

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

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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 )  
)  
Policies and Rules Concerning )  
Unauthorized Changes of Consumers' )  
Long Distance Carriers )

CC Docket No. 94-129

**AMERITECH PARTIAL OPPOSITION TO PETITIONS FOR RECONSIDERATION**

The Ameritech Operating Companies (Ameritech) respectfully file this partial opposition to the Petitions for Reconsideration of the *Second Report and Order* filed by AT&T and Excel in the above-captioned proceeding. Those petitions seek, *inter alia*, reconsideration or "clarification" of section 64.1190(d) and (e) of the Commission's rules, which establish procedures by which customers may request and remove so-called preferred carrier freezes (sometimes referred to herein as PC protection) from their account. In addition, AT&T asks the Commission to expand the scope of its verification requirements to new contexts not previously addressed – specifically, initial carrier selections that take place when a customer establishes new service or orders additional lines. For the reasons discussed below, these requests should be denied.<sup>1</sup>

<sup>1</sup> With one *caveat*, Ameritech generally takes no position at this time on the other issues raised in these parties' reconsideration petitions. The one *caveat* relates to AT&T's request that the Commission require LECs to provide automated handling of PC protection orders. See AT&T Petition at 19-20. While Ameritech does not believe it necessary for the Commission to require LECs to provide automated handling of PC protection orders, the Commission should modify its existing verification requirements to the extent those requirements unnecessarily

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**A. The Commission Should Reject Calls To Gut the Efficacy Of PC Protection Programs.**

Section 64.1190(d) and (e) of the Commission's rules establish procedures for the implementation and removal of PC protection on a customer's account. According to Excel, these rules, as drafted, "could be interpreted by incumbent LECs to allow only those orders to initiate or lift a PC freeze that are communicated directly from the customer to the ILEC to be valid."<sup>2</sup> It asks the Commission to clarify that LECs must honor "an LOA or other appropriate verification obtained by a non-facilities-based LEC or by an IXC to initiate a PC freeze or lift a PC freeze."<sup>3</sup> AT&T makes a similar request, although AT&T couches its request as a reconsideration, not a clarification.

These requests would effectively gut PC protection and accordingly should be denied. PC protection "offer[s] consumers an additional and beneficial level of protection against slamming"<sup>4</sup> by "prevent[ing] a change in a subscriber's preferred carrier selection until the *subscriber* gives the carrier from whom the freeze was

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*restrict* the use of automated verification systems, such as voice response units (VRUs). The Commission's existing rules permit verification through a VRU only if the call to the VRU originates from the line to which the verification request relates. While this limitation was presumably intended to limit fraud, there are other equally effective ways of securing the integrity of a VRU verification. For example, carriers operating such systems could require customers to provide their social security number or some other unique identifying information. Allowing such alternative security measures could permit broader use of VRUs, which would save money and also "obviate potential disputes about the reliability and effectiveness of LEC three-way calling procedures." AT&T Petition at n. 35. Indeed, the Commission is considering these very types of security measures with respect to PC changes made over the Internet. Surely if a social security number or other identifying information provides sufficient assurance as to the integrity of a PC-change made over the Internet, this same information ought to sufficiently ensure the integrity of PC protection instructions provided over a VRU. The Commission should so rule.

<sup>2</sup> Excel Petition at 6.

<sup>3</sup> *Id.* at 6-7.

<sup>4</sup> *Second Report and Order* at para. 103.

requested his or her written or oral consent.”<sup>5</sup> In essence, PC protection reduces slamming “by giving customers greater control over their accounts.”<sup>6</sup> In asking the Commission to require LECs to accept changes in PC protection status directly from carriers, AT&T and Excel seek to wrest that control away from customers and give it back to slammers. As the Commission recognized in the *Second Report and Order*, these requests are fundamentally inconsistent with the essence of PC protection and would effectively eliminate the protection it offers:

We agree with Ameritech and those commenters who suggest that the essence of the preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze. ... We disagree with MCI that third-party verification of a carrier change alone should be sufficient to lift a preferred carrier freeze. Were we to allow third-party verification of a carrier change to override a preferred carrier freeze, subscribers would gain no additional protection from the implementation of a preferred carrier freeze. Since we believe that subscribers should have the choice to implement slamming protection in the form of preferred carrier freeze mechanisms, we do not adopt MCI’s proposal.<sup>7</sup>

AT&T and Excel offer no good reason for the Commission to deny consumers a viable PC protection option. They merely recycle arguments that, unless PC protection

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<sup>5</sup> *Id.* at para. 104. Consistent with this holding, Ameritech does accept and honor letters of agency (LOA) that have been executed by customers and provided to Ameritech by other carriers. Since LOAs bear the customer’s signature, they constitute direct customer authorization, irrespective of whether this authorization is given by the customer directly to Ameritech or forwarded to Ameritech through a third party. In contrast, the representation of a third party that the customer has authorized a change in PC protection status is not sufficient. Thus, for example, Ameritech will not honor purported third party verification records in lifting PC protection because those records do not constitute direct customer authorization but, rather, the representation of a third party that the customer has authorized removal of PC protection. As noted, the whole point of PC protection is to give *customers* the option of controlling their own account.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at para. 119.

