____ RENEGOTIATING MEMORANDA OF UNDERSTANDING ON FORCED LABOR.

It is the sense of Congress that the President should determine whether any country with which the United States has a memorandum of understanding with respect to reciprocal trade which involves goods made with forced labor is frustrating implementation of the memorandum. Should an affirmative determination be made, the President should immediately commence negotiations to replace the current memorandum of understanding with one providing for effective procedures for the monitoring of forced labor, including improved procedures to request investigations of suspected prison labor facilities by international monitors.

SEC. ____ DEFINITION OF FORCED LABOR.

As used in sections ____ through ____ of this Act, the term "forced labor" means convict labor, forced labor, or indentured labor, as such terms are used in section 307 of the Tariff Act of 1930.

**COMMUNICATIONS ACT
AMENDMENTS**

**MCCAIN (AND HOLLINGS)
AMENDMENT NO. 2389**

Mr. MCCAIN (for himself and Mr. HOLLINGS) proposed an amendment to the bill (S. 1618) to amend the Communications Act of 1934 to improve the protection of consumers against "slamming" by telecommunications carriers, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Anti-slamming Amendment 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;

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

“(iii) to affirm the subscriber's intent to select the provider as the provider of that service;

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

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

“(B) ADDITIONAL REQUIREMENTS.—The procedures prescribed by the Commission to verify a subscriber's selection of a provider shall—

“(i) preclude the use of negative option marketing;

“(ii) provide for a complete copy of verification of a change in telephone exchange service or telephone toll service provider in oral, written, or electronic form;

“(iii) require the retention of such verification in such manner and form and for such time as the Commission considers appropriate;

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

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

“(3) ACTION BY UNAFFILIATED RESELLER NOT IMPUTED TO CARRIER.—No telecommunications carrier may be found to be in violation of this section solely on the basis of a violation of this section by an unaffiliated reseller of that carrier's services or facilities.

“(4) FREEZE OPTION PROTECTED.—The Commission may not take action under this section to limit or inhibit a subscriber's ability to require that any change in the subscriber's choice of a provider of interexchange service not be effected unless the change is expressly and directly communicated by the subscriber to the subscriber's existing telephone exchange service provider.

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

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

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

“(b) LIABILITY FOR CHARGES.—

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

(2) by designating the second sentence as paragraph (3) and inserting at the beginning of such paragraph, as so designated, the following:

“(3) CONSTRUCTION OF REMEDIES.—”; and

(3) by inserting after paragraph (1), as designated by paragraph (1) of this subsection, the following:

“(2) SUBSCRIBER PAYMENT OPTION.—

“(A) IN GENERAL.—A subscriber whose telephone exchange service or telephone toll service is changed in violation of the provisions of this section, or the procedures prescribed under subsection (a), may elect to pay the carrier or reseller previously selected by the subscriber for any such service received after the change in full satisfaction of amounts due from the subscriber to the carrier or reseller providing such service after the change.

“(B) PAYMENT RATE.—Payment for service under subparagraph (A) shall be at the rate for such service charged by the carrier or reseller previously selected by the subscriber concerned.”.

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

“(c) NOTICE TO SUBSCRIBER.—Whenever there is a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service, the telecommunications carrier or reseller shall notify the subscriber in a specific and unambiguous writing, not more than 15 days after the change is processed by the telecommunications carrier or the reseller—

“(1) of the subscriber's new carrier or reseller; and

“(2) that the subscriber may request information regarding the date on which the change was agreed to and the name of the individual who authorized the change.

“(d) RESOLUTION OF COMPLAINTS.—

“(1) PROMPT RESOLUTION.—

“(A) IN GENERAL.—The Commission shall prescribe a period of time for a telecommunications carrier or reseller to resolve a complaint by a subscriber concerning an unauthorized change in the subscriber's selection of a provider of telephone exchange service or telephone toll service not in excess of 120 days after the telecommunications carrier or reseller receives notice from the subscriber of the complaint. A subscriber may at any time pursue such a complaint with the Commission, in a State or local administrative or judicial body, or elsewhere.

“(B) UNRESOLVED COMPLAINTS.—If a telecommunications carrier or reseller fails to resolve a complaint within the time period prescribed by the Commission, then, within 10 days after the end of that period, the telecommunications carrier or reseller shall—

“(i) notify the subscriber in writing of the subscriber's right to file a complaint with the Commission and of the subscriber's rights and remedies under this section;

“(ii) inform the subscriber in writing of the procedures prescribed by the Commission for filing such a complaint; and

“(iii) provide the subscriber a copy of any evidence in the carrier's or reseller's possession showing that the change in the subscriber's provider of telephone exchange service or telephone toll service was submitted or executed in accordance with the verification procedures prescribed under subsection (a).

