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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning	)	CC Docket No. 94-129
Unauthorized Changes of	)	
Consumers' Long Distance Carriers	)	

DOCKET FILE COPY ORIGINAL

AT&T MOTION FOR STAY

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August 4, 1995

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AT&T MOTION FOR STAY

Pursuant to Sections 1.44 and 1.45 of the Commission's Rules, 47 C.F.R. §§ 1.44 and 1.45, AT&T Corp. ("AT&T") requests the Commission stay its June 14 Order[1] in this proceeding, insofar as that decision extends the primary interexchange carrier ("PIC") verification requirements of Section 64.1100 of the Commission's rules to consumer-initiated calls to interexchange carriers ("IXCs"), pending reconsideration of that aspect of the Commission's decision.

The June 14 Order adopted new rules to protect consumers from unauthorized changes of their long distance carrier (a practice commonly referred to as "slamming"). One limited aspect of the Commission's new rules is likely to impose substantial costs and inconvenience on both customers and IXCs, without providing any meaningful

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1 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, FCC 95-225, released June 14, 1995 ("June 14 Order").

consumer protection. Specifically, the June 14 Order (¶ 42) extends the scope of Section 64.1100 of the Commission's rules, which require IXCs to use certain Commission-prescribed methods to confirm telemarketing-generated carrier changes before submitting those orders to local exchange carriers ("LECs"), to include "consumer-initiated calls to IXC business numbers."

Concurrently with the filing of this stay motion, AT&T has petitioned the Commission to reconsider and reverse its decision extending the PIC verification requirement to customer-initiated calling. AT&T's petition demonstrates that the Commission's extension of the verification requirement to such "inbound" calling lacks any reasoned basis in the record of this proceeding. Moreover, AT&T shows there that requiring PIC verification of calls placed by customers to IXCs for the purpose of presubscribing to those carriers will unnecessarily subject carriers to substantial costs and impair their ability effectively to compete for customers and will likewise subject customers to serious inconvenience and delay in selecting their preferred IXC. In view of these serious (and apparently unintended) consequences of the Commission's action, which provides no needed customer protection, the Commission should stay the application of the verification requirements to inbound calling pending reconsideration of that directive.

ARGUMENT

THE COMMISSION SHOULD STAY THE INBOUND VERIFICATION REQUIREMENT PENDING RECONSIDERATION OF ITS ORDER.

AT&T requests the Commission to stay the inbound calling verification requirement, which is now scheduled to take effect September 11,[2] pending reconsideration of that aspect of the June 14 Order. Such relief is necessary to avoid subjecting IXCs to the substantial (and needless) costs that compliance with the inbound verification requirement will entail, and to prevent the serious harm to consumer interests that will result from implementation of that requirement. AT&T's request meets the traditional four-part test for granting a stay prescribed by the Court of Appeals and routinely applied by the Commission in its own proceedings. See Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958); Washington Metro. Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977).[3]

Likelihood of success on the merits. There is a substantial likelihood that AT&T will prevail on its request for limited reconsideration of the June 14 Order,

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2 See 60 F.R. 35,846 (July 12, 1995).

3 Moreover, while AT&T's stay request satisfies each prong of this test, it is not required to do so; the Commission is required to balance these factors against one another and may grant a stay if the balance of hardships tips decidedly towards the party seeking relief. See Washington Metro., 559 F.2d at 844.

both as a matter of law and agency discretion. As more fully shown in AT&T's reconsideration petition (pp. 3-8), the Commission's decision requiring inbound call verification fails to satisfy the minimum requisites of administrative law for adoption of a valid rule, because there is insufficient record evidence that deceptive practices on "inbound" telemarketing calls have been (or are likely to become) a significant problem.

Specifically, the June 14 Order ignores that most parties who commented on this issue expressly recognized that requiring any additional consumer protection for inbound calling to IXCs is unnecessary.[4] Thus, the rule extension was not substantially uncontested as the Commission's decision implies, but was instead actively disputed by the overwhelming majority of participants. None of the three commenters supporting that relief identified in the June 14 Order provided any factual support (as opposed to conclusory assertions) for its claim that inbound verification is necessary to prevent slamming.[5]

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4 See AT&T Reconsideration Pet., p. 4 n.3 (quoting comments).

