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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, NW, Room 222
Washington, D.C. 20554

Re: CC Docket No. 94-129 Unauthorized Changes of Carrier

Dear Ms. Salas:

On November 20, 1998, AT&T Executive Vice President Marc Manley, General Attorney Michael Lamb, and Consumer Markets Manager Rebecca Yung-Eng and I met with Paul Gallant, legal advisor to Commissioner Tristani. We discussed the above captioned docket and the attached presentation material. We provided documentation of numerous incidents of consumer abuse by incumbent LEC's with regard to their monopoly control of interchange carrier PIC changes. Prompt and specific remedial action was recommended with regard to the administration of consumer requests for a new service provider.

Two copies of this Notice are being submitted to the Secretary of the Commission in accordance with Section 1.1206(a)(2) of the Commission's rules.

Sincerely,

James W. Spurlock

Attachment

Cc: Paul Gallant
Marc Manley
Rebecca Yung-Eng
Michael Lamb

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LEC PIC Administration and Customer Data Abuse Examples

ILEC "PIC Dispute" Stonewall

- Every day, thousands of customers tell their LEC they were slammed and request reassignment to their carrier of choice.

- In 1998 (through October), at least 400,333 AT&T consumer customers who had been slammed away by other carriers, were returned to AT&T through the LEC-controlled PIC dispute process.

- The ILECs stone-wall AT&T and flatly refuse to tell us the identities of the carriers who apparently conducted these slams.

- NYNEX (now Bell Atlantic) refuses even to disclose to AT&T when it is returning a slammed customer to us. We have no data for the NYNEX region. NYNEX simply assigns the customer PIC back to AT&T and will not tell us whether the PIC resulted from an ordinary customer carrier selection or from the correction of a slam.

Bell Atlantic – The Maryland WorldCom Slam

- In November 1997, WorldCom slammed 53,000 Maryland residents to itself by sending the wrong customer tape to Bell Atlantic. More than half of these were AT&T customers.

- WorldCom was unable to remedy its error because WorldCom had no list of the proper carrier for each slammed customer and no technical ability to switch back the customers' PICs.

- When made aware of the error, Bell Atlantic flatly refused to switch the customers automatically back to their proper carriers. We suspect that Bell Atlantic decided to exploit its control over PIC administration and improperly transform this WorldCom mistake into a Bell Atlantic "marketing opportunity." Bell Atlantic sent the affected customers a form letter stating that they had been switched and that they must call Bell Atlantic if they desired to be switched back to their carrier of choice. By this tactic, Bell Atlantic may have sought to gain an opportunity to market its other services such as intraLATA toll service to these customers based upon its control of PIC administration. In all events, Bell Atlantic likely knew that competitors like AT&T would suffer the loss of their victimized customers because most of these form letters would not even be read by customers, let alone acted upon.

- Only after weeks of unsuccessful efforts to convince Bell Atlantic to cooperate, was AT&T able to figure out how to get some of its customers back to their carrier of choice. AT&T obtained a list of ALL of the slammed customers from WorldCom and compared that list to AT&T's customer databases to determine which AT&T customers still needed to be switched back to AT&T. AT&T then submitted these customers to Bell Atlantic as PIC change requests. As a result of Bell Atlantic's intransigence, AT&T's wronged residential customers were not switched back until just before Christmas, even though the slam occurred before Thanksgiving. Bell Atlantic's delay thus gave it an improper marketing opportunity for those customers who responded to the Bell Atlantic form letter.

- AT&T sought to recover compensation for its lost customers and lost revenue from WorldCom, but we have been unsuccessful in negotiations to date.

BellSouth Cover-up

- In August/September of 1997, BellSouth slammed to itself 2000 AT&T intraLATA toll customers. These customers were located in Georgia, Florida, and Kentucky.

- On about September 18, BellSouth contacted AT&T and told us that it had slammed 2000 AT&T intraLATA customers as a result of a "programming error", which had been corrected on the same day that it occurred. BellSouth also told us that it had switched our customers back within a day and that it would reimburse AT&T for the revenue lost.

- AT&T discovered later that its customers had been slammed beginning on August 21, 1997 and the slamming had continued through September 10, 1997. BellSouth never notified customers that the slam had occurred and delayed for at least eight days after the incident was uncovered before even notifying AT&T.

- BellSouth later abruptly revoked its offer to reimburse AT&T for lost revenues and demanded that AT&T agree to a confidentiality provision that would prevent AT&T from revealing this incident in regulatory proceedings. Because AT&T refused to agree to this highly improper BellSouth confidentiality demand, BellSouth refused to reimburse AT&T.