“(2) RESOLUTION BY COMMISSION.—

“(A) DETERMINATION OF VIOLATION.—The Commission shall provide a simplified process for resolving complaints under paragraph (1)(B). The simplified procedure shall preclude the use of interrogatories, depositions, discovery, or other procedural techniques that might unduly increase the expense, formality, and time involved in the process.

The Commission shall determine whether there has been a violation of subsection (a) and shall issue a decision or ruling at the earliest date practicable, but in no event later than 150 days after the date on which it received the complaint.

“(B) DETERMINATION OF DAMAGES AND PENALTIES.—If the Commission determines that there has been a violation of subsection (a), it shall issue a decision or ruling determining the amount of the damages and penalties at the earliest practicable date, but in no event later than 90 days after the date on which it issued its decision or ruling under subparagraph (A).

“(3) DAMAGES AWARDED BY COMMISSION.—If a violation of subsection (a) is found by the Commission, the Commission may award damages equal to the greater of \$500 or the amount of actual damages for each violation. The Commission may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under the preceding sentence.

“(e) DISQUALIFICATION AND REINSTATEMENT.—

“(1) DISQUALIFICATION FROM CERTAIN ACTIVITIES BASED ON CONVICTION.—

“(A) DISQUALIFICATION OF PERSONS.—Subject to subparagraph (C), any person convicted under section 2328 of title 18, United States Code, in addition to any fines or imprisonment under that section, may not carry out any activities covered by section 214.

“(B) DISQUALIFICATION OF COMPANIES.—Subject to subparagraph (C), any company substantially controlled by a person convicted under section 2328 of title 18, United States Code, in addition to any fines or imprisonment under that section, may not carry out any activities covered by section 214.

“(C) REINSTATEMENT.—

“(i) IN GENERAL.—The Commission may terminate the application of subparagraph (A) to a person, or subparagraph (B) to a company, if the Commission determines that the termination would be in the public interest.

“(ii) EFFECTIVE DATE.—The termination of the applicability of subparagraph (A) to a person, or subparagraph (B) to a company, under clause (i) may not take effect earlier than 5 years after the date on which the applicable subparagraph applied to the person or company concerned.

“(2) CERTIFICATION REQUIREMENT.—Any person described in subparagraph (A) of paragraph (1), or company described in subparagraph (B) of that paragraph, not reinstated under subparagraph (C) of that paragraph shall include with any application to the Commission under section 214 a certification that the person or company, as the case may be, is described in paragraph (1)(A) or (B), as the case may be.

“(f) CIVIL PENALTIES.—

“(1) IN GENERAL.—Unless the Commission determines that there are mitigating circumstances, violation of subsection (a) is punishable by a forfeiture of not less than \$40,000 for the first offense, and not less than \$150,000 for each subsequent offense.

“(2) FAILURE TO NOTIFY TREATED AS VIOLATION OF SUBSECTION (A).—If a telecommunications carrier or reseller fails to comply with the requirements of subsection (d)(1)(B), then that failure shall be treated as a violation of subsection (a).

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

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

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

“(h) CHANGE INCLUDES INITIAL SELECTION.—For purposes of this section, the initiation of service to a subscriber by a telecommunications carrier or a reseller shall be treated as a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.”.

(d) CRIMINAL PENALTY.—

(1) IN GENERAL.—Chapter 113A of title 18, United States Code, is amended by adding at the end thereof the following:

§ 2328. Slamming

“Any person who submits or executes a change in a provider of telephone exchange service or telephone toll service not authorized by the subscriber in willful violation of the provisions of section 258 of the Communications Act of 1934 (47 U.S.C. 258), or the procedures prescribed under section 258(a) of that Act—

“(A) shall be fined in accordance with this title, imprisoned not more than 1 year, or both; but

“(B) if previously convicted under this paragraph at the time of a subsequent offense, shall be fined in accordance with this title, imprisoned not more than 5 years, or both, for such subsequent offense.”.

“(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 113A of title 18, United States Code, is amended by adding at the end thereof the following:

“2328. Slamming”.

“(e) STATE RIGHT-OF-ACTION.—Section 258 of the Communications Act of 1934 (47 U.S.C. 258), as amended by subsection (c), is amended by adding at the end thereof the following:

“(i) ACTION BY STATES.—

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

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

“(B) may bring a criminal action to enforce this section under section 2328 of title 18, United States Code; and

“(C) may bring an action for the assessment of civil penalties under subsection (f), and for purposes of such an action, subsections (d)(3) and (f)(1) shall be applied by substituting “the court” for “the Commission”.

