

RECEIVED

JUN 12 1997

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

Federal Communications Commission
Office of Secretary

Rm-9085

In the Matter of)	
)	
Policies and Rules Pertaining)	
to Local Exchange Carrier)	
"Freezes" on Consumer Choices)	File No. CCB/CPD 97-19
of Primary Local Exchange or)	
Interexchange Carriers)	
)	
MCI Telecommunications Corp.)	
Petition for Rulemaking)	

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the Commission's May 5, 1997 Public Notice (DA 97-942), AT&T Corp. ("AT&T") submits these comments on the above-captioned petition by MCI Telecommunications Corp. ("MCI"), requesting that the Commission institute a rulemaking to regulate the solicitation of carrier selection "freezes" by local exchange carriers ("LECs"). As MCI's petition convincingly demonstrates, there is an urgent need for the Commission to prevent LEC misuse of the freeze mechanism to throttle incipient competition in the intraLATA toll and local markets, and to leverage the LECs' local exchange monopolies as those carriers seek to enter the competitive interexchange marketplace.

Carrier selection freezes were originally developed by the LECs as a means of controlling

"slamming," the unauthorized changing of an end user's primary interexchange carrier ("PIC"). By requesting a carrier selection freeze on their service, end users could instruct their LEC not to implement a change in their designated interexchange carrier ("IXC") unless the LEC is expressly authorized to do so, either orally or in writing, by the end user. In the absence of such express customer authorization, primary interexchange carrier ("PIC") changes submitted directly to the LEC by an IXC would be rejected. With the advent of intraLATA toll and local competition, the freeze procedure now may also be applied by LECs to those carrier selections.

When impartially implemented, the freeze mechanism can provide a useful adjunct to other regulatory compliance and enforcement procedures for controlling slamming. AT&T has long supported the availability of carrier freezes for this purpose; indeed, as early as 1990, AT&T proposed that LECs be required to offer a PIC freeze option to end users as a consumer protection measure.

However, recent experience shows that LECs are now extensively misusing the carrier freeze procedure in order to advantage themselves when entering the interexchange marketplace, and to further entrench their own intraLATA toll and local service monopolies against new entrants. This serious anticompetitive potential was not present when the freeze procedure was first adopted,

because the largest LECs did not then operate in the interexchange services market, and competition in the provision of intraLATA and local service was largely foreclosed by regulatory fiat. The current and anticipated changes in industry structure wrought by the Telecommunications Act of 1996 have irretrievably altered the incentives for LECs to implement carrier freezes in a neutral and unbiased manner.

For example, as MCI points out (p. 5), some LECs have offered PIC freeze mechanisms to end users without disclosing that their selection of this option for their preferred IXC would also freeze the customers' selections of an intraLATA toll and local carrier. Especially when implemented by LECs immediately prior to the availability of intraLATA presubscription, such "account level" freezes have had a clear anticompetitive purpose and effect.¹

¹ See, e.g., Sprint Communications Co., L.P. v. Ameritech Michigan, Case No U-11038, 117 P.U.R.4th 429 (1996). There, the Michigan Public Utility Commission ("PUC") found a bill insert by Ameritech, promoting account level carrier selection freezes, mailed just as intraLATA presubscription was being introduced, was misleading and anticompetitive. The PUC restricted application of the freeze mechanism to interLATA selections only until six months after Ameritech mailed a corrective bill insert to subscribers. The Illinois Commerce Commission likewise found unlawful Ameritech's identical conduct in that state. See MCI Telecommunications Corp. v. Illinois Bell Tel. Co., Case No. 96-0075, Order, April 13, 1996 ("ICC Order").

Additionally, many LECs' procedures make it extremely difficult for customers, once they have elected a freeze option, to remove a carrier selection freeze or to designate a new IXC or intraLATA carrier when there is already a carrier selection freeze in place. Some LECs, such as the GTE operating companies, require customers to request a frozen PIC change in writing, using special forms available only from the LEC, and refuse to allow IXCs to provide copies of those forms to customers who wish to change their carrier. Even in instances where LECs allow oral customer authorization of a frozen PIC change, end users face serious obstacles because LECs either have refused to accept three-way calls between end users, their new carrier and the LEC, or have provided inadequate capacity to process those calls without long delays.²

Moreover, LECs appear to have misled or confused customers to adopt PIC freezes without understanding the consequences of their actions or the implications of that option for future carrier selection

² Moreover, in most cases LECs offer facilities and personnel to process three-way calls only during normal business hours, when it is often difficult or impossible for IXCs to reach residential customers to establish those calls. Even where IXCs succeed in establishing such calls, LEC business office representatives have frequently misused those contacts to market their own competing interexchange, intraLATA or local services, instead of simply processing the customers' carrier selection changes.

changes. In particular, AT&T has experienced an exceptionally high level of carrier change rejections in Southern New England Telephone Company's ("SNET's") service territory, amounting to three times the national rate.³ Subsequent surveys by AT&T of the affected customers have disclosed that the end users were either unaware of, or denied, having authorized freezing their carrier selections. Both MCI and AT&T have already initiated legal action against SNET for this and other related misuse of the carrier freeze mechanism.⁴

These widespread LEC abuses demonstrate the urgent need for the Commission to protect competition in interexchange, intraLATA and local services by adopting market rules that will assure consumers receive complete and accurate information about the consequences of selecting a carrier freeze option, and the means for changing their preferred carrier once a freeze option has been implemented. AT&T suggests that the Commission

³ Rejections of carrier change orders submitted by AT&T due to PIC freezes average about 7 percent nationwide, while in SNET's service area the rejection rate on this basis has amounted to 21 percent of the PIC changes submitted. See Letter dated April 9, 1997 from Mark C. Rosenblum, AT&T, to Regina M. Keeney, FCC, at p. 3 n.1.

