

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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 July 11, 2001 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Laura Chappelle, Chairman
Hon. David A. Svanda, Commissioner
Hon. Robert B. Nelson, Commissioner

OPINION AND ORDER

I.

HISTORY OF PROCEEDINGS

To better protect Michigan’s citizens from slamming,¹ 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. Those amendments expressly prohibited a telecommunications provider from switching a customer to another service provider without first verifying, through one or more approved methodologies, that the customer truly authorized the

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.

switch. 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) establishing 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 be making significant revisions to its own anti-slamming rules 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 (Case No. U-11900) and invited interested parties to file proposals concerning, among other things, any 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 Case No. U-11900 revising its anti-slamming procedures. Moreover, in response to various requests for rehearing, reconsideration, reopening, and clarification, the Commission issued follow-up orders in this case on July 28 and September 28, 1999, as well as on January 10, March 3, and September 18, 2000.

On February 6, 2001, MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., and MCImetro Access Transmission Services, Inc. (collectively, WorldCom), filed

a petition requesting that the Commission reopen the proceedings and insert in its anti-slamming procedures a provision requiring each carrier that executes a primary interexchange carrier (PIC) change order to provide notice of that change to the carrier whose service is being replaced.

According to WorldCom, its proposed revision to the anti-slamming procedures was necessitated by subsequent changes in both fact and law. Responses to WorldCom's petition were filed on February 27, 2001 by Qwest Communications Services (Qwest) and AT&T Communications of Michigan, Inc. (AT&T).

II.

DISCUSSION

WorldCom begins by noting that, across the country and in Michigan, an overwhelming majority of PIC changes are accomplished and confirmed through the use of an automated process called the Customer Account Records Exchange (CARE) system. Under the CARE system, it continues, the major local exchange carriers (LECs) like Ameritech Michigan, Verizon North Inc., Frontier Communications of Michigan, Inc., and CenturyTel--who serve approximately 98% of the local customers in Michigan--send notices of cancellation to interexchange carriers (IXCs) when one of their customers has been switched to another carrier. Upon receipt of such notice, WorldCom asserts, the IXCs will take steps to prevent further billing on those accounts.

WorldCom goes on to note that, if an LEC does not subscribe to the CARE system, it can give notice to an IXC of a customer's change in service providers by calling a telephone number designated for this purpose by the IXC, sending a FAX, mailing a letter, or using the Internet. Despite this wealth of options, WorldCom argues, certain small LECs have refused to provide any type of customer cancellation notice to the IXCs.

According to WorldCom, those small LECs' failure to act shifts to the end-use customers the burden of providing adequate cancellation notice. Worse yet, it can result in end-users being listed as customers of two IXCs and, thus, being billed by both providers. WorldCom finds this particularly troubling for itself because it previously entered into a consent decree with the FCC stating, in pertinent part, that:

WorldCom will ensure that for all customers that request disconnection from the Company as their preferred interexchange carrier, the Company will not remove the customer's billing records until the company receives notice from the customer's LEC that the customer has canceled his or her account with [WorldCom]. This provision does not preclude the Company from conducting regular account maintenance of customer billing records to address escalations regarding (a) accounts for which the customer can verify that they have already been switched to another [PIC]

In the Matter of MCI WorldCom, 15 FCC Rec. 4545 (2000) [Appendix, ¶11(H)].

WorldCom therefore asserts that the Commission's anti-slamming procedures should be revised to "spell out the obligations and responsibilities of executing and former carriers" to be consistent with both the predominant industry practice and the consent decree quoted above. WorldCom's petition for reopening, p. 6. It goes on to contend that this can best be accomplished by adding, to Section 2.1(a) of the current procedures, the following provision:

- (4) An executing carrier shall, for every PIC change, notify the carrier whose service is being replaced of the cancellation of that service. This notice of cancellation may take place through an electronic notification over the CARE system. Other acceptable forms of notice of cancellation include use of an Internet-based site hosted by the IXC, sending a fax, mailing a letter, or placing a telephone call to a telephone number designated by the carrier whose service is being replaced and notifying that carrier of the customer name and of the specific line for which the service has been canceled by the customer. This notification of cancellation must take place within 10 days of the cancellation of the service and shall include the date on which the service was canceled and shall identify the service (i.e., intraLATA toll and/or interLATA toll) which has been canceled. After receipt and processing of this notice of cancellation, the former carrier shall remove the customer's billing records.

Id., p. 7. By making this change, WorldCom argues, the Commission can ensure that a customer's former carrier is properly notified of the change in carriers and the end-user is not billed for services that have previously been canceled.

In its response, Qwest supports WorldCom's proposal to require all executing carriers to provide notice of cancellation through use of the CARE system or any of the other means set forth in the proposed revision to the Commission's anti-slamming procedures. Like WorldCom, Qwest asserts that the current industry standard calls for LECs to provide cancellation notices to affected carriers. Moreover, Qwest continues, including that requirement as part of the Commission's anti-slamming procedures would make sure that carriers receive the notices and are able to avoid billing customers for unwanted service.

Nevertheless, Qwest proposes several changes to the specific language recommended by WorldCom. First, it suggests that the scope of the notice be expanded to (1) require its submission to both the carrier that is being replaced and the newly selected carrier, referred to as the "submitting carrier," and (2) include the effective date that the PIC change order was executed. According to Qwest, failure to expand the notice in this fashion would leave submitting carriers wondering whether their respective change orders have been processed, rejected, or otherwise delayed. Second, Qwest proposes requiring this notice to occur within 5 days of when the change occurred, rather than the 10 days proposed by WorldCom. Qwest claims that this is necessary to allow submitting carriers to satisfy Section 7(a) of the Commission's anti-slamming procedures, which requires both the executing carrier and the submitting carrier to notify the end-use customer of any change in the customer's service provider within 10 days of the change. Third, Qwest recommends eliminating the last sentence of WorldCom's proposal, which states, "After receipt and processing of this notice of cancellation, the former carrier shall remove the customer's billing

records.” Among other things, Qwest asserts that sound business practices require carriers to maintain their former customers’ billing records in order to resolve any billing concerns that might arise after those customers’ have switched to another provider.