“(2) EXCLUSIVE JURISDICTION OF FEDERAL COURTS.—The district courts of the United States, the United States courts of any territory, and the District Court of the United States for the District of Columbia shall have exclusive jurisdiction over all actions brought under this section. When a State brings an action under this section, the court in which the action is brought has pendant jurisdiction of any claim brought under the law of that State. Upon proper application, such courts shall also have jurisdiction to issue writs of mandamus, or orders affording like relief, commanding the defendant to comply with the provisions of this section or regulations prescribed under this section, including the requirement that the defendant take such action as is necessary to remove the danger of such violation. Upon a proper showing, a permanent or temporary injunction or restraining order shall be granted without bond.

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

“(A) to intervene in the action;

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

“(C) to file petitions for appeal.

“(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under this subsection in a district court of the United States may be brought in the district wherein the subscriber or defendant is found or is an inhabitant or transacts business or wherein the violation occurred or is occurring, and process in such cases may be served in which the defendant is an inhabitant or where the defendant may be found.

“(5) INVESTIGATORY POWERS.—For purposes of bringing any civil action under this subsection, nothing in this section shall prevent the attorney general of a State, or an official or agency designated by a State, from exercising the powers conferred on the attorney general or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

“(j) STATE LAW NOT PREEMPTED.—

“(1) IN GENERAL.—Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive requirements, regulations, damages, costs, or penalties on changes in a subscriber's service or selection of a provider of telephone exchange service or telephone toll services than are imposed under this section.

“(2) EFFECT ON STATE COURT PROCEEDINGS.—Nothing contained in this section shall be construed to prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any general civil or criminal statute of such State or any specific civil or criminal statute of such State not preempted by this section.

“(3) LIMITATIONS.—Whenever a complaint is pending before the Commission involving a violation of regulations prescribed under this section, no State may, during the pendency of such complaint, institute a civil action against any defendant party to the complaint for any violation affecting the same subscriber alleged in the complaint.

“(k) REPORTS ON COMPLAINTS.—

“(1) REPORTS REQUIRED.—Each telecommunications carrier or reseller shall submit to the Commission, quarterly, a report on the number of complaints of unauthorized changes in providers of telephone exchange service or telephone toll service that are submitted to the carrier or reseller by its subscribers. Each report shall specify each provider of service complained of and the number of complaints relating to such provider.

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

“(3) UTILIZATION.—The Commission shall use the information submitted in reports under paragraph (1) to identify telecommunications carriers or resellers that engage in patterns and practices of unauthorized changes in providers of telephone exchange service or telephone toll service.

“(1) DEFINITIONS.—For purposes of this section—

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

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

(f) REPORT ON CARRIERS EXECUTING UNAUTHORIZED CHANGES OR TELEPHONE SERVICE.—

(1) REPORT.—Not later than October 31, 1998, the Federal Communications Commission shall submit to Congress a report on unauthorized changes of subscribers' selections

of providers of telephone exchange service or telephone toll service.

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

(A) A list of the 10 telecommunications carriers or resellers that, during the 1-year period ending on the date of the report, were subject to the highest number of complaints of having executed unauthorized changes of subscribers from their selected providers of telephone exchange service or telephone toll service when compared with the total number of subscribers served by such carriers or resellers.

(B) The telecommunications carriers or resellers, if any, assessed forfeitures under section 258(f) of the Communications Act of 1934 (as added by subsection (d)), during that period, including the amount of each such forfeiture and whether the forfeiture was assessed as a result of a court judgment or an order of the Commission or was secured pursuant to a consent decree.

SEC. 102. ADDITIONAL ENFORCEMENT AUTHORITY.

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

SEC. 103. OBLIGATIONS OF BILLING AGENTS.

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

"SEC. 231. OBLIGATIONS OF TELEPHONE BILLING AGENTS.

"(a) IN GENERAL.—A billing agent, including a telecommunications carrier or reseller, who issues a bill for telephone exchange service or telephone toll service to a subscriber shall

"(1) state on the bill—

"(A) the name and toll-free telephone number of any telecommunications carrier or reseller for the subscriber's telephone exchange service and telephone toll service;

"(B) the identity of the presubscribed carrier or reseller; and

"(C) the charges associated with each carrier's or reseller's provision of telecommunications service during the billing period;

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

"(A) the name of any company whose charges are reflected on the subscriber's bill;

"(B) the services for which the subscriber is being charged by that company;

"(C) the charges associated with that company's provision of service during the billing period;

"(D) the toll-free telephone number that the subscriber may call to dispute that company's charges; and

"(E) that disputes about that company's charges will not result in disruption of telephone exchange service or telephone toll service; and

"(3) show the mailing address of any telecommunications carrier or reseller or other company whose charges are reflected on the bill.

