NEXTLINK®

Before the

Pennsylvania House of Representatives
Committee on Consumer Affairs

Testimony

of

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On Behalf of

NEXTLINK PENNSYLVANIA, INC.

Concerning House Bills 200 and 229

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My name is Renardo Hicks and I am Vice President, Regulatory and Legal Counsel for NEXTLINK Pennsylvania, Inc. ("NEXTLINK")[1] The last time I testified before this Committee, I was responsible for enforcing the state's consumer protection laws in the Office of Attorney General. I joined NEXTLINK in August of 1997 and I have brought with me all of my experience as a consumer advocate and prosecutor to this exciting and increasingly more competitive telecommunications business.

NEXTLINK is a "facilities based" local and long distance telephone company, serving eastern Pennsylvania including Harrisburg, Lancaster, Reading, Pottstown, Allentown, Bethlehem, Wilkes Barre/Scranton, Philadelphia and some of the surrounding communities. What I mean by the phrase "facilities based" is that in order to provide our customers with a variety of competitive services and prices, NEXTLINK has invested more than $50 million in infrastructure development in Pennsylvania to date, with substantial expansion continuing this year. We are not "resellers" of telephone service.

Thank you for the opportunity to participate in this important hearing on amendments to Title 66, the Public Utilities Law, to include measures to combat "slamming." As you know, the term "slamming" refers to a process where consumers have had their telephone service provider changed without their consent. NEXTLINK fully supports the enactment of legislation that prohibits "slamming."

House Bills 229 and 200 both address the process of securing, and verifying an authorization from consumers to switch their telephone service provider. These bills are **timely and important**. **Timely**, because this is an area where the Federal Communications Commission ("FCC") has held hearings, reviewed comments and promulgated new regulations. The FCC has adopted new regulations on slamming which become effective in April and May of this year (approx. April 28th for rules and May 17th for liability). **Important**, because the growth and survival of local telephone competition, particularly for facilities based companies like NEXTLINK, requires that consumers have the ability to affirmatively **choose** the telephone company that best suits their needs.

In an Order adopted on December 17th and released on December 23, 1998, the FCC published rules to assist consumers who have had their telephone service provider changed without their consent. Those rules permit consumers to refuse to pay charges imposed by an unauthorized carrier for up to 30 days after being slammed. In addition, the FCC outlines a number of approved verification procedures used to confirm telephone carrier switches. NEXTLINK believes that the proposed PA legislation should compliment - not contradict - the recent rules of the FCC.

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[1] NEXTLINK Pennsylvania connects customers in the cities we serve by a fiber optic system covering more than 750 route miles. Nortel DMS-500 switches are now in place in Philadelphia, Harrisburg and Allentown to provide a full range of local and long distance services. NEXTLINK Pennsylvania has also developed an enhanced inter-city network in Pennsylvania. We have built Metropolitan Area Networks (MANS) in Philadelphia, Allentown, Bethlehem, Lancaster, Scranton and Harrisburg. These cities are interconnected to provide Wide Area Network (WAN) service. Currently the network also connects to the major Interexchange Carriers (IXCs) and fourteen Bell Atlantic Central Offices for collocation services.

HB 229 AND THE FCC RULES CORRECTLY ABSOLVE CONSUMERS OF LIABILITY FOR UNAUTHORIZED SWITCHES

The FCC concluded that absolving slammed consumers of liability for charges will discourage slamming by taking the profit out of this fraudulent practice. In so doing, the FCC was careful to balance the interests of consumers and the industry. A 30-day absolution period provides incentive for consumers to review their phone bills carefully and promptly, and it provides incentive for carriers that legitimately sign up customers to verify switches properly so as to have solid evidence of the change.

Under the new FCC rules, any carrier that a consumer calls to report being slammed must inform the consumer that he or she is not required to pay any slamming charges incurred for the first 30 days after the unauthorized switch. If a consumer does pay the unauthorized carrier, however, the authorized carrier may recoup from the unauthorized carrier any slamming charges collected by the latter, in which case the authorized carrier is required to refund to the consumer any amount paid in excess of what the consumer would have paid absent the slam. Unauthorized carriers are also required to pay other expenses, such as reasonable billing and collection costs, including attorneys' fees, incurred by the authorized carrier in collecting charges from the unauthorized carrier.

