

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

In the Matter of)
)
Policies and Rules Pertaining)
to Local Exchange Carrier)
"Freezes" on Consumer Choices)
of Primary Local Exchange or)
Interexchange Carriers)
)
MCI Telecommunications Corp.)
Petition of Rulemaking)

RM-9085

File No. CCB/CPD 97-19

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Federal Communications Commission
Office of Secretary

AT&T REPLY 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 this reply to other parties' comments on the above-captioned petition by MCI Telecommunications Corp. ("MCI") requesting a rulemaking to regulate carrier selection "freezes" by local exchange carriers ("LECs").¹ Contrary to the claims of some parties, it is clear that there is no irreconcilable conflict between the objectives of protecting end users from unlawful "slamming" and precluding LEC abuse of the carrier selection freeze mechanism to frustrate competitive entry and customer choice.

As MCI described in its petition, and as AT&T also showed in its Comments, there is abundant evidence

¹ A list of the commenters in addition to AT&T is annexed as Attachment A.

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that carrier selection freeze procedures are frequently being applied by incumbent LECs ("ILECs") in a manner that has the clear purpose and effect of inhibiting customers' ability to implement changes in their preferred carrier, and that these practices likewise unfairly impede other carriers' ability to market their services successfully in competition with the ILECs. These showings are mirrored in the comments in support of MCI's petition submitted by other interexchange carriers ("IXCs") and competitive LECs ("CLECs").²

In particular, Citizens -- which operates both as an IXC and an ILEC -- candidly acknowledges (p. 3) that incumbent carriers have powerful reasons to misuse the freeze mechanism. As Citizens notes, "[b]y making it more difficult to change presubscribed carriers, [LECs] reduce the likelihood that customers will take all of the necessary steps to effect a [carrier] change." Citizens also leaves no doubt (*id.*) as to the economic motive behind this misconduct: "[o]bviously . . . the LEC has [an] incentive to engage in PIC freeze solicitations that favor its affiliated toll carrier."

None of the commenters who oppose the petition - - all of whom are ILECs -- makes any serious effort to rebut the evidence concerning the adverse effects the freeze mechanism has had (and, absent Commission action,

² See CWI, p. 2; ALTS; Telco, pp. 4-6; WorldCom, p. 4; CompTel, pp. 3-5; Sprint, pp. 4-10; TRA, pp. 2-4.

will continue to have) on consumer choice and telecommunications competition. Instead, for the most part these parties simply point out that customer complaints of slamming continue to increase, and then assert that the Commission should deny MCI's request for rulemaking so as to avoid interfering with efforts to control slamming thorough the freeze mechanism.³

These arguments create a false conflict between controlling slamming and preventing abuse of the freeze mechanism. Clearly, telephone subscribers deserve to be protected against unlawful slamming, and the freeze mechanism can in some circumstances contribute to that objective.⁴ For this reason, the Commission must assure

³ Bell Atlantic/NYNEX, p. 2; BellSouth, p. 2; SWBT/PacTel, p. 3; Ameritech, p. 5; SNET, p. 2; GTE, p. 2. Some of these commenters also assert that the Commission should not initiate MCI's requested rulemaking except as part of the broader proceeding required under new Section 258 of the Communications Act. Of course, nothing precludes the Commission from coordinating a separate rulemaking on the freeze mechanism with other proceedings it may later commence under Section 258. These commenters' arguments, however, demonstrate there is no basis to the assertion (see, e.g., Bell Atlantic/NYNEX p. 1 n.1) that the Commission lacks jurisdiction over the freeze mechanism.

⁴ While the freeze mechanism has value in controlling slamming, it is hardly the panacea that some of the commenters depict. See, e.g., Bell Atlantic/NYNEX, p. 2 ("a PIC change submitted by an [IXC] for the [frozen] customer will not be processed"). As even Ameritech is constrained to admit (pp. 17-18), a "PIC freeze" is ineffective in protecting a customer of a facilities-based carrier from slamming by a "switchless reseller" that uses that same underlying network, because the unauthorized carrier change occurs through a records transaction between the

that any rulemaking does not seriously compromise the value of this procedure in reducing unauthorized carrier changes.⁵ At the same time, there can be no serious claim that LECs should be permitted to abuse the freeze procedure to the detriment of customers and competitors. As even Ameritech concedes (p. 12), "[s]urely a [freeze] program that goes beyond the legitimate interest of effectively protecting consumers and that unnecessarily impedes competition ought not to be permitted."

These considerations can readily be harmonized by the Commission through rules prescribing appropriate standards and procedures for implementing carrier changes where the consumer has previously frozen that selection. For example, some LECs assert that reliance on three-way calls between a consumer, the LEC, and the consumer's new preferred carrier would be unduly burdensome and would raise unacceptable risks of fraud.⁶ The fallacy of this

(Footnote continued from preceding page)

IXCs, and not with the LEC. Slamming by resellers accounts for the vast bulk of such incidents in the current marketplace. See also ALLTEL, p. 4 (noting that freeze "is a method -- albeit not totally effective -- to deter slamming") (emphasis supplied).

