

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
to consider revisions to the procedures designed)
to prohibit switching an end user of a telecom-)
munications provider to another provider without)
the authorization of the end user.)
_____)

Case No. U-11900

At the January 10, 2000 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John G. Strand, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

On September 28, 1999, the Commission issued an order in this case (the September 28 order) revising its anti-slamming procedures, extending the deadline for offering local exchange carrier (LEC) protection, and publishing for comment proposed language intended to further ensure that each telecommunications provider’s actions do not encourage slamming.¹ The order went on to establish October 12 and 26, 1999, respectively, as the deadlines for filing comments and reply comments to the proposed language.

¹“Slamming” refers to switching one or more of an end-use customer’s telecommunications services from one provider to another without that customer’s permission.

Pursuant to that schedule, comments were received from the Telecommunications Resellers Association and the Competitive Telecommunications Association (collectively, the TRA); AT&T Communications of Michigan, Inc. (AT&T); the Telecommunications Association of Michigan (TAM); GTE Communications Corporation and GTE North Incorporated (GTE); MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc., formerly known as MCI Telecommunications Corporation (MCI WorldCom); and Ameritech Michigan. Reply comments were also submitted by AT&T, MCI WorldCom, Ameritech Michigan, and Qwest Communications Corporation (Qwest).

In addition to those comments and reply comments, petitions for rehearing, clarification, or stay of the September 28 order were filed on October 18, 20, and 28, 1999, respectively, by AT&T, MCI WorldCom, and Qwest. On November 8, 1999, Ameritech Michigan filed a response to those petitions.

II.

BACKGROUND

To better protect Michigan's citizens from slamming, the Legislature passed and the Governor signed into law Public Acts 259 and 260 of 1998 (Acts 259 and 260), which amended the Michigan Telecommunications Act, 1991 PA 179, as previously amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., (the Act). Those amendments expressly prohibited a telecommunications provider from switching a customer to another service provider without that customer's authorization. In addition, the amendments granted the Commission broad authority to issue orders establishing and enforcing all procedures deemed necessary to eliminate slamming.

The Commission therefore issued an order on September 23, 1998 (in Case No. U-11757) in which it established the initial set of anti-slamming procedures to be followed by all service providers operating

in Michigan. The adoption of those procedures was timed to correspond to the effective date of Public Acts 259 and 260. This occurred despite the recognition by all parties that the Federal Communications Commission (FCC) would shortly be revising its own anti-slamming procedures and that at least some of the changes eventually adopted by the FCC would have to be reflected in the Commission's procedures.

On December 17, 1998, the FCC issued an order in CC Docket No. 94-129 broadening the scope of its anti-slamming rules, imposing more stringent verification requirements regarding customers' requests to change service providers, and establishing penalty provisions designed to take the economic incentive out of slamming. In response to the FCC's order, the Commission initiated an investigation in the present case and invited interested parties to file proposals concerning, among other things, revisions to the Commission's initial anti-slamming procedures that they believed were necessitated by the FCC's new rules.

Following review of the parties' proposals and responses, the Commission issued an order on April 23, 1999 in the present case (Case No. U-11900) adopting revised anti-slamming procedures. In response to various requests for rehearing, reconsideration, and clarification, the Commission issued follow-up orders in this case on July 28 and September 28, 1999 that further revised its anti-slamming procedures.

Among other things, the Commission's September 28, 1999 order addressed the potential imposition of joint and several liability upon carriers that either (1) elect to serve as billing agents for other service providers or (2) permit switchless resellers to use their carrier identification codes. In accordance with arguments offered by several of the parties, the Commission found that "in some situations imposing joint and several liability on a carrier for the improper actions of an unaffiliated service provider may result

in unfair or unintended consequences.” September 28 order, p. 12. The Commission therefore elected not to include as part of its anti-slamming procedures proposed language regarding joint and several liability.

Nevertheless, the Commission remained convinced that steps should be taken to ensure that carriers do not promote the practice of slamming, either intentionally or unintentionally, by providing services to other carriers that slam end-use customers. The Commission therefore concluded that the best way to accomplish this might be to include, as revised Section 6(f) of its revised anti-slamming procedures, a provision stating that:

No telecommunications service provider shall attempt to collect from an end use customer any charges arising from unauthorized service. In addition, no such provider shall impose or attempt to collect from an end use customer any fees for switching that customer to the unauthorized service provider or for subsequently switching the customer back to its authorized provider.