5 Id., pp. 5-6. AT&T also showed that one of the commenters cited by the Commission as supporting inbound verification had not, in fact, endorsed that requirement. Id., p. 5 n.4.

AT&T's reconsideration petition (p. 6 and n.6) also shows that the comments of Consumer Action, relied on by the June 14 Order (¶ 42), are similarly devoid of any evidence substantiating the need for inbound verification. Instead, that commenter's claims regarding potential customer harm from inbound slamming (and the Commission's ruling based on it) are totally speculative.[6] Nor does review of the record disclose any other factual information indicating a need for inbound verification to protect customers.[7] In particular, AT&T showed that in a Freedom of Information Act ("FOIA") request by AT&T disclosed that informal complaints alleging slamming through inbound calling accounted for only 4 (or less than 1 percent) of a sample of 430 informal slamming complaints analyzed by the Commission.[8]

In sum, the June 14 Order lacks any factual basis on which to base a rational decision that inbound calling presents a threat to consumers warranting the verification requirement. Given this fundamental defect, and the fact that as shown below the inbound verification requirement will have serious anti-consumer consequences,

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6 Id., p. 6 n.6.

7 Id., p. 7 and n.7 (analyzing NAAG comments).

8 Id., pp. 7-8 and nn.8-9.

there is a high probability the inbound verification requirement will be rescinded upon reconsideration.

Irreparable injury. Implementation of the inbound verification requirement will require IXCs to incur significant recurring costs to comply with that directive, and will also inflict serious revenue losses on those carriers. The accompanying Declaration of Georgeana R. Neff, AT&T's Director - Prospect Markets ("Neff Declaration") shows that the only two confirmation methods specified by the Commission's rules that are practical for use (individually or in combination) with consumer-initiated telemarketing calls would be both burdensome and costly.[9] On-line verification for inbound calls from residence customers by an independent third party (although most convenient for customers) would be difficult to implement because of the number of calling centers which may process inbound calls, and because

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9 The confirmation methods that are feasible for use with inbound calling verification of the customer's order by an independent third party, and mailing of a prescribed information package to the customer, followed by a 14-day "holdfast" period to allow the customer to disclaim the carrier change. See Section 64.1100(c), (d). Electronic authorization through a voice response unit, although also permitted by the Commission's regulations, is impractical for AT&T to implement for customer-initiated calls because automatic numbering identification ("ANI") cannot always be passed to the response unit, as required by the rule, and could not be used where the call is not placed from the telephone for which the carrier change is desired, or with customers with rotary dial telephones. Neff Declaration, ¶ 5.

traffic volumes would be more difficult to forecast than with outbound telemarketing.[10] The alternative of mailing an information package to customers and waiting expiration of the holdfast period, as also permitted under the Commission's rules, would be less expensive to implement but would necessarily result in a substantial delay in implementing the customer's carrier choice, and a consequent loss of revenue to the IXC.

AT&T estimates that implementing these confirmation methods (or a combination of these options) in its inbound calling centers for residential subscribers could cost up to $36.6 million annually (with start-up costs of as much as $3.1 million). Neff Declaration, ¶¶ 7, 9-10. Depending upon the "mix" of confirmation methods used by its inbound centers, AT&T also estimates that the loss of revenues due to delays in implementing residence customers' carrier change orders could reach $65 million annually. Id., ¶¶ 8-9, 11.[11] AT&T anticipates

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[10] In all events, moreover, AT&T estimates that the system changes required for on-line transfer of inbound calls from a multiplicity of call servicing centers to an independent third-party verifier will require substantially longer than the 60-day period from Federal Register publication prescribed in the Commission's order. Neff Declaration, ¶ 6.

[11] Implementation of the verification requirement as to business customers would subject AT&T to additional significant costs and revenue losses, and would likewise inconvenience and delay those subscribers' PIC change orders placed through inbound calls. Neff Declaration, ¶ 3 n.1.

that other IXCs will likewise incur substantial expenses and lost revenues as a result of the Commission's ruling on inbound calling.