ILEC Refusals To Allow Their Competitors To Implement PIC Protect Programs

- The ILECs are defending their monopoly control over PIC administration issues by refusing to allow any other carriers to solicit PIC Protect decisions from customers.

- AT&T Trial: Between July 1, 1998 and August 12, 1998, AT&T conducted a trial in which it asked its customers if they wanted PIC Protections. These requests were made by the third party verifiers who were verifying the customers' PIC change decisions.

- AT&T then sent 303,452 customer requests for PIC Protection to the following ILECs: Ameritech, BellSouth, Bell Atlantic, GTE, SBC, SNET and US West.

- Every single LEC to which the requests were submitted refused to implement a single PIC Protect request submitted by AT&T.

Pacific Bell Theft of AT&T Customer Data

- Pacific Bell's recent theft of LD carrier customer billing data is not a PIC administration action, but it confirms again that the LECs are not neutral third parties and feel legally unconstrained as they abuse their position to gain competitive advantages.

- AT&T provided data to Pacific Bell so that Pacific Bell could bill customers on its behalf. Pacific Bell used this AT&T billing database to identify and target potential high value customers for Pacific Bell marketing efforts.

- In AT&T Communications v. Pacific Bell, No. C96-1691 CRB (N.D. Cal. April 6, 1998), the federal district court ruled that Pacific Bell had unlawfully misappropriated AT&T's trade secrets by its actions.

Bell Atlantic -- PIC Freeze Abuses

Earlier this year, AT&T submitted to the FCC a listing of specific abuses by Bell Atlantic (then NYNEX) during a two-month period in 1997. The abuses occurred during three-way calls involving customers, AT&T and Bell Atlantic for the purpose of unfreezing customer accounts and allowing a PIC change to AT&T for intraLATA toll calling. Abuse of the PIC Administration process resulted despite a prior and explicit New York PSC order that barred this ILEC from marketing during such calls and requiring it to facilitate three-way calls.

Examples include:

- "LEC rep told customer that NYNEX also offered $.06 per minute and apologized to the customer for charging her $.12 per minute. LEC rep said she would go ahead and make the change [in NYNEX plans]; there was no need for the customer to switch to AT&T. Customer did not switch."

- "LEC rep offered an unlimited local and regional calling plan. Customer accepted it and did not switch."

- "Called NYNEX to switch LD service. . . . [NYNEX] Rep told customer he would be billed twice for his regional calls."

- "LEC refused to switch regional and LD even though customer gave SS#. LEC told customer he would have to put it in writing and gave him an address to write."

- "LEC rep asked me to drop off the line – when I asked why she giggled and said she doesn't need me on the line to discuss customer account. I asked if she would process it – she said of course if that's what the customer wants."

- "LEC rep offered $0.05 per minute – said AT&T rates were higher than NYNEX."

- "LEC rep verified that customer wanted to switch regional calls. Customer said yes. . . . [LEC rep] said he wouldn't benefit from switch. Customer did not switch."

- "LEC rep said they were instructed not to talk to customer with AT&T on the line. Rep ended the call and said she would call the customer back to switch."

- "LEC Rep (Mrs. Parker) told customer she must send letter because she has a freeze on her account."

- "LEC rep (Mrs. Carlton) said NYNEX had a conflict with AT&T so the customer would have to call back himself."

Ameritech's PIC Freeze Abuses

In violation of PUC orders, Ameritech sent misleading PIC Freeze solicitations to customers in late 1995 and early 1996 throughout its region. It sought to mislead customers into freezing intraLATA toll PICs before Ameritech faced new competition. In Michigan, for example, the PSC has had to issue two explicit orders against Ameritech over the last two years in an effort to force Ameritech to stop its blatant abuses. In a third decision, released this September, the PSC concluded that "rather than abide by the terms of those orders and provide PIC protection in a competitively neutral manner" Ameritech opted to shut down its PIC Protection option.

Example No 1 -- Michigan:

Michigan PSC in Sprint v. Ameritech Michigan, Case No. U-11038 (Aug. 1, 1996)(the "1996 Order"):

The Michigan PSC found that Ameritech Michigan's December 1995 bill insert violated both the Act and prior Commission orders. Specifically, the PSC concluded that the insert was "**deceptive and misleading**" because it failed to inform customers that the PIC freeze would apply to all of a customer's services, including intraLATA and local exchange services. 1996 Order, p. 5. The PSC ordered Ameritech Michigan also to permit verification to override freezes through a number of methods, including three-way conference calls and held that "if a customer with PIC protection calls to change providers, Ameritech Michigan shall not use that contact to try to persuade the customer not to change providers." Id., p. 22.