Id. Because none of the parties had been provided an opportunity to review and comment upon this proposal, the Commission found that a process should be established for gathering and evaluating the parties’ statements of position. It therefore gave the parties until October 26, 1999 to file comments and reply comments regarding the proposed language.

The September 28 order also adopted, as Section 7 of the Commission’s anti-slamming procedures, a requirement that each submitting or executing carrier must notify the customer of any change in the customer’s service provider within ten days after the change takes effect. That section further stated that the notice shall (1) indicate the type of the service that was changed, (2) supply the effective date of the change, (3) identify the company that is on record as previously providing that service, and (4) provide the identity--including the address and the phone number--of the company to whom the customer’s

service has been switched. Finally, it went on to require the carriers to preserve, for at least two years, records showing the date upon which each notice was issued.

III.

DISCUSSION

Proposed Section 6(f)

Of all the parties that submitted comments, only the TRA supports adopting proposed Section 6(f) in its current form. According to the TRA, including that provision in the Commission's anti-slamming procedures is the most equitable way to ensure that unscrupulous telecommunications providers reap no benefit from slamming.

In contrast, AT&T, MCI WorldCom, and Qwest argue that the proposed language should be rejected in its entirety. According to AT&T, the language suggested in the September 28 order is ambiguous and overly broad, and--if taken to its logical end--will produce the same unfair result as the "joint and several liability" language that it was intended to replace. Moreover, MCI WorldCom contends that it is redundant in light of other anti-slamming procedures and will only serve to punish innocent carriers that happen to provide billing services to a few small (albeit unethical) carriers over which they have no control. These parties therefore contend, among other things, that adopting the proposed language could create a barrier to entry by encouraging large carriers to cease providing billing services to all small carriers.

Similarly, Ameritech Michigan, GTE, and TAM argue that proposed Section 6(f)--at least in its current form--could expose carriers to substantial fines for simply mailing a bill to an end use customer who, unbeknownst to the billing carrier, is being served by an unauthorized carrier. Thus, these LECs

assert that the Commission should take either of two steps to avoid such an unfair result. First, they state that it could reject proposed Section 6(f), as recommended above. In the alternative, they continue, the Commission could revise the proposed language to require a determinable level of knowledge on the part of the provider who bills the end user for the unauthorized service before liability is imposed. According to GTE, this could be accomplished by inserting the word “knowingly” in the first line of proposed Section 6(f). GTE’s comments, p. 3.

The Commission disagrees, in significant part, with the parties’ arguments in opposition to proposed Section 6(f). As noted in the September 28 order, each telecommunications service provider operating in Michigan “should take all reasonable steps to ensure that its actions do not encourage slamming.” September 28 order, p. 12. Likewise, “each provider should be held fully accountable for its own actions and should not derive any benefit from slamming.” *Id.* Because deleting Section 6(f) in its entirety would effectively exempt carriers from these responsibilities, the Commission finds that it must reject the position taken by AT&T, MCI WorldCom, and Qwest. Moreover, because adopting a “knowingly assisted” standard like that proposed by Ameritech Michigan, GTE, and TAM would produce a similar result, the Commission finds that it too must be rejected.

Nevertheless, the Commission finds that the proposed language set forth in the September 28 order establishes an unnecessarily strict standard. As noted in that order, the intent of Section 6(f) is to make carriers take “all reasonable steps” to avoid encouraging the practice of slamming. *Id.* Thus, carriers should be given the opportunity to prove that they did everything reasonable to avoid assisting other carriers in the provision of unauthorized service. This can best be accomplished by adding the following sentence to proposed Section 6(f):

Nevertheless, no penalties shall be imposed on a provider for violating this subsection of the Commission's procedures if that provider shows that it took all reasonable steps to avoid imposing or attempting to collect charges or fees on behalf of, or arising from the actions of, an unauthorized service provider. The provider that violates this subsection bears the burden of proving that it took all reasonable steps to avoid acting on behalf of the unauthorized service provider.