As a practical matter, these additional expenses cannot be recovered by the affected carriers through rate increases to their customers because, as AT&T has previously demonstrated, the interexchange market is intensely competitive.[12] In this environment, where IXCs continually attempt to distinguish themselves from their rivals based on price, carriers cannot recoup their expenses of complying with the inbound verification requirement through additional charges to customers without opening themselves to an unacceptable risk of revenue losses to competitors. Thus, so long it remains in place the inbound verification will necessarily subject the interexchange industry as a whole to tens of millions of dollars of unrecoverable expenses.

The inbound verification requirement would also result in serious monetary harm to customers; as the Neff Declaration shows, the resulting delays in implementing

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12 See, e.g., Motion for Reclassification of American Telephone and Telegraph Company as a Nondominant Carrier, CC Docket No. 79-252, filed September 22, 1993,; Reply Comments of AT&T in id., filed December 3, 1993; ex parte presentation in support of AT&T's motion for reclassification as a nondominant carrier, in id., filed April 24, 1995; additional ex parte in id., filed June 12, 1995 and Reply of AT&T in id., filed June 30, 1995.

carrier selections would disenfranchise many customers from obtaining the benefits of price discounts or related offerings that are dependent on their carrier selection status, such as AT&T's True USA^{sm}, True Savings^{sm} and True Rewards® offerings.[13] Affected customers would have no means to make up the lost calling savings denied them due to such processing delays, which are inherent in the inbound verification requirement. AT&T estimates that delays in processing carrier changes occasioned by the Commission's decision could result in depriving customers of up to $26 million annually in savings under these programs alone. Neff Declaration, ¶ 6.

<u>Absence of injury to other parties</u>. Grant of a stay also will not adversely affect the legitimate interests of any party affected by the inbound verification requirement. To the contrary, such relief

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[13] The Commission should also take into account the significant inconvenience and annoyance that the inbound verification requirement will visit on millions of customers seeking to change their preferred IXC. Customer "churn" in the interexchange marketplace has increased at a dramatic rate in recent years; as AT&T has shown elsewhere, some 30 million carrier changes are projected during 1995. <u>See</u> AT&T Comments, filed July 3, 1995, in <u>Policy and Rules Concerning Rates for Dominant Carriers; Revisions to Price Cap Rules for AT&T</u>, CC Docket Nos. 87-313 and 93-197, pp. 9-10. A substantial portion of these carrier changes are the result of inbound calling by customers attracted by IXCs' print and broadcast advertising describing their features and rates; thus, numerous customers will be adversely impacted by the Commission's verification requirement.

will benefit all IXCs, who would otherwise be needlessly compelled to invest scarce resources in fulfilling the Commission's directive. Consumer interests likewise will not be injured by granting a stay, because there is no evidence that customers have been or will be exposed to any appreciable risk of slamming on inbound calls.

Absence of harm to the public interest. Of paramount importance, a stay will not only avoid harming, but will affirmatively serve, the public interest. Where, as here, there is no demonstrable need for a regulation that simultaneously imposes serious compliance burdens on IXCs and disserves the interests of customers in obtaining prompt and efficient carrier changes and related calling savings, the Commission is well justified in concluding that holding the revised rule in abeyance will best serve its pro-consumer policies. In fact, any other action would be antithetical to the Commission's objectives in this proceeding.

CONCLUSION

For the reasons stated above, the Commission should stay implementation of the inbound calling verification requirement pending reconsideration of that aspect of the June 14 Order.

Respectfully submitted,

AT&T CORP.

By Peter H. Jacoby

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August 4, 1995

DECLARATION OF GEORGEANA R. NEFF

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	CC Docket No. 94-129

DECLARATION OF GEORGEANA NEFF

I, Georgeana Neff, declare as follows:

1. I am Director--Prospects Markets for AT&T's Consumer Communications Services business unit. I am responsible for marketing to residential consumers who are presubscribed to an interexchange carrier (IXC) other than AT&T in an effort to convince the customer to switch his or her service to AT&T (otherwise known as customer acquisition activities). In that capacity, I am familiar with the procedures AT&T currently uses to verify a customer's order to switch carriers, as well as the costs associated with those procedures.