MCI v. Ameritech Michigan, Case No. U-11550 (May 11, 1998):

PSC found that Ameritech Michigan had violated the 1996 Order from the outset and ordered it to cease and desist from further violations:

PSC found that Ameritech had violated the 1996 Order by refusing to process valid PIC changes cleared through authorized methods, instead requiring three-way verification calls before processing PIC changes to

frozen lines. The reason for this unlawful tactic is apparent, because the PSC also found that Ameritech Michigan reps were improperly using three-way verification calls to dissuade customers from leaving Ameritech Michigan's intraLATA service. The PSC found that Ameritech Michigan reps made "these three-way calls an unpleasant and difficult experience" by "**hanging up, putting parties on hold for unreasonable periods, or pressuring customers not to change carriers**" and blatantly marketed their services "each time they (1) asked customers whether they would be getting a less expensive rate from MCI, (2) discussed the customers' existing service plan or calling pattern, (3) inquired about whether the customers wanted additional services, (4) talked about the ramifications of changing service providers, and (5) mentioned any information contained in the customers' billing records beyond that needed to confirm the customers' respective identities."

Proceeding to determine procedures to ensure that an end user of a telecommunications provider is not switched to another provider without the authorization of the end user, Case No. U-11757 (Sept. 23, 1998):

In its September rulemaking decision on slamming and marketing issues, the PSC found:

"[R]ather than abide by the terms of those orders and provide PIC protection in a competitively neutral manner, Ameritech Michigan initiated a public relations campaign designed to increase customer anxiety about the potential for slamming. Ameritech Michigan's campaign included, among other things, its unilateral decision to cease providing PIC protection to any of its customers after May 31, 1998 and its election to spread (through the use of bill inserts and newspaper advertisements) deceptive accounts of both its actions and those of the Commission. The apparent goal of that campaign was to pressure the Legislature and the Commission into allowing Ameritech Michigan to implement PIC protection on its own, albeit anticompetitive, terms."

Example No. 2-- Illinois

MCI Telecommunications Corporation v. Illinois Bell Telephone Company, ICC Docket Nos. 96-0075/0084, Order (April 3, 1996):

ICC determined that the bill insert was anticompetitive and misleading because the language of the bill insert was designed to mislead consumers into thinking that their long distance/interLATA/interMSA PIC was the only choice being frozen. In fact, Ameritech was freezing the

consumer's local, intraMSA/intraLATA and interMSA/interLATA PICs. The order specifically stated: "During telephone calls for the purpose of changing the customer's intraLATA PIC to another carrier, Respondent (Ameritech) should not attempt to retain the customer's account during the process."

MCI Telecommunications Corporation v. Illinois Bell Telephone Company, d/b/a Ameritech Illinois, ICC Docket No. 97-0540 (December 17, 1997):

ICC upheld an MCI complaint that Ameritech representatives were using the three way calls as an opportunity to attempt to retain customers, to question their selection of providers, to make switching their intraLATA provider via the three way call unpleasant or difficult, and to attempt to sell unrelated Ameritech products and services. The ICC found that **"inappropriate marketing on the part of the Ameritech representatives" and found that "Ameritech Illinois' instructions to its representatives . . . represented a knowing use of three-way calls as an opportunity to retain customers in violations of Section 13-514 [of the Illinois Public Utilities Act].** The cited conduct is a barrier for customers wishing to trade carriers, and thereby is anti-competitive." Further the order finds that "There is no question that the conduct of Ameritech representatives during three-way calls cited by MCI impedes the ability of carriers like MCI to fairly and efficiently compete for local toll customers in Illinois. As the three-way call summaries bear out, such conduct is in addition to Ameritech Illinois' inappropriate attempts to retain customers' accounts for local toll service. **The cumulative effect of the conduct is to make switching to a competitive carrier via a three-way call an unpleasant and difficult experience."**

SNET's PIC Freeze Abuses

- In 1995 and 1996, SNET was soliciting PIC Freeze orders only from customers who selected SNET for their LD service.
- SNET was also marketing its services to customers who call SNET to request a PIC change to another LD carrier that is subject to a SNET PIC freeze.
- AT&T "reject" rates for PIC changes submitted to SNET increased from 3.9% in January 1995 to 21.5% in July 1996.
- AT&T and SNET are now in litigation about this SNET conduct.