The Commission therefore concludes that, with this addition, it should adopt proposed Section 6(f) as part of its anti-slamming procedures.

Rehearing Requests Regarding Section 7

Each of the three requests for rehearing, clarification, or stay that are at issue in this case concerns the 10-day notification requirement approved in the September 28 order and set forth in Section 7 of the Commission's anti-slamming procedures. That section states, in pertinent part:

(a) The submitting carrier and the executing carrier, as defined in Sections 2.1(c)(1) and 2.1(c)(2) of these procedures, respectively, shall notify the end-use customer of any change in the customer's service provider(s). Any such notice must be provided to the customer within 10 days of the effective date of the change in the customer's service provider(s).

(b) The notification required by Section 7(a) of these procedures shall only indicate:

- (1) the type or types of telecommunications service that will be provided by a different carrier;
- (2) the effective date of the change in the customer's service provider(s);
- (3) the identity of the customer's prior telecommunications service provider for each type of service that was changed; and
- (4) the identity, including the address and phone number, of each telecommunications provider to whom the customer's service has now been changed.

See, Exhibit A attached to the September 28 order, pp. 11-12.

MCI WorldCom, Qwest, and AT&T claim that in many instances it could prove difficult, if not impossible, for carriers to satisfy the requirements of Section 7. For example, both MCI WorldCom and

Qwest point out that neither facilities-based interexchange carriers (FBIXCs) nor any resellers that use the FBIXCs' systems will know the identity of an end-use customer's prior service provider. As a result, they note, those carriers would be unable to provide the information demanded by Section 7(b)(3).² These two parties go on to argue that FBIXCs frequently lack an established billing relationship with the end-use customer whose service is being changed. Thus, they continue, those carriers would lack information essential to delivery of the notice--namely, the name and address of the customer to whom the notice must be sent. Expanding on that argument, AT&T asserts that the only way for those carriers to satisfy Section 7 would be to request highly proprietary information from the submitting carriers, such as the name and address of each customer that signs up for their service. Moreover, Qwest asserts that even if those problems could be surmounted, it could take several months to establish all systems necessary to provide the 10-day notice mandated by Section 7.

For the reasons set forth above, the parties propose a wide array of potential remedies. For example, AT&T and Ameritech Michigan recommend that the Commission either eliminate Section 7 in its entirety or impose its requirements solely on submitting carriers. In contrast, MCI WorldCom and Qwest recommend exempting all long-distance carriers (FBIXCs and resellers alike) from the requirements imposed by Section 7. In the alternative, MCI WorldCom asserts, the Commission should revise its anti-slamming procedures to indicate that "if a provider does not have certain information, it will not be held in violation of Section 7 so long as it complies to the extent to which it has applicable information."

²In its response to the petitions for rehearing, Ameritech Michigan notes that the same situation often exists with regard to LECs and that they, too, may be unable to ascertain and report the identity of the customer's prior service provider.

MCI WorldCom's petition for clarification or rehearing, p. 4. Finally, Qwest states that the Commission should, at a minimum, stay the effect of Section 7 for between five and eight months.

The Commission does not find persuasive the parties' claims that Section 7 should be deleted in its entirety. The notification requirement imposed by this section will help avoid situations in which an end-use customer goes weeks or months before discovering that its service has been slammed. As a result, the Commission concludes that it constitutes a reasonable and necessary adjunct to the truth-in-billing and bill format requirements that were adopted in the September 28 order, and should be retained.

Likewise, the Commission disagrees with claims to the effect that the 10-day notice requirement should apply exclusively to submitting carriers (as recommended by AT&T and Ameritech Michigan) or to LECs (as proposed by MCI WorldCom and Qwest). This is due to the fact that in some situations--such as where the customer's service is changed from one switchless reseller to another--the LEC or FBIXC that is operating the underlying system may be unaware of the change and, thus, unable to provide any part of the notice mandated by Section 7.³ By imposing these requirements on all submitting and executing carriers, regardless of what type of service they provide, the Commission can better ensure that end-use customers are quickly apprised of every change in their designated service providers. The Commission therefore finds that it should reject all requests to restrict the application of Section 7 to certain groups of service providers.