⁵ The Commission should thus reject out of hand TRA's proposal that carrier selection freezes be eliminated entirely.

⁶ See Bell Atlantic/NYNEX, p. 4 (three-way calls "can only lead to endless disputes between carriers" and "would allow [IXCs] . . . to inject themselves into individual consumer's PIC freeze decisions"). NYNEX's condemnation of this procedure is puzzling at best, because it avowedly already permits three-way

(footnote continued on following page)

claim is laid bare by the comments of other ILECs showing that those carriers have already implemented, or stand ready to adopt, such three-way calling procedures.⁷ Accordingly, there is clearly no legitimate basis for opposing a Commission-prescribed requirement that LECs accept three-way calling so that frozen customers may conveniently implement a carrier selection change.⁸

Similarly, ILEC commenters assert that MCI's proposal to rely on independent third party verifiers to confirm customers' changes of their frozen carrier choice, in the same manner as PIC change orders obtained via "outbound" telemarketing, would be ineffectual. For

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calls. See also Citizens, p. 10 (allowing multiple carriers to participate in calls "could lead to distasteful exchanges in which both carriers attempt to market their services to the customer"); GTE, p. 5 (requiring written authorization from customer to remove freeze because there allegedly "is not always sufficient verification to ensure that it is actually the customer who is participating in the [three-way] call").

⁷ See BellSouth, pp. 2-3 ("BellSouth offers a 3-way conference call option between BellSouth, the local exchange customer and the new primary carrier . . . on a 24-hour a day basis"); Ameritech, p. 21 (stating it currently offers three-way calling capability to "unfreeze" a carrier selection).

⁸ To assure the integrity of the carrier selection process, LECs could request appropriate identifying information (e.g., the last four digits of the customer's social security number) when implementing a change order through a three-way call. Moreover, to detect efforts by LECs to "cross sell" their services, personnel of the competing carrier that initiated a three-way call should be permitted to participate in the call for its entire duration.

example, Ameritech contends (p. 21) that third party verification "in no way guarantee[s] a fair and accurate verification process" because slamming complaints have continued to escalate despite the Commission's adoption of that procedure for interexchange carrier selection.

This facile argument blinks reality. The increase in slamming complaints described by the commenters does not reflect any infirmity in third party verification of carrier selections; to the contrary, AT&T's experience indicates that this procedure is highly effective in eliminating unauthorized carrier changes. The recent increase in slamming complaints instead reflects the fact that the Commission-prescribed verification procedures are frequently ignored by unscrupulous carriers. Thus, rather than rejecting third party verification altogether, the proper focus of the rulemaking requested by MCI should be to assure that the Commission adopts auditable and readily enforceable procedures to insure that third party verification is in fact followed by carriers that submit carrier selection change orders to LECs on that basis (whether in connection with frozen customers or otherwise).

The comments of other parties likewise confirm the showing in AT&T's Comments (pp. 8-9) that LECs should be required to provide written information to customers explaining the freeze option and its effects on their telecommunications service. As Ameritech (pp. 13-14) recognizes, "the Commission should prescribe minimum

informational requirements [for] slamming protection solicitations" to alleviate consumer confusion about this procedure. In the same vein, Citizens (pp. 6-7) provides a detailed proposal for the information that LECs should be required to provide subscribers about the freeze mechanism. Significantly, both Ameritech and Citizens also recognize that, as AT&T showed (Comments, pp. 6-7), the carrier selection freeze mechanism should be administered at the service level, *i.e.*, customers should be permitted to separately elect a freeze of their interLATA, intraLATA or local carrier selection.⁹

No commenter contests MCI's proposal, endorsed by AT&T (Comments, pp. 7-8), that LECs should be required to accept written customer requests as one method to remove a carrier selection freeze or to change a frozen carrier selection. However, some ILECs attempt to defend requirements that customers use forms for this purpose exclusively provided by those carriers, and prohibiting other carriers from supplying copies of those documents to customers.¹⁰ None of these parties, however, provides any

⁹ See Ameritech, p. 14 (LECs should be required to advise customers "whether the [freeze] applies to the local exchange, local toll and/or other toll services"); Sprint, p. 3 (LECs' should "obtain a customer's freeze on an individual market basis, *i.e.*, interLATA, intraLATA and local"); Citizens, p. 6 ("separate freeze [should be] required for each service frozen, *e.g.*, interexchange, intraLATA toll and exchange").