2. In my capacity with AT&T, I am familiar with the Commission's current regulation of the interexchange carrier selection process. I also am familiar with the effects on AT&T of the Report and Order in Common Carrier Docket 94-129 released by the Commission on June 14, 1995

(the Order), including the effects the Order would have on AT&T's expenses and revenues associated with customer acquisition activities. I make this Declaration in support of AT&T's accompanying Petition for Limited Reconsideration of the Order insofar as it expands the verification requirement to in-bound calls, as well as AT&T's Motion for Stay of that aspect of the Order.

3. The Order extends the primary interexhange carrier (PIC) verification procedures contained in Section 64.1100 to consumer-initiated calls to an IXC ("in-bound calls"). Previously, the PIC verification procedures applied only to calls initiated by the IXC.[1]

4. AT&T receives a wide variety of in-bound calls, including calls made in response to direct mail, mass media advertising or bill messages, and calls made by a consumer for purposes of making an inquiry about a bill or simply to seek information about AT&T. All of these call types result in requests by consumers for PIC changes to AT&T. Depending on the reason for the customer's call to

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1 While my Declaration specifically addresses the impact of the Order on the residential segment of AT&T's operations (as well as on residential customers), based on my overall familiarity with AT&T's operations it is apparent that the in-bound verification requirement would also impose additional costs on AT&T for compliance with respect to business subscribers seeking to implement PIC changes for their lines, and would in many cases inconvenience those customers and subject them to delays in arranging their PIC changes.

AT&T and where he or she obtained the 800 number being called, the in-bound call could be directed to any of 21 AT&T customer sales and service centers located around the country. To comply with the Order, AT&T would have to implement PIC verification procedures in each of these centers.

5. Section 64.1100 allows for three different methods of PIC verification: (1)obtaining electronic authorization from the customer; (2) transferring the call to a third party for independent verification of the customer's authorization; or (3) mailing the customer confirmation of the order, and allow the customer 14 days to return a postcard declining the order before processing the PIC change. The first method is not practical because AT&T's in-bound centers cannot always pass the ANI to a response unit. In addition, only about 40% of in-bound calls are made by customers who are using the telephone for which a PIC change is being requested.

6. Implementation of PIC verification on in-bound calls using either the second or third method, or a combination of the two methods, would result in significantly increased costs for AT&T for initial implementation and on-going maintenance of the process, as more fully explained below. In addition, use of the third method for all or some in-bound PICs would result in a 14 to

17 day delay before the customer could be switched to AT&T, with an accompanying loss of revenue to AT&T. Moreover, customers would lose discounts in the range of $26 million annually. Such customer losses would occur because AT&T's most popular discount options, AT&T True Rewards, AT&T True USA Savings and AT&T True Savings, all require the customer to be PICed to AT&T to receive the benefits of the options. Finally, because of the massive systems changes required to implement PIC verification procedures in AT&T's in-bound centers, it will be impossible for AT&T to complete the necessary changes in all 21 centers in the 60 day period before the rule change contemplated by the Order is effective.

7. AT&T is considering various alternatives for implementation of PIC confirmation procedures in its in-bound centers. The first alternative would be 100% utilization of the third method identified in paragraph 5 above (i.e., mailing customers a "welcome package" and awaiting a customer response for 14 days). The total start-up costs associated with this method are estimated to be $1.2 million, with annual additional expenses of approximately $17.3 million; these costs are broken down as follows:

1. Systems Costs: AT&T would incur costs for development and production of new databases to store

in-bound telemarketing sales, with the capability of checking daily to determine whether the customer has returned the postcard declining the order of AT&T. In addition, there would be costs associated with the maintenance, daily production reporting, order status and reporting capability, and updating and maintaining scripts for use by AT&T's customer service representatives. Start-up costs are estimated to be $820,000, with annual maintenance costs of $405,000.

2. <u>Fulfillment Costs</u>: AT&T will incur expenses associated with the start-up of vendors to perform fulfillment (physical mailing of the verification letter to the customer), and the costs for printing, producing and mailing of the fulfillment materials. Start-up costs are estimated to be $200,000, with annual maintenance costs of $9,450,000.