"(b) KNOWING INCLUSION OF UNAUTHORIZED OR IMPROPER CHARGES PROHIBITED.—A billing agent may not submit charges for telecommunications services or other services to a subscriber if the billing agent knows, or should know, that the subscriber did not authorize the charges or that the charges are otherwise improper."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to bills to subscribers for telecommunications services

sent to subscribers more than 60 days after the date of enactment of this Act.

SEC. 104. FCC JURISDICTION OVER BILLING SERVICE PROVIDERS.

Part III of title II of the Communications Act of 1934 (47 U.S.C. 271 et seq.) is amended by adding at the end thereof the following:

"SEC. 277. JURISDICTION OVER BILLING SERVICE PROVIDERS.

"The Commission has jurisdiction to assess and recover any penalty imposed under title V of this Act against an entity not a telecommunications carrier or reseller to the extent that entity provides billing services for the provision of telecommunications services, or for services other than telecommunications services that appear on a subscriber's telephone bill for telecommunications services, but the Commission may assess and recover such penalties only if that entity knowingly or willfully violates the provisions of this Act or any rule or order of the Commission."

SEC. 105. REPORT; STUDY.

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

(b) SPECIFIC ISSUES.—As part of the report required under subsection (a), the Commission shall include findings on—

(1) the extent to which imposing penalties on telemarketers would deter unauthorized changes in a subscriber's selection of a provider of telephone exchange service or telephone toll service;

(2) the need for rules requiring third-party verification of changes in a subscriber's selection of such a provider and independent third party administration of presubscribed interexchange carrier changes; and

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

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

SEC. 106. DISCLOSURE OF CERTAIN RECORDS FOR INVESTIGATIONS OF TELEMARKETING FRAUD.

Section 2703 (c)(1)(B) of title 18, United States Code, is amended by—

(1) by striking "or" at the end of clause (ii);

(2) striking the period at the end of clause (iii) and inserting "; or"; and

(3) adding at the end the following:

"(iv) submits a formal written request relevant to a law enforcement investigation concerning telemarketing fraud for the name, address, and place of business of a subscriber or customer of such provider, which subscriber or customer is engaged in telemarketing (as such term is in section 2325 of this title)."

TITLE II—SWITCHLESS RESELLERS

SEC. 201. REQUIREMENT FOR SURETY BONDS FROM TELECOMMUNICATIONS CARRIERS OPERATING AS SWITCHLESS RESELLERS.

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

"SEC. 232. SURETY BONDS FROM TELECOMMUNICATIONS CARRIERS OPERATING AS SWITCHLESS RESELLERS.

"(a) REQUIREMENT.—Under such regulations as the Commission shall prescribe, any telecommunications carrier operating or seeking to operate as a switchless reseller shall furnish to the Commission a surety bond in a form and an amount determined by the Commission to be satisfactory for purposes of this section.

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

"(c) CLAIMS AGAINST BOND.—A surety bond furnished under this section shall be available to pay the following:

"(1) Any fine or penalty imposed against the carrier concerned while operating as a switchless reseller as a result of a violation of the provisions of section 258 (relating to unauthorized changes in subscriber selections to telecommunications carriers).

"(2) Any penalty imposed against the carrier under this section.

"(3) Any other fine or penalty, including a forfeiture penalty, imposed against the carrier under this Act.

"(d) RESIDENT AGENT.—A telecommunications carrier operating as a switchless reseller that is not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

"(e) PENALTIES.—

"(1) SUSPENSION.—The Commission may suspend the right of any telecommunications carrier to operate as a switchless reseller—

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

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

"(C) for a violation of section 258 while operating as a switchless reseller.

"(2) ADDITIONAL PENALTIES.—In addition to suspension under paragraph (1), any telecommunications carrier operating as a switchless reseller that fails to furnish or maintain a surety body under this section shall be subject to any forfeiture provided for under sections 503 and 504.

"(f) BILLING SERVICES FOR UNBONDED SWITCHLESS RESELLERS.—

"(1) PROHIBITION.—No common carrier or billing agent may provide billing services for any services provided by a switchless reseller unless the switchless reseller—

"(A) has furnished the bond required by subsection (a); and

"(B) in the case of a switchless reseller not domiciled in the United States, has designated an agent under section (d).

"(2) PENALTY.—

"(A) PENALTY.—Any common carrier or billing agent that knowingly and willfully provides billing services to a switchless reseller in violation of paragraph (1) shall be liable to the United States for a civil penalty not to exceed \$50,000.