⁴ See MCI Telecommunications Corp. v Southern New England Tel. Co., et al., Civil Action No. _____, (D. Conn.), filed April 29, 1997; AT&T Corp. v. Southern New England Tel. Co., et al., No. 397CV01056 (JBA), (D. Conn.), filed May 30, 1997.

include the following minimum requirements for such regulations:

(a) Incumbent LECs ("ILECs") should be prohibited from affirmatively marketing intraLATA carrier selection freezes to their customers until at least one year after the ILEC has fully implemented intraLATA toll dialing parity throughout its service territory in a state. This limitation will assure that ILECs do not use the freeze option to overhang the intraLATA toll market by prematurely restricting customers' ability to effectuate changes in their intraLATA carrier selection. Any intraLATA carrier freezes that have already been implemented before the availability of such dialing parity should be promptly removed.⁵

(b) So long as they remain classified as dominant carriers, ILECs should also be prohibited from implementing local carrier selection freezes. Such a prohibition is required to assure that these carriers do not abuse their undisputed market power to throttle nascent local competition by new entrants.

(c) All carrier selection freezes should be administered at the service level (i.e., interLATA, intraLATA or local) for each working telephone number in customer's account. The Commission should prohibit both

⁵ See ICC Order (prohibiting Ameritech from applying intraLATA carrier freeze until six months after availability of intraLATA presubscription).

ILECs and competitive LECs ("CLECs") from implementing carrier freezes solely at the "account level," thereby automatically restricting all changes in a customer's choice of carriers.

(d) ILECs and CLECs should be required to allow three-way calls to remove a carrier choice freeze or to change a selected carrier when a freeze is already in place. Local carriers should provide adequate facilities and staffing to expeditiously process anticipated call volumes during normal business hours, and should be required to establish appropriate alternative methods (such as answering machines, Conversant systems or other electronic means) to process three-way calls in a timely manner after normal business hours.

(e) ILECs and CLECs should be prohibited from discussing their own competing services, or those of any affiliate, with customers during the processing of a three-way call to remove a carrier selection freeze or to change the subscriber's selected carrier when a freeze is already in place. The transaction should instead be limited to collecting the information necessary to remove the current frozen carrier choice and effectuate the customer's new carrier selection request.

(f) Local carriers should also be required to accept written requests from customers to remove a carrier selection freeze or to change their selected

carrier when a freeze is already in place, and should be required to accept copies supplied to customers by another carrier of any document used by the local carrier to change a carrier selection freeze.

(g) Where expressly authorized to do so by affected customers, carriers should also be permitted to submit customers' change orders directly to an ILEC or CLEC, and to remove the customers' existing freeze or to change the selected carrier for that service level when a freeze is already in place. The Commission should prescribe appropriate procedures (such as verification by an independent third party) to confirm the submitting carrier's authority to alter the customers' current frozen carrier selection.

(h) To assure that customers are properly informed that a carrier selection freeze has been implemented for their service, all local carriers should be required to confirm to the customer in writing when a freeze option has been applied to their telephone service, and to state (i) the specific service level(s) to which the freeze applies; (ii) the identity of the current carrier(s) to which the freeze option applies; and (iii) the methods by which the customer may remove the freeze or change that subscriber's selected carrier when a freeze has previously been implemented.

(i) Finally, to facilitate the accurate and timely implementation of customer' carrier selection changes and to avoid unnecessary confusion and cost, ILECs and CLECs should be required to furnish other carriers with data identifying those local subscribers who have elected a carrier selection freeze and the service level at which each such subscriber has frozen the carrier choice.⁶ Moreover, to preclude use of those data for anticompetitive purposes, the Commission should prohibit local carriers from disclosing carrier selection freeze information to their own affiliated IXCs (except as to customers who have designated that IXC as their carrier), or from using such information for marketing their own services to other carriers' subscribers.

⁶ However, consistent with current industry practice, the identity of the specific carrier selected by the subscriber for each service level should not be disclosed by an ILEC/CLEC to any other carrier (or, for that matter, to any IXC affiliated with the ILEC/CLEC).

WHEREFORE, for the reasons stated above, the Commission should immediately institute a rulemaking to regulate LEC carrier selection "freeze" procedures in accordance with the foregoing Comments.

Respectfully submitted,

AT&T CORP.

By /s/ Peter H. Jacoby
Mark C. Rosenblum
Peter H. Jacoby

Its Attorneys

295 North Maple Avenue
Room 3250J1
Basking Ridge, NJ 07920
(908) 221-4243

June 4, 1997

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 4th day of June, 1997, a copy of the foregoing "AT&T Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed below.

Mary J. Sisak
Mary L. Brown
MCI Telecommunications Corp.
1801 Pennsylvania Ave., NW
Washington, D.C. 20006

Chief, Competitive Pricing Division*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 518
Washington, D.C. 20554

International Transcription Services*
2100 M Street, NW, Suite 140
Washington, D.C. 20037

/s/ Ann Marie Abrahamson
Ann Marie Abrahamson

* Service by hand delivery.