Like Qwest, AT&T supports WorldCom’s request to reopen this docket, revise Section 2.1(a) of the Commission’s anti-slamming procedures, and require LECs to provide notice of cancellation whenever they execute a PIC change order. “Without such notification,” AT&T asserts, “the former toll carrier may not be able to change the end user’s billing status in a timely manner so as to prevent inadvertent billing of charges.” AT&T’s response, p. 2.

Notwithstanding that support, AT&T claims that WorldCom’s proposed language should be clarified or modified to address two issues. First, AT&T asserts that when the change in inter-LATA service providers involves two resellers of service provided by the same facilities-based IXC (generally referred to as a FBIXC), the notice requirement should not apply. Because the FBIXC generally “modifies its billing operational systems to record the change in carrier status,” AT&T reasons, “the terminated resale carrier is put on notice that the end user has left its service” and no further notice is necessary. *Id.*, p. 3. Second, like Qwest, AT&T finds fault with the last sentence of WorldCom’s proposed language. Although conceding that former service providers should be required to remove switched customers from their lists of active customers, AT&T explains that the language in question “is overly broad for this purpose” and would force IXCs to remove those customers’ billing records from their operational and billing systems. *Id.*, p. 5. Because those records may be needed to resolve billing disputes, AT&T suggests revising that sentence to read as follows:

“After receipt and processing of this notice of cancellation, the former carrier shall discontinue billing the customer for the discontinued toll service, except that the carrier may continue to collect all rates and charges due and owing prior to the discontinuance of service.”

Id.

The Commission agrees that WorldCom’s petition should be granted and that Section 2.1(a)(4) should be added to the anti-slamming procedures previously adopted in this case. Requiring executing carriers to promptly provide cancellation notices to customers’ former service providers will, as noted by the parties, better ensure that end users are not billed for services that have previously been canceled. Although imposing this requirement may slightly increase executing carriers’ operating expenses and necessitate having service providers develop a reasonable system for allocating any such costs, the Commission finds that to be a small price to pay to avoid double-billing end-use customers.

Nevertheless, the Commission further concludes that certain changes should be made to the language initially proposed by WorldCom. First, the scope of the proposed language should be expanded to (1) require submission of the notice of cancellation to both the carrier that is being replaced and the submitting carrier, and (2) include, as part of that notice, the effective date that the change order was processed. Without this expansion, the Commission finds, submitting carriers would have no clear means of determining whether or when to begin serving any newly-acquired customers. Second, to provide submitting carriers an opportunity to satisfy the requirements of Section 7(a), the Commission agrees with Qwest that the notification period should be reduced from the 10 days initially proposed by WorldCom. However, rather than the 5-day deadline suggested by Qwest, the Commission finds that 7 days would be better. This would allow small carriers that are not subscribers to the CARE system to satisfy the new Section 2.1(a)(4) require-

ments by issuing, on a single day of the week, all cancellation notices arising from change orders executed during the preceding 7 days. Third, the Commission finds that the last sentence of WorldCom's proposed language should be revised in the manner suggested by AT&T. Making this revision--rather than simply deleting the sentence in its entirety, as proposed by Qwest--would have the beneficial effect of removing switched customers from a carrier's list of active accounts, while retaining the records necessary to resolve any billing disputes that may arise in the future.

Finally, the Commission concludes that it should reject AT&T's request to exempt from the requirements established by Section 2.1(a)(4) situations where the change in carriers involves two resellers taking service from the same FBIXC. As with the end-use customer notification required under Section 7(a) of the existing anti-slamming procedures, the cancellation notice requirement at issue in this case is more likely to produce the desired results when applied to all involved carriers. For the same reason, the Commission finds that the language proposed by WorldCom should be revised to make it apply to the execution of all change orders, regardless of whether they involve LEC or PIC changes. Doing so will make the language contained in Section 2.1(a)(4) consistent with the remainder of the Commission's anti-slamming procedures.

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 AACRS, R 460.17101 et seq.
- b. WorldCom's petition for reopening should be granted.

c. Proposed Section 2.1(a)(4) of the Commission's anti-slamming procedures, as set forth in WorldCom's petition for reopening and modified by this order, should be approved.

d. Except for the modifications approved by this order, all relief requested in the petition for reopening and the responses to that petition should be denied.

THEREFORE, IT IS ORDERED that:

A. The petition for reopening filed on February 6, 2001 by MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., and MCImetro Access Transmission Services, Inc., is granted.

B. Proposed Section 2.1(a)(4) of the Commission's anti-slamming procedures, as set forth in the February 6, 2001 petition for reopening and modified by this order, is approved.

C. Except for the modifications approved by this order, all relief requested in the February 6, 2001 petition for reopening and the responses to that petition is denied.

D. 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 the 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/ Laura Chappelle
Chairman

(S E A L)

/s/ David A. Svanda
Commissioner

/s/ Robert B. Nelson
Commissioner

By its action of July 11, 2001.

/s/ Dorothy Wideman
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Case No. U-11900

Suggested Minute:

“Adopt and issue order dated July 11, 2001 granting the February 6, 2001 petition for reopening and approving revisions to the Commission's anti-slamming procedures, as set forth in the order.”