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

"(3) COMMISSION AUTHORITY TO ASSESS AND COLLECT PENALTIES.—The Commission shall have the authority to assess and collect any penalty provided for under this subsection upon a finding by the Commission of a violation of paragraph (1).

"(g) RETURN OF BONDS.—

"(1) REVIEW.—

"(A) IN GENERAL.—The Commission may from time to time review the activities of a telecommunications carrier that has furnished a surety bond under this section for

purposes of determining whether or not to retain the bond under this section.

“(B) STANDARDS OF REVIEW.—The Commission shall prescribe any standards applicable to its review of activities under this paragraph.

“(C) FIRST REVIEW.—The Commission may not first review the activities of a carrier under subparagraph (A) before the date that is 3 years after the date on which the carrier furnishes the bond concerned under this section.

“(2) RETURN.—The Commission may return a surety bond as a result of a review under this subsection.

“(h) DEFINITIONS.—In this section:

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

“(2) SWITCHLESS RESELLER.—The term ‘switchless reseller’ means a telecommunications carrier that resells the switched telecommunications service of another telecommunications carrier without the use of any switching facilities under its own ownership or control.

“(i) DETARIFFING AUTHORITY NOT IMPAIRED.—Nothing in this section is intended to prohibit the Commission from adopting rules providing for the permissive detariffing of long-distance telephone companies, if the Commission determines that such permissive detariffing would otherwise serve the public interest, convenience, and 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 transmission of the message may be stopped at no cost to the recipient by sending a reply to the originating electronic mail address with the word “remove” in the subject line.

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

(c) EFFECTIVE DATE.—The requirements in this section shall take effect 30 days after the date of enactment of this Act.

SEC. 302. FEDERAL OVERSIGHT OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) TRANSMISSIONS.—

(1) IN GENERAL.—Upon notice from a person of the person’s receipt of electronic mail in violation of a provision of section 301 or 305, the Commission—

(A) may conduct an investigation to determine whether or not the electronic mail was transmitted in violation of such provision; and

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

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

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

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

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

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

(b) ADMINISTRATION.—

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

(2) INFORMATION ON ENFORCEMENT.—The Commission shall make available through the Internet web site established under paragraph (1) information on the actions taken by the Commission under subsection (a)(1)(B).

(3) ASSISTANCE OF OTHER FEDERAL AGENCIES.—Other Federal agencies may assist the Commission in carrying out its duties under this section.

SEC. 303. ACTIONS BY STATES.

(a) IN GENERAL.—Whenever the attorney general of a State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected because any person is engaging in a pattern or practice of the transmission of electronic mail in violation of a provision of section 301 or 305, the State, as *parens patriae*, may bring a civil action on behalf of its residents to enjoin such transmission, to enforce compliance with such provision, to obtain damages or other compensation on behalf of its residents, or to obtain such further and other relief as the court considers appropriate.

(b) NOTICE TO COMMISSION.—

(1) NOTICE.—The State shall serve prior written notice of any civil action under this section on the Commission and provide the Commission with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve written notice immediately on instituting such action.

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

(A) to intervene in the action;

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

(C) to file petitions for appeal.

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

(d) CONSTRUCTION.—For purposes of bringing a civil action under subsection (a), nothing in this section shall prevent an attorney general from exercising the powers conferred

on the attorney general by the laws of the State concerned to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary or other evidence.

(e) VENUE; SERVICE OF PROCESS.—Any civil action brought under subsection (a) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

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

(g) DEFINITIONS.—In this section:

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

(2) STATE.—The term “State” means any State of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, the Republic of Palau, and any possession of the United States.

SEC. 304. INTERACTIVE COMPUTER SERVICE PROVIDERS

(a) EXEMPTION FOR CERTAIN TRANSMISSIONS.—

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

(A) the provider initiates the transmission; or

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

(2) CONSTRUCTION.—Nothing in this subsection may be construed to require an interactive computer service provider to transmit or otherwise deliver any electronic mail message.

(b) ACTIONS BY INTERACTIVE COMPUTER SERVICE PROVIDERS.—

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

(2) DAMAGES.—

(A) IN GENERAL.—The amount of damages in an action under this subsection for a violation specified in paragraph (1) may not exceed \$15,000 per violation.

(B) RELATIONSHIP TO OTHER DAMAGES.—Damages awarded for a violation under this subsection are in addition to any other damages awardable for the violation under any other provision of law.

(C) COST AND FEES.—The court may, in issuing any final order in any action brought under paragraph (1), award costs of suit, reasonable costs of obtaining services of process, reasonable attorney fees, and expert witness fees for the prevailing party.