The Commission nevertheless concludes that, at least for the foreseeable future, Section 7 should be modified to make it at least somewhat easier for all carriers to satisfy its requirements. Specifically, the

³It also bears noting that a significant flaw exists in the practical application of the proposal to restrict the scope of Section 7 to submitting carriers. Specifically, this proposal would only work in the unlikely event that a company that slammed an end-use customer would be willing to promptly advise that customer that its service had been slammed.

Commission finds that three changes should be made that are similar to, but not quite as extensive as, MCI WorldCom's alternative proposal. First, a sentence should be added to the end of Section 7(a) indicating that the 10-day notification requirement applies only to executing carriers when the name and address of the end-use customer is either known to, or readily discernible by, the executing carrier.⁴

Second, the following language should be inserted as Section 7(c):

(c) To the extent that any of the information described in Section 7(b) is neither known to, nor readily discernible by, the submitting or executing carrier, that portion of the carrier's notice may be left blank.

Third, the subsequent subparts of Section 7 should be re-lettered to reflect the addition of this language.

The basis for making these changes is the fact that, following the implementation of the Commission's anti-slamming procedures, the number of slamming complaints received by the Commission Staff has declined noticeably. With the addition of Section 6(f), as discussed earlier in this order, the Commission fully expects the number of these complaints to decline further. It is for this reason that the Commission finds that it should grant, in part, MCI WorldCom's petition for rehearing and ease the requirements imposed by Section 7. However, the Commission reserves the right to revisit this issue should it determine that the recent reduction in the number of slamming complaints is only a temporary phenomenon.

Finally, the Commission concludes that Qwest's request to stay the effect of Section 7 for between five and eight months should be rejected. The 10-day notification requirement was first adopted approximately eight months ago, as part of the Commission's April 23 order in Case No. U-11900.

Although application of that requirement was temporarily stayed by the July 28, 1999 order in this case,

⁴This exemption is not being extended to submitting carriers for the reason that those carriers can always discern the customer's name and address by requesting this information directly from the customer in the course of its marketing contact.

its force and effect resumed with the issuance of the September 28 order and continues to this day. As a result, carriers have already had approximately six months during which Section 7 was in full effect to begin complying with the 10-day notice requirement. This, the Commission finds, constitutes adequate time for those carriers to implement or revise all systems necessary to begin providing the requisite notice.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.
- b. Proposed Section 6(f) of the Commission's anti-slamming procedures, as set forth in the September 28 order and modified by this order, should be approved.
- c. MCI WorldCom's petition for clarification or rehearing should be granted in part and denied in part, and all other petitions should be denied.
- d. Section 7 of the Commission's anti-slamming procedures should be modified as indicated in this order.
- e. Except for the modifications approved by this order, all relief requested in the comments, reply comments, and petitions addressed in this order should be denied.

THEREFORE, IT IS ORDERED that:

- A. Proposed Section 6(f) of the Commission's anti-slamming procedures, as set forth in the September 28, 1999 order in Case No. U-11900 and modified by this order, is approved.

B. The petition for clarification or rehearing filed on October 20, 1999 by MCI WorldCom Communications, Inc., and MCI WorldCom Network Services, Inc., formerly known as MCI Telecommunications Corporation, is granted in part and denied in part, and all other petitions for rehearing, clarification, or stay of the Commission's September 28, 1999 order in Case No. U-11900 are denied.

C. Section 7 of the Commission's anti-slamming procedures is modified as indicated in this order.

D. Except for the modifications approved by this order, all relief requested in the comments, reply comments, and petitions addressed in this order is denied.

E. The revised procedures for changing telecommunications service providers, attached as Exhibit A to this order, are approved and shall remain in effect until further order of this Commission.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of January 10, 2000.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

Commissioner

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Its Executive Secretary

In the matter, on the Commission's own motion,)
to consider revisions to the procedures designed)
to prohibit switching an end user of a telecom-)
munications provider to another provider without)
the authorization of the end user.)
_____)

Case No. U-11900

Suggested Minute:

“Adopt and issue order dated January 10, 2000 approving revisions to the Commission's anti-slamming procedures, granting in part and denying in part the petition for clarification or rehearing filed October 20, 1999, and rejecting all other requests for relief, as set forth in the order.”