¹⁰ See GTE, pp. 4-5; SWBT/PacTel, pp. 7-8.

persuasive justification why this clearly burdensome and dilatory requirement is necessary to protect customers.¹¹

The comments also demonstrate the need for the Commission to assure that ILECs do not abuse the freeze mechanism by affirmatively marketing that procedure to subscribers during the period prior to and after competitive entry in those carriers' markets.¹² For example, Citizens points out (p. 7) that in California ILECs have been prohibited from soliciting PIC freezes during the transition to equal access, and states that "[a] similar federal prohibition may be appropriate" because "[t]his implementation period is an important time for the transition to competition." Indeed, because of that concern, when the equal access process was initiated in Canada in 1995, the Canadian Radio and Television

¹¹ Both GTE and SWBT require customers who have elected a carrier selection freeze to implement a subsequent carrier change by requesting a LEC-supplied form, which must then be mailed to the subscriber, signed, and mailed back to the LEC for processing. This cumbersome procedure can easily delay the desired carrier change for two weeks or more. GTE's claim (p. 7) that this procedure is needed to prevent forgeries is far-fetched; the same result can be achieved by requiring customers to provide unique identifying information (such as a social security or driver's license number) on copies of the LEC form supplied to customers by other carriers. See, e.g., SWBT/PacTel, p. 8 (describing Pacific Bell and Nevada Bell procedures).

¹² This prohibition should apply only to media advertising, direct mail and telemarketing solicitations by ILECs; customers who unilaterally request carrier selection freezes during this period should continue to be permitted to elect that option.

Commission ("CRTC") prohibited local carriers altogether from providing a "PIC restrict" option to customers.¹³ While that absolute prohibition would be unwarranted in United States markets, Commission adoption of the less restrictive alternative of a time-limited ban on ILEC marketing of carrier selection freezes is clearly appropriate and necessary.

Finally, several LECs¹⁴ assert that providing all carriers with "universe lists" identifying those customers who have elected carrier selection freezes (but not their selected carrier) would somehow violate existing restrictions on the disclosure of Customer Proprietary Network Information ("CPNI") or use of Billing Name and Address ("BNA") data.¹⁵ These claims are transparent nonsense.

First, disclosure by a LEC of the fact that a given customer has elected a carrier selection freeze option plainly is not information "that relates to the quantity, technical configuration, type, destination or

¹³ The CRTC concluded that the feature would "impede the evolution of the competitive market by increasing the effort required on the part of the customer to change carriers," and "could provide the [LEC] with an opportunity, which would not be available to its competitors, to solicit or win back the customer's business." Telecom Order CRTC 97-514, 16 April 1997, ¶¶ 42, 44.

¹⁴ Ameritech, pp. 18-19; Citizens, p. 8; GTE, p. 7. Cf. SNET, p. 8 (claiming disclosure "clearly violates the privacy rights of customers").

¹⁵ See 47 U.S.C. § 222; 64 C.F.R. §§ 64.702, 64.1201.

amount of use of a telecommunications service" by that subscriber, which are the sole data subject to CPNI protection.¹⁶ Second, nothing in the Commission's BNA rules prohibits disclosure of information identifying customers that have elected a carrier selection freeze; rather, those rules simply prohibit the recipients' use of the customers' billing names and addresses for marketing purposes.¹⁷ Carriers that have independently obtained that information from other sources are free to market their services, and to make use of the carrier freeze list, without violating the Commission's BNA restrictions.¹⁸ In all events, moreover, the LEC commenters who raise this cavil ignore the fact that the rulemaking MCI has requested the Commission to initiate can, if necessary, modify the current CPNI and BNA rules to make them consistent with the relief sought by the petition.

¹⁶ See 47 U.S.C. § 222(f)(1) (defining CPNI).

¹⁷ Indeed, the BNA rules would not preclude a LEC from disclosing a list of subscribers' telephone numbers, marked to indicate those to which a carrier selection freeze applies, without the subscribers' billing names and addresses.

¹⁸ However, the LECs' attempt to invoke the BNA rules as a bar to disclosure of their customers' freeze status underscores the increasingly serious danger that those regulations will be interpreted and applied by them to unfairly disadvantage competing inter-, intraLATA and local carriers. The Commission should therefore take all necessary steps to assure that its BNA rules do not become an unintended tool for throttling competition in these markets.

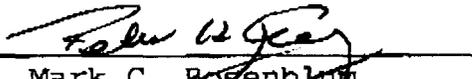
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WHEREFORE, for the reasons stated above, the Commission should immediately institute a rulemaking to regulate LEC carrier selection freeze procedures in accordance with AT&T's Comments and Reply Comments.

Respectfully submitted,

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By



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June 19, 1997

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Competitive Telecommunications Association ("CompTel")

GTE Service Corporation ("GTE")

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Southern New England Telephone Company ("SNET")

Southwestern Bell Telephone Company, jointly with Pacific Bell and Nevada Bell ("SWBT/PacTel")

Sprint Communications Company L.P. ("Sprint")

Telco Communications Group, Inc. ("Telco")

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WorldCom, Inc. ("WorldCom").

CERTIFICATE OF SERVICE

I, Ann Marie Abrahamson, do hereby certify that on this 19th day of June, 1997, a copy of the foregoing "AT&T Reply Comments" was mailed by U.S. first class mail, postage prepaid, to the parties listed on the attached Service List.


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