

consumers in a position to make a well-informed decision, a PC-freeze can be a useful tool for ensuring that only such telecommunications choices as have been authorized will be implemented. TRA continues to believe, however, that such benefits can only be derived in an atmosphere in which it is possible to ensure that a PC-freeze (i) represents the actual intention of the consumer, (ii) is based upon sufficient information presented in a non-misleading fashion; (iii) is no more burdensome for the consumer to remove than to implement; and (iv) will be implemented in an equitable and neutral manner.

Through the *Notice* the Commission has responded to the concerns of TRA and others, proposing that specific types of information be provided consumers and requiring that such information be presented in a non-deceptive manner.²⁴ TRA commends the Commission for taking this step and, as discussed below, asks the Commission to go the next step by promulgating even more detailed rules regarding both the precise information which must be provided consumers in connection with a PC-freeze solicitation and the manner in which such information must be conveyed.

Specific requirements concerning the type of information which must be included in the solicitation of a PC-freeze will no doubt be helpful in limiting the frequency of PC-freezes implemented through strategic manipulation of consumers. Most crucial to the safeguarding of consumer interests, however, will be the existence of an entity tasked with administering the implementation and/or removal of PC-freezes in a manner which precludes manipulation of the process by carriers with a vested interest in "locking in" the customer regardless of the costs to the consumer or to competition generally.

²⁴ Further Notice of Proposed Rulemaking, FCC 97-248 at ¶ 23.

The Commission has already been made aware of significant anticompetitive abuses arising from the selective marketing of PC-freezes, frequently accompanied by intentionally vague or outright misleading information which encourages consumers to take action the full implications of which may not be readily apparent. Ameritech, for example, has been the subject of PC-freeze complaints in each of its "in-region States." The Michigan Public Service Commission thus found Ameritech's PC-freeze practices were designed to hinder competition inasmuch as they were undertaken by the carrier in earnest at the precise time when competitive service offerings were about to become available.²⁵ In Illinois, Ameritech's brochure touting PC-freezes was declared misleading, discriminatory and anticompetitive because the information provided did not alert consumers that the freeze would be applicable to all of their telecommunications services and further "establish[ed] unfair and unreasonable barriers to IXC intraMSA competition."²⁶ And in Ohio, Ameritech's PC-freeze crusade has been faulted not only for being misleading but also because Ameritech has engaged in a practice of freezing all of the consumers' telecommunications services in a deliberate attempt "to retain market share in the intraLATA and local service markets."²⁷

Southern New England Telephone Company ("SNET") also stepped up PC-freeze marketing efforts around the time competitive options began to become available to consumers. MCI has estimated that upwards to 20% of carrier change orders are rejected by SNET in reliance

²⁵ In the Matter of the Complaint of Sprint Communications Company, L.P. against Ameritech Michigan, Case No. U-110138, decided August 1, 1996.

²⁶ Sprint v. Illinois Bell Telephone Company, No. 96-0084 (consolidated with MCI et al. v. Illinois Bell Telephone Company, No. 96-0075), Order, April 3, 1996.

²⁷ Sprint v. Ameritech Ohio, Case No. 96-142-TP-CSS, Slip op. at 17.

on PC-freezes.²⁸ Additionally, the procedures enacted by SNET to accomplish consumer removal of an established PC-freeze were cumbersome, often requiring multiple, coordinated three-way calls between SNET, the newly selected carrier and the customer whose service switch had by then been subjected to a lengthy and unnecessary delay.

In an effort to head off customer loss, NYNEX instituted marketing efforts designed specifically to dissuade customers from switching service providers when those customers contacted the carrier to remove previously enacted PC-freezes, a necessity to facilitating the service move. The New York Public Service Commission has directed NYNEX to discontinue this practice.²⁹ Actions have also been brought against Southwestern Bell in both Federal and State regulatory forums alleging that the carrier is misusing customer proprietary network information of former local service customers to enable a telemarketing firm to contact those former customers and "question[]" them as to why they no longer are using the incumbent."³⁰

TRA submits that the Commission could eliminate such abuses of the PC-freeze process by appointing an independent administrator to receive and effect consumer PC-freeze instructions. The same entity could administer both carrier changes and PC-freezes. By disintermediating incumbent LECs from the PC-freeze process, the Commission would take a significant step toward ensuring that PC-freezes represent informed consumer decisions and will be implemented and removed based upon consumer, not carrier, interests.

²⁸ MCI Petition for Rulemaking in RM-9085 filed March 18, 1997, at 2, fn. 3.

²⁹ Order Concerning Implementation of IntraLATA Presubscription by New York Telephone Company, August 15, 1996.

³⁰ Washington Telecom News, "WTN Notebook", Vol. 5, No. 25 (June 23, 1997).

2. The Commission Should Strictly Regulate PC-freeze Solicitations by the Incumbent LECs

The Commission's verification rules both provide significant guidance as to the information to which consumers should be entitled before making a carrier change and ensure that such information is presented in a non-misleading fashion. TRA strongly supports application of the Commission's verification rules to PC-freeze instructions as well. In order to facilitate the implementation of only such PC-freezes as truly reflect the informed decision of the consumer, however, TRA also urges the Commission to elaborate further on the particular information which must be provided at the time a PC-freeze is solicited, and to require the submission of appropriate documentation to the independent administrator in order that the validity of submitted PC-freeze instructions may be determined without noticeable delay to consumers.

