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

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MAY 14 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	FCC 98-334

OPPOSITION OF SBC COMMUNICATIONS INC.
TO MOTION FOR STAY PENDING JUDICIAL REVIEW

SBC Communications Inc.[1] (SBC) opposes any stay of the Commission's liability rules set forth in the Slamming Order.[2] Since the issuance of the Slamming Order, SBC, as well as numerous other telecommunications carriers, have been working to comply with the requirements of that Order. The objective of the liability rules is to take the profit out of slamming. Any delay in implementation of the rules will allow slamming carriers to continue to profit from slamming during the pendancy of the stay.

I. Re-rating

MCI's biggest argument for not implementing the Commission's Rules is that there is no system in place to allow the exchange of information in electronic format to

[1] SBC Communications Inc. is the parent company of various subsidiaries, including telecommunications carriers. These subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Nevada Bell, and The Southern New England Telephone Company ("SNET"). The abbreviation "SBC" shall be used herein to include each of these subsidiaries as appropriate in the context.

[2] Second Report and Order (Slamming Order) issued on December 23, 1998 in Second Report and Order and Further Notice of Proposed Rulemaking, *In re Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996.*

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allow the re-rating of the bills.[3] Sally Ann McMahon's Declaration attached to the MCI Motion cites the fact that MCI and other major carriers process "tens of millions of orders annually and receive thousands of slamming complaints a year." SBC submits that the only scenario which requires re-rating is where the customer has paid the unauthorized carrier's bill and the unauthorized carrier has refunded this amount to the authorized carrier. Only in that specific instance would the issue of re-rating even arise. If the customer reports the slam before paying the bill, there is no need for any refund or any re-rating to determine the amount of the refund. Such situations constitute only a small percentage of the total slamming claims. A big complicated system to re-rate bills on an automated basis, such as MCI claims must be in place before the rules can be implemented, is not required nor warranted at this time and the Commission should not be fooled by MCI's claim to the contrary. If the slamming rules have the effect intended by the Commission, it may never be necessary to re-rate bills on an automated basis.

SBC finds it curious that MCI asks for a stay to allow the implementation of its Third Party Administrator Plan (TPA), while a re-rating system such as described in the Motion for Stay is not a part of that Plan. Under the TPA, MCI proposes to simply refund half of any money collected from the unauthorized carrier to the customer. Although proposed as part of the TPA, this solution is available to MCI or any other carrier within the framework of the Rules today, so long as the end user customer is not being required to pay anymore than the customer would have paid absent the slam. The inability to exchange billing information on an electronic, fully automated basis with all other carriers is not required to comply with the Commission's Rules and therefore is not a legitimate reason to delay the Commission's Liability Rules.

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[3] See: 47C.F.R. Subpart K, § 64.1170(d)

II. MCI WorldCom Is Not Likely to Prevail on the Merits

A. The Slamming Order Implements the Statutory Scheme While Protecting the Interest of the End User Customer

Contrary to the arguments made by MCI, the Commission's new liability rules are not in conflict with the requirements of the Federal Telecommunications Act of 1996 (FTA96). Although the statute does require the slamming carrier to refund any money paid by the end user customer to the customer's authorized carrier, it is not unreasonable for the customer's authorized carrier to refund to the customer any amounts paid that are over and above the amount the customer would have paid for the same services if those services had been provided by the customer's authorized carrier. Such rule is not in conflict with the procedure outlined in the statute. It continues the preceding practice of ensuring that the end user customer does not pay more for its service because of the slam.

Nor does the rule "eviscerate" the incentive scheme set forth in FTA96 that encourages authorized carriers to pursue collection of any money that the customer paid the slamming carrier before reporting the slam. The authorized carrier has not been providing any services to the customer during the period for which the slamming carrier is issuing bills. Thus, when the authorized carrier recovers the amounts paid by the end user customer to the slamming carrier, there are no expenses of providing service that must be offset against the revenue received because the authorized carrier did not provide the service; the slamming carrier did. Therefore, any portion of that refund that is retained by the authorized carrier can be used to offset any expenses of handling the slamming claim.

The slamming carrier, on the other hand, incurred the cost of setting up the new customer's account and the cost of providing the service to the customer, as well as the cost of handling the demand for refund and the process of refunding all money collected. The rules set forth in the Slamming Order implement the statutory scheme to the detriment of the slamming carrier and to the benefit of the authorized carrier, while protecting the customer. For that reason, it is highly unlikely that MCI will prevail on

the merits in its effort to overturn those rules. For all of the reasons discussed above, it is in the public interest for those rules to go into effect as scheduled on May 17.

B. The Absolution Rule Follows the Statute

The absolution rule effectuates the clear intent of §258 of FTA96. Slamming carriers will no longer be allowed to collect the charges for their services when the customer did not authorize the carrier change. If the customer has paid any such charges, the statute is clear that the slamming carrier is liable to the customer's authorized carrier in the full amount paid. The rules prescribed by the Commission also provide that, if the unauthorized charges have not yet been paid, there is no obligation for the customer to pay charges incurred for the first thirty days after the slam. The Commission, charged with prescribing procedures to implement §258, has put in place a simple solution to provide a remedy for the customer and the authorized carrier. The customer never authorized the slamming carrier to provide the service or entered any contractual arrangement to pay for those services. Therefore, the Commission does not require payment for the first thirty days of service. After that date, the customer would only be obligated to its authorized carrier at the rate charged by that carrier. The Rules reward customers for carefully examining their bills to catch slams at an early stage and thereby limit the adverse effects of such unfortunate situations for all parties except the slammers.