(3) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant or in which the interactive computer

service provider is located, is an inhabitant, or transacts business or wherever venue is proper under section 1391 or title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

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

SEC. 305. RECEIPT OF TRANSMISSIONS BY PRIVATE PERSONS.

(a) **TERMINATION OF TRANSMISSIONS.**—A person who receives from any other person an electronic mail message requesting the termination of further transmission of commercial electronic mail shall cease the initiation of further transmissions of such mail to the person making the request.

(b) **AFFIRMATIVE AUTHORIZATION OF TRANSMISSION.**—

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

(2) **AVAILABILITY OF TERMINATION.**—A person initiating transmissions of electronic mail under paragraph (1) shall include, with each transmission of such mail to a person authorizing the transmission under that paragraph, the information specified in section 301(a)(2)(C).

(c) **CONSTRUCTIVE AUTHORIZATION OF TRANSMISSIONS.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), a person who secures a good or service from, or otherwise responds electronically to, an offer in a transmission of unsolicited commercial electronic mail shall be deemed to have authorized the initiation of transmissions of unsolicited commercial electronic mail from the person who initiated the transmission.

(2) **NO AUTHORIZATION FOR REQUESTS FOR TERMINATION.**—An electronic mail request to cease the initiation of further transmissions of electronic mail under subsection (a) shall not constitute authorization for the initiation of further electronic mail under this subsection.

(3) **AVAILABILITY OF TERMINATION.**—A person initiating transmissions of electronic mail under paragraph (1) shall include, with each transmission of such mail to a person deemed to have authorized the transmission under that paragraph, the information specified in section 301(a)(2)(C).

(d) **EFFECTIVE DATE OF TERMINATION REQUIREMENTS.**—Subsections (a), (b)(2), and (c)(3) shall take effect 30 days after the date of enactment of this Act.

SEC. 306. DEFINITIONS.

In this title.

(1) **COMMERCIAL ELECTRONIC MAIL.**—The term “commercial electronic mail” means any electronic mail that—

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

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

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

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

(3) The term “initiate the transmission” in the case of an electronic mail message means to originate the electronic mail mes-

sage, and does not encompass any intervening interactive computer service whose facilities may have been used to relay, handle, or otherwise retransmit the electronic mail message, unless the intervening interactive computer service provider knowingly and intentionally retransmits, any electronic mail in violation of section 301 or 305.

FEINGOLD AMENDMENT NO. 2390

Mr. MCCAIN (for Mr. FEINGOLD) proposed an amendment to the bill, S. 1618, *supra*; as follows:

At the appropriate place, insert the following:

SEC. ____ ENFORCEMENT OF REGULATIONS REGARDING CITIZENS BAND RADIO EQUIPMENT.

Section 302 of the Communications Act of 1934 (47 U.S.C. 302) is amended by adding at the end the following:

“(f)(1) Except as provided in paragraph (2), a State or local government may enforce the following regulations of the Commission under this section:

“(A) A regulation that prohibits a use of citizens band radio equipment not authorized by the Commission.

“(B) A regulation that prohibits the unauthorized operation of citizens band radio equipment on a frequency between 24 MHz and 35 MHz.

“(2) Possession of a station license issued by the Commission pursuant to section 301 in any radio service for the operation at issue shall preclude action by a State or local government under this subsection.

“(3) The Commission shall provide technical guidance to State and local governments regarding the detection and determination of violations of the regulations specified in paragraph (1).

“(4)(A) In addition to any other remedy authorized by law, a person affected by the decision of a State or local government enforcing a regulation under paragraph (1) may submit to the Commission an appeal of the decision on the grounds that the State or local government, as the case may be, acted outside the authority provided in this subsection.

“(B) A person shall submit an appeal on a decision of a State or local government to the Commission under this paragraph, if at all, not later than 30 days after the date on which the decision by the State or local government becomes final.

“(C) The Commission shall make a determination on an appeal submitted under subparagraph (B) not later than 180 days after its submittal.

“(D) If the Commission determines under subparagraph (C) that a State or local government has acted outside its authority in enforcing a regulation, the Commission shall reverse the decision enforcing the regulation.

“(5) The enforcement of a regulation by a State or local government under paragraph (1) in a particular case shall not preclude the Commission from enforcing the regulation in that case concurrently.

“(6) Nothing in this subsection shall be construed to diminish or otherwise affect the jurisdiction of the Commission under this section over devices capable of interfering with radio communications.”.

FEINSTEIN AMENDMENT NO. 2391

Mr. DORGAN (for Mrs. FEINSTEIN) proposed an amendment to the bill, S. 1618, *supra*; as follows:

At the appropriate place, insert the following:

SEC. ____ MODIFICATION OF EXCEPTION TO PROHIBITION ON INTERCEPTION OF COMMUNICATIONS.