3. <u>Center Expenses</u>: Implementation of this rule will result in expenses for development and delivery of training to AT&T's customer service representatives, as well as increased expenses because of incremental call volume (customers calling to check the status of their order) and incremental talk time to explain the order process. Start-up costs are estimated to be $187,000, with annual costs of $7,400,000.

8. In addition to the additional costs described above, having to wait 14 to 17 days to process the PIC change will result in lost revenue. AT&T estimates that the delay will result in an annual revenue loss of $65 million. This figure is derived by multiplying the estimated number of customers who switch to AT&T via an in-bound telemarketing call by the average per customer revenue received by AT&T during a 17 day period.

9. A second alternative open to AT&T would be to utilize 100% third-party verification of all in-bound PIC change requests. The total start-up costs associated with this method are estimated to be $3.1 million, with annual additional expenses of approximately $36.6 million; these costs are broken down as follows:

1. Systems Expenses: AT&T would incur costs for development and implementation of systems changes at all 21 in-bound centers to provide third party verification functionality, including purchasing new equipment and data lines to handle new agencies and increased verification volumes. In addition, this method would require development and production of new in-bound telemarketing codes and reports. Finally, there would be costs associated with the maintenance, daily production reporting, order status and reporting capability, and updating and

maintaining scripts for use by AT&T's customer service representatives. Start-up costs are estimated to be $2,350,000, with annual costs of $270,000.

2. <u>Vendor Expenses</u>: AT&T would need to obtain new third party verification agencies, or expand its relationship with existing third party verification agencies (who currently handle only out-bound telemarketing PIC verification). Start-up costs are estimated to be $320,000, with annual costs of $18,000,000.
3. <u>Center Expenses</u>: Implementation of this rule will result in expenses for development and delivery of training to AT&T's customer service representatives, as well as increased expenses because of incremental call volume (customer call backs if the verification process cannot be completed on the initial call) and incremental talk time to explain the order process. Start-up costs are estimated to be $483,000, with annual costs of $18,341,000.

Use of this method will also result in some lost revenue to AT&T, caused by the fact that AT&T will not be able to complete the verification process on the first call for all customers, either because the third party verifier is busy or cannot be reached (necessitating a later call back to the customer or use of the fulfillment method described in paragraph 7), or because the customer refuses to be transferred to the verifier. Lost revenue (using the same formula described in paragraph 8) is estimated to be over $2.3 million per year.

10. The final alternative would be to utilize a combination of the two methods described above, with some third party verification, and some mailing of an information package to the customer to verify the order. Even if AT&T implements the most logical combination of the two methods in each of its centers (which varies based on the particular configuration of the center, and how quickly each of the particular methods can be implemented), the total start-up costs associated with this method are estimated to be $3.3 million, with annual additional expenses of $26.4 million; these costs are broken down as follows:

1. Systems Expenses: AT&T would incur systems costs as described in both paragraphs 7 and 9, above. Start-up costs are estimated to be $2,620,000, with annual costs of $405,000.
2. Fulfillment Expenses: AT&T would incur the type of fulfillment expenses described in paragraph 7. Start-up costs are estimated to be $200,000, with annual costs of $4,725,000.

3. Center Expenses: AT&T would incur additional expenses at its telemarketing centers, as described in paragraphs 7 and 9, above. Start-up costs are estimated to be $251,000, with annual costs of $12,206,000.

4. Vendor Expenses: AT&T would incur expenses associated with an increased number of third party verification agencies, as described in paragraph 9. Start-up costs are estimated to be $270,000, with annual costs of $9,036,000.

11. Lost revenues to AT&T from use of the most logical combination of methods to verify in-bound telemarketing orders results in a revenue loss of $29,000,000. While smaller estimated revenue loss could be achieved by using more third party verification, doing so would delay implementation of the verification process because third party verification takes longer to implement and would increase implementation expenses. Therefore, AT&T necessarily will have to implement the "mail a welcome kit and wait for a response" method for those centers where third party verification is impractical to implement quickly.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 4, 1995.

Georgeana Neff

Georgeana Neff

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 4th day of August, 1995, a copy of the foregoing "AT&T Motion for Stay" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.

Ann Marie Abrahamson

Ann Marie Abrahamson

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