The Commission has tentatively concluded that a carrier which provides a subscriber with "(a) an explanation of a PC freeze, (b) an explanation of the subscriber's right to request such a freeze for its telecommunications service, and © advice on how the subscriber can obtain a PC freeze, would be acting consistent with the goals and policies of the Act and the Commission's rules and orders."³¹ The Commission has also noted that "wide-spread confusion and dissatisfaction among consumers" may result if information concerning a PC-freeze is not fairly depicted or sufficiently described.³² TRA agrees with the Commission and suggests that such information should include, at a minimum, (I) separate choices for implementing a PC-freeze for local service, intraLATA toll service or interLATA toll service individually or in combination; (ii) a clear explanation that implementing a PC-freeze for local service may result in certain long distance calls

³¹ Further Notice of Proposed Rulemaking, FCC 97-248 at ¶ 23.

³² Id.

(i.e., intraLATA toll calls) defaulting to the identified local exchange carrier or its long distance affiliate; (iii) detailed instructions on the procedure for implementing a PC-freeze and correspondingly detailed information regarding canceling a PC-freeze, as well as an indication of whether the consumer may designate a subsequent carrier to act as the agent for purposes of removing a PC-freeze; (iv) an indication of the time required both to implement and remove a PC-freeze; and (v) notification that a change in local service providers will require the consumer to implement a new PC-freeze in order to continue a previously established PC-freeze.

D. A "Bright-Line" Test for Determining Instances in Which a Resale Carrier Must Notify Subscribers of a Change in Its Network Service Provider Serves the Public Interest

The Commission has incorporated into this proceeding TRA's Petition for Clarification of the Common Carrier Bureau's *Memorandum Opinion and Order*, DA 95-2333, released November 9, 1995, in WATS International Corp. v. Group Long Distance (USA), Inc., File No. ENF-94-05. In that Petition, TRA sought clarification of the particular circumstances under which a resale carrier must notify its customers of a change in its underlying network services provider. In order to preserve and enhance the competitive capability of resale carriers, TRA urged the Commission to confirm that these circumstances would be clearly defined and limited in number.

The Commission "agree[d] with TRA that establishing a 'bright-line' test could enhance competition by providing resale carriers with more certainty 'before-the-fact' than is possible under a case-by-case approach."³³ It, however, has sought comment regarding the degree of

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Further Notice of Proposed Rulemaking, FCC 97-248 at ¶ 39.

consumer reliance necessary to trigger a requirement that a resale carrier notify its customers that it will be using a different network service provider to carry their traffic.

TRA believes that notification to end users should be mandatory only where the resale carrier has made a clear public commitment not to change its network service provider. TRA nonetheless recognizes the usefulness, under certain circumstances, of advising a consumer of a change in network service provider for the express purpose of minimizing consumer confusion. This latter circumstance would most frequently arise where the resale carrier has identified its network service provider in correspondence to its customers within a short period of time -- *e.g.*, six months or less, prior to a change in network service provider.

The Commission has asked whether "a presumption (conclusive, rebuttable or otherwise) of reliance" should apply "where a resale carrier publicly commits not to change its underlying network provider".³⁴ As an initial matter, TRA believes that those circumstances under which a resale carrier has made a public commitment not to change its underlying network provider will be rare. Indeed, as the long distance resale industry has matured, "branding" and name identification have become a more and more important part of a successful, long-term business strategy. Thus, resale carriers have more and more frequently endeavored to distance themselves from their underlying carrier, emphasizing their independent status as full-fledged carriers.

Accordingly, TRA certainly would not object to a conclusive presumption of reliance when a resale carrier has made a clear "public commitment" not to change its network service provider. Certainly, if a resale carrier has committed not to change its network provider, it should be held to that commitment. TRA, however, would ask the Commission to confirm that references

³⁴ Id. at ¶ 40.

to an network services provider's identity in "advertisements, promotions, or telemarketing"³⁵ do not constitute such "public commitments." TRA would further not object to a rebuttable presumption of reliance based upon identification by a resale carrier in correspondence or other communications with customers of its network service provider during the preceding six months. The presumption could be rebutted, for example, by demonstrating that the identification of the network service provider was made for purposes of full disclosure rather than to entice customers to try or to remain on the resale carrier's service.

Requiring a resale carrier that has sought in the marketplace to establish its own identity and to "brand" its own products and services to notify its customers of a change in its network service provider in any other circumstances would undercut the carrier's central business objective. Periodic and repeated identification of a resale carrier's network service provider would sends the clear message that the resale carrier is not the "real" service provider; indeed, it may reinforce the brand recognition of the network service provider carrier to the resale carrier's competitive detriment. Whether the effect on the resale carrier's competitive credibility was large or small, it would adverse and contrary to the Commission's pro-competitive policies. A carrier should not be required to undermine its own, and enhance another's, competitive position absent a strong public policy need.

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Id.

III.

CONCLUSION

By reason of the foregoing, the Telecommunications Resellers Association urges the Commission to adopt rules and policies implementing Section 258 consistent with the above comments and.

Respectfully submitted,

**TELECOMMUNICATIONS
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