Similarly, HB 229 provides that any company that initiates an unauthorized change in a customers service provider shall be liable to the company previously selected in an amount equal to all charges paid by the customer after the unauthorized change.

These provisions correctly rely upon the authorized carrier to determine whether its subscribers are slammed and to provide the appropriate relief to consumers.

A "NEGATIVE OPTION" SHOULD NOT BE PERMITTED AS AN APPROVED METHOD OF MAKING A CHANGE TO A CUSTOMER'S AUTHORIZED CARRIER

H.B. 229 adopts significant portions of the recent federal regulations and authorizes customer verification of a service transfer by:

- a consumer signature on an authorization form, known as a Letter of Agency;
- an electronic authorization, usually resulting from a customer-initiated call to toll-free number;
- and, verification by an independent third party.

On the other hand, this Bill proposes a fourth method of customer authorization that has been specifically rejected by the FCC. Section 4(a)(4) of HB 229 provides for verification of a consumer decision to switch providers as follows:

- an informational package mailed to the customer ...which contains a postage-prepaid postcard or mailer, without receiving a cancellation of the change order from the customer within 14 days after the date of the mailing.

Although the language in this section is confusing, and possibly incomplete, it appears to be an attempt to institute the use of a prepaid postcard for the canceling of a change of carrier that was ostensibly the result of a telemarketing call. By adopting language authorizing a change of a consumer's service provider through telemarketing and the use of "an informational package...which contains a postage-prepaid postcard, where the company has not received a cancellation of the change order within 14 days after the mailing", this provision authorizes the change of a consumer's service provider through the use of a "negative option."

In Paragraph 61 of its Order of December 27, 1998, the FCC eliminated the "Welcome" package as an approved method of making a change to a customer's authorized carrier. The FCC noted that this method had been subject to abuse by unscrupulous carriers, **and** consumers should not have to take affirmative action to avoid being slammed. Therefore, since the FCC has rejected this technique, this "negative option" should also be eliminated from HB 229.

SERVICE PROVIDER VERIFICATION OF A CUSTOMER'S CHANGE REQUEST SHOULD NOT BE PERMITTED PRIOR TO CHANGING SERVICE

House Bill 200 also raises an issue that has already been addressed by the FCC.

Section 1(a.1) provides that:

- **Prior to** changing a customer's local exchange company, their current company **shall** verify through direct oral or written evidence the customer's consent to change.

The process of converting a local service customer from Bell Atlantic to NEXTLINK, or any other CLEC, is already an inconvenient and difficult experience for many customers. Too often, it takes too long, to fulfil a customer's request for transfer to a new carrier. By authorizing, and apparently requiring, incumbent carriers to verify a consumer choice before initiating a change of local service providers, incumbent local exchange carriers are provided a significant competitive advantage and consumers will encounter greater difficulty in choosing a competitive local exchange carrier.

Unlike Section 1(a.1) of HB 200, in Paragraph 97 of its Order of December 27, 1998, the FCC specifically concluded that carriers should not verify carrier changes prior to executing the change, and found that executing carriers have an obligation to ensure that the consumer's carrier changes are executed as soon and as accurately as possible.

By permitting a customer's current service provider to confirm a customer's decision to change their service provider, **before a change in service is accomplished,** we create opportunities for abuse and delay of the authorized transfer process. Carriers should not be permitted to use a customer's request for a transfer of service as a foundation to "Win Back" that customer. Executing carriers should not be permitted to communicate with a customer who has requested a change of carrier for the purpose of verification until well after the change has been made.

NEXTLINK RECOMMENDATIONS

- HB 229 should be amended, consistent with the new rules of the FCC, to "remove" or "strike" the negative option in Section 4(a)(4) as an approved method of making a change to a customer's authorized carrier.

- The FCC has clearly stated that verification by the executing carrier prior to a change of carriers is unacceptable, therefore, HB 200 should be withdrawn.