(a) **MODIFICATION.**—Section 2511(2)(d) of title 18, United States Code, is amended by adding at the end the following: “Notwithstanding the previous sentence, it shall not be unlawful under this chapter for a person not acting under the color of law to intercept a wire, oral, or electronic communication between a health insurance issuer or health plan and a subscriber of such issuer or plan, or between a health care provider and a patient, only if all of the parties to the communication have given prior express consent to such interception. For purposes of the preceding sentence, the term ‘health insurance issuer’ has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b), the term ‘health plan’ means a group health plan, as defined in such section of such Act, an individual or self-insured health plan, the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.), the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.), and the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, and the term ‘health care provider’ means a physician or other health care professional.”.

(b) **RECORDING AND MONITORING OF COMMUNICATIONS WITH HEALTH INSURERS.**—

(1) **COMMUNICATION WITHOUT RECORDING OR MONITORING.**—Notwithstanding any other provision of law, a health insurance issuer, health plan, or health care provider that notifies any customer of its intent to record or monitor any communication with such customer shall provide the customer the option to conduct the communication without being recorded or monitored by the health insurance issuer, health plan, or health care provider.

(2) **DEFINITIONS.**—In this subsection:

(A) **HEALTH CARE PROVIDER.**—The term “health care provider” means a physician or other health care professional.

(B) **HEALTH INSURANCE ISSUER.**—The term “health insurance issuer” has the meaning given that term in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b).

(C) **HEALTH PLAN.**—The term “health plan” means—

(i) a group health plan, as defined in section 733 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b);

(ii) an individual or self-insured health plan;

(iii) the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(iv) the medicaid program under title XIX of such Act (42 U.S.C. 1396 et seq.);

(v) the State children’s health insurance program under title XXI of such Act (42 U.S.C. 1397aa et seq.); and

(vi) the Civilian Health and Medical Program of the Uniformed Services under chapter 55 of title 10, United States Code.

ROCKEFELLER AMENDMENT NO. 2392

Mr. DORGAN (for Mr. ROCKEFELLER) proposed an amendment to the bill, S. 1618, *supra*; as follows:

At the appropriate place, insert the following:

SEC. . CONSUMER TRUTH IN BILLING DISCLOSURE ACT.

(a) **FINDINGS.**—Congress makes the following findings—

(1) Billing practices by telecommunications carriers may not reflect accurately the cost or basis of the additional telecommunications services and benefits that consumers receive as a result of the enactment of the Telecommunications Act of 1996 (Public Law 104-104) and other Federal regulatory actions taken since the enactment of that Act.

(2) The Telecommunications Act of 1996 was not intended to allow providers of telecommunications services to misrepresent to customers the costs of providing services or the services provided.

(3) Certain providers of telecommunications services have established new, specific charges on customer bills commonly known as "line-item charges".

(4) Certain providers of telecommunications services have described such charges as "Federal Universal Service Fees" or similar fees.

(5) Such charges have generated significant confusion among customers regarding the nature of and scope of universal service and of the fees associated with universal service.

(6) The State of New York is considering action to protect consumers by requiring telecommunications carriers to disclose fully in the bills of all classes of customers the fee increases and fee reductions resulting from the enactment of the Telecommunications Act of 1996 and other regulatory actions taken since the enactment of that Act.

(7) The National Association of Regulatory Utility Commissioners adopted a resolution in February 1998 supporting action by the Federal Communications Commission and the Federal Trade Commission to protect consumers of telecommunications services by assuring accurate cost reporting and billing practices by telecommunications carriers nationwide.

(b) REQUIREMENTS.—Any telecommunications carrier that includes any change resulting from Federal regulatory action shall specify in such bill—

(1) the reduction in charges or fees for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers) resulting from any regulatory action of the Federal Communications Commission;

(2) total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including customers of residential basic service, customers of other residential services, small business customers, and other business customers);

(3) notify consumers one billing cycle in advance of any charges in existing charges or imposition of new charges; and

(4) disclose, upon subscription, total monthly charges, usage charges, percentage charges, and premiums for each class of customers (including residential basic service, customers of other residential service, small business customers, and other business customers).

THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

BROWNBACK AMENDMENT NO. 2393

(Ordered to lie on the table.)

Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill, S. 2057, supra; as follows:

Strike out section 527, and insert in lieu thereof the following:

SEC. 527. REQUIREMENTS RELATING TO RECRUIT BASIC TRAINING.