C. The Commission's Procedures and Timetable Are Reasonable

Section 258 of FTA96 contains explicit requirements for the purpose of eliminating, or at least, deterring slamming. The Commission established its Slamming Rules to carry out that explicit language of the statute.

MCI, as well as all other carriers, first had notice of the slamming rules on December 23, 1998. SBC began its implementation process immediately. If MCI and others did not do so, they should not now come forward, nearly five months later, to complain. SBC believes that the level of slamming claims will be significantly reduced, if not almost eliminated entirely as a result of the verification Rules which became

effective on April 27, 1999 and the liability rules to go into effect on May 17, 1999.[4] Thus, it would be economically inefficient for SBC, or any other carrier to incur the enormous cost of developing a re-rating system such as the one MCI describes or to commit to participate in a TPA before the rules go into effect and a determination can be made as to whether any such systems will ever be needed.

In summary, there is nothing arbitrary and capricious about an agency following the dictates of a federal statute that require it to prescribe rules to implement that statute. The rules that the Commission has prescribed are reasonable and necessary in order to implement the requirements of §258 and those rules should go into effect as scheduled on May 17, 1999.

III. No Irreparable Harm

MCI cannot show irreparable harm as a result of the Commission Slamming Order. All companies operating in a regulated industry regularly incur expense in complying with regulatory requirements. MCI would have the Commission believe it must expend huge sums to build a system for re-rating. No such system is required and no such system will be built by SBC. This is simply MCI's attempt to stall the Slamming Order. There is nothing different about the cost of complying with the slamming rules than the cost of complying with other regulatory rules. The Rules are also fair and non-discriminatory because they apply to all carriers.

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[4] In fact, MCI has also claimed that TPV drastically reduces slamming. See, Footnote 19 to MCI Worldcom, Inc., Reply Comments, page 9, which reads as follows: "TPV has also proven overwhelmingly successful in Mexico. There, prior to the implementation of a third party verification process for PIC changes, unauthorized conversion disputes were reportedly as high as 30 percent of the presubscription requests received. Third party verification was implemented in Mexico in February 1998. Beginning in May 1998, the average number of slamming findings in Mexico was reduced by over 90 percent from its peak in late 1997. Since September 1998, slamming in Mexico has been nearly eliminated. This reduction very clearly followed from the implementation of the TPV process, with drastic reductions beginning within eight weeks of TPV implementation."

The burden of complying with the Rules will be heaviest on those carriers that slam, because these carriers will no longer be allowed to collect money from customers they have slammed, which is the intent of the statute and the intent of the Rules. The rules also place some burden on the authorized carriers whose customers are taken by slammers, but those carriers may now recover at least a portion of their costs by collecting those costs from the slamming carrier. There is always a cost involved in regulatory compliance, but there have rarely been situations where the cost has been more justified or the rules more clearly directed to protection of the public interest than in the Commission's slamming rules.

IV. Delay of the Implementation of the Rules Is Not in the Public Interest Because It Allows Slammers to Continue Profiting from Slamming

It is in the public interest for the slamming rules to take effect as scheduled. If a stay is granted, slamming carriers will continue to slam and continue to profit from their slamming activity until those rules go into effect.

While MCI indicates that the Commission invited a third party administrator "TPA" plan, the invitation was for a telecommunications industry-supported plan, not a plan devised for and by the interexchange carrier segment of the industry alone, such as the TPA Plan filed by the Joint Petitioners.[5] Although MCI recites that it began meeting with other interexchange carriers to devise such a plan at an early date, the TPA is far from the implementation stage. In fact, the plan proposed in the Joint Petition is a theoretical plan with no details about how it would actually work or be funded. It was only when local exchange carriers were brought into the discussions, that the industry really began in earnest to develop a plan for a type of TPA that could meet the needs of any carrier that wished to contract out its authorized carrier duties. The vendor

[5] Joint Petition for Waiver filed by AT&T Corporation, Sprint Corporation, MCI Worldcom, Inc., and Competitive Telecommunications Association on March 30, 1999.

arrangement that is the subject of those ongoing discussions differs significantly from the TPA proposed in the Joint Petition.

SBC believes that the only type of TPA Plan that would really work is one that is voluntary and used only by those carriers that find it less expensive to have the TPA perform its obligations as an authorized carrier than to perform those obligations itself. With this type of TPA, the rules would remain unchanged except for any changes necessary to allow carriers to contract out their authorized carrier obligations to a TPA. There is no need to await the establishment of such a TPA because the need for such a vendor-based solution will really only become clear when the results of the Commission's slamming rules are known. SBC believes the effect of the Rules will be a sobering wake up call to those carriers that are slamming consumers and a welcome relief to consumers.

V. Conclusion

MCI has provided nothing in its Petition that should warrant a stay of the Commission's slamming Rules. Granting a stay of the Commission's Slamming Rules preserves the rights of slamming carriers to continue to use slamming as a marketing tool. A stay is not in the public interest, nor is it in the interest of SBC or SBC's customers. For all of the aforementioned reasons, SBC opposes the MCI Petition for Stay and welcomes and supports the slamming rules prescribed by the Commission and here argues for implementation of those rules as scheduled on May 17, 1999.

Respectfully submitted,

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May 14, 1999

Certificate of Service

I, Katie Turner, hereby certify that the foregoing "Opposition of SBC Communications, Inc. on Joint Petition for Waiver," in CC Docket No. 94-129 has been served on May 14, 1999 to the Parties of Record.

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