(a) ARMY.—(1) Chapter 401 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 4319. Recruit basic training: separate housing and privacy for male and female recruits

"(a) SEPARATE HOUSING FACILITIES.—The Secretary of the Army shall require that during basic training male and female recruits be housed in separate barracks or other troop housing facilities.

"(b) HOUSING PRIVACY.—The Secretary of the Army shall require that access by drill sergeants and other training personnel to a barracks floor on which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to drill sergeants and other training personnel who are of the same sex as the recruits housed on that floor.

"(c) BASIC TRAINING DEFINED.—In this section, the term 'basic training' means the initial entry training program of the Army that constitutes the basic training of new recruits."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"4319. Recruit basic training: separate housing and privacy for male and female recruits."

(b) NAVY AND MARINE CORPS.—(1) Part III of subtitle C of title 10, United States Code, is amended by inserting after chapter 601 the following new chapter:

"CHAPTER 602—TRAINING GENERALLY

"Sec.

"6931. Recruit basic training: separate housing and privacy for male and female recruits.

"§ 6931. Recruit basic training: separate housing and privacy for male and female recruits

"(a) SEPARATE HOUSING.—The Secretary of the Navy shall require that during basic training male and female recruits be housed in separate barracks or other troop housing facilities.

"(b) HOUSING PRIVACY.—The Secretary of the Navy shall require that access by recruit division commanders and other training personnel to a barracks floor on which Navy recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to recruit division commanders and other training personnel who are of the same sex as the recruits housed on that floor.

"(c) BASIC TRAINING DEFINED.—In this section, the term 'basic training' means the initial entry training programs of the Navy and Marine Corps that constitute the basic training of new recruits."

(2) The tables of chapters at the beginning of subtitle C, and at the beginning of part III of subtitle C, of such title are amended by inserting after the item relating to chapter 601 the following new item:

"602. Training Generally 6931".

(c) AIR FORCE.—(1) Chapter 901 of title 10, United States Code, is amended by adding at the end the following new section:

"§ 9319. Recruit basic training: separate housing and privacy for male and female recruits

"(a) SEPARATE HOUSING.—The Secretary of the Air Force shall require that during basic training male and female recruits be housed in separate dormitories or other troop housing facilities.

"(b) HOUSING PRIVACY.—The Secretary of the Air Force shall require that access by

drill sergeants and other training personnel to a dormitory floor on which recruits are housed during basic training shall be limited after the end of the training day, other than in the case of an emergency or other exigent circumstance, to drill sergeants and other training personnel who are of the same sex as the recruits housed on that floor.

"(c) BASIC TRAINING DEFINED.—In this section, the term 'basic training' means the initial entry training program of the Air Force that constitutes the basic training of new recruits."

(2) The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

"9319. Recruit basic training: separate housing and privacy for male and female recruits."

(d) IMPLEMENTATION.—(1) The Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force shall implement section 4319, 6931, or 9319, respectively, of title 10, United States Code (as added by this section), as rapidly as feasible and shall ensure that the provisions of that section are applied to all recruit basic training classes beginning not later than the first such class that enters basic training on or after April 15, 1999.

(2)(A) If the Secretary of the military department concerned determines that it is not feasible, during some or all of the period beginning on April 15, 1999, and ending on October 1, 2001, to comply with the requirement for separate housing at any particular installation at which basic training is conducted because facilities at that installation are insufficient for such purpose, the Secretary may grant a waiver of the requirement with respect to that installation. Any such waiver may not be in effect after October 1, 2001, and may only be in effect while the facilities at that installation are insufficient for the purposes of compliance with the requirement for separate housing.

(B) If the Secretary of a military department grants a waiver under subparagraph (A) with respect to an installation, the Secretary shall require that male and female recruits in basic training at that installation during any period that the waiver is in effect not be housed on the same floor of a barracks or other troop housing facility.

(3) In this subsection:

(A) The term "requirement for separate housing" means—

(i) with respect to the Army, the requirement set forth in section 4319(a) of title 10, United States Code, as added by subsection (a);

(ii) with respect to the Navy and the Marine Corps, the requirement set forth in section 6931(a) of such title, as added by subsection (b); and

(iii) with respect to the Air Force, the requirement set forth in section 9319(a) of such title, as added by subsection (c).

(B) The term "basic training" means the initial entry training program of an armed force that constitutes the basic training of new recruits.

NOTICE OF HEARING

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. LUGAR. Mr. President, I would like to announce that the Senate Committee on Agriculture, Nutrition, and Forestry will meet on Thursday, May 14, 1998 at 9:00 a.m. in SR-328A. The purpose of this meeting will be to examine the year 2000 computer problem compliance of the U.S. Department of