is treated just like a PC change, LECs might obtain a competitive advantage.<sup>8</sup> The Commission fully considered and addressed these arguments in the *Second Report and Order* by carefully regulating PC protection programs. AT&T and Excel do not present any new arguments or evidence that would show these measures to be inadequate. Accordingly, their decidedly anti-consumer reconsideration request should be denied.<sup>9</sup>

**B. Verifications Requirements Cannot and Should Not be Extended to Orders for the Establishment of New Services or New Lines.**

AT&T also asks the Commission to expand its verification requirements to encompass new service orders. It notes that the regulations prescribed in the *Second Report and Order* apply only to carrier *changes*, not new service orders, and claims that this omission could not have been intended.<sup>10</sup> It claims further that “the potential for LEC abuse in a carrier selection through a transaction directly between a customer and a

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<sup>8</sup> In support of its request for a third party administrator of PC changes, AT&T has made a number of misstatements of fact regarding LEC PC protection programs. These false statements are described in detail in Ameritech’s Reply to the Further Notice of Proposed Rulemaking in this docket, filed May 3, 1999, at 6-12.

<sup>9</sup> AT&T also claims that the Michigan Public Service Commission has held that “direct contact between the customer and a LEC is not necessary to the proper operation of the preferred carrier freeze mechanism.” AT&T Petition at 17. Of course, the decisions of the Michigan Commission are not binding on the FCC, but the Michigan Commission has, in any event, reversed this holding, and its PC protection rules now mirror those of the FCC. *See In the Matter*, on the Commission’s own motion, to consider revisions to the procedures designed to prohibit switching an end user of a telecommunications provider to another provider without the authorization of the end user, Case No. U-11900, MPSC, 4/23/99 at 17 (revising rules so that a third party verification record is no longer sufficient to lift slamming protection).

<sup>10</sup> AT&T Petition at 24-25.

LEC is just as serious in an initial carrier selection for a newly-ordered presubscribed line as where the customer wishes to change an existing carrier choice.”<sup>11</sup>

The Commission should reject this request. First, the Commission does not have authority to prescribe verification requirements for new intrastate services. The Commission’s authority to prescribe verification requirements for intrastate services stems from section 258, which authorizes the Commission to establish verification requirements for “a *change* in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.”<sup>12</sup> The very premise of AT&T’s petition is that Commission’s existing verification requirements, which apply to PC “changes” do not, by their terms, apply to the initial establishment of service. Thus AT&T effectively concedes that the Commission lacks authority to grant its request.

AT&T’s petition also runs afoul of section 553(b) of the Administrative Procedure Act. The Notice of Proposed Rulemaking in this proceeding proposed verification requirements only for PC changes; it in no way suggested that the Commission would, for first the time ever, require verification of new service orders. Nor did any commenter raise this issue prior to AT&T’s reconsideration petition. Indeed, AT&T itself now raises this issue for the first time. It is axiomatic that before promulgating a rule, an agency must publish general notice of its proposal in the Federal Register.<sup>13</sup> Because the Commission gave no notice of its intent to consider requiring

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<sup>11</sup> *Id.* at 25.

<sup>12</sup> 47 U.S.C. § 258(a) (emphasis added).

<sup>13</sup> 5 U.S.C. § 553(b). *See National Tour Brokers Ass’n v. United States*, 591 F.2d 896, 901-02 (D.C. Cir. 1978).

verification of new service orders, it cannot impose such a requirement on reconsideration of the *Second Report and Order*.

In any event, the requirement that AT&T seeks is wholly unnecessary. While AT&T claims that the risk of slamming is as high when customers initially establish service as when they change carriers, that is clearly false. The process by which customers establish new service is markedly different from the process by which they change carriers. A carrier change can be implemented based on nothing more than the representation of an IXC that it has received the customer's authorization. The IXC need only provide the customer's name and telephone number – information that can be readily obtained, for example, from the phone book or telemarketing lists. In this manner, a consumer's carrier can be changed even though the consumer has not initiated any steps to change her service.

In contrast, LECs do not simply turn up service for a new customer; those customers must first contact the LEC and establish an account. That requires that the customer provide a considerable amount of information. For example, Ameritech obtains, among other things, the customer's name, address, social security number, date of birth, and former address and telephone number when it establishes new service.<sup>14</sup> For both new service orders and additional lines, the customer is asked to choose a service installation date and is given a telephone number. Quite obviously, slamming is impossible under these circumstances.

Indeed, the only circumstance involving a new service in which slamming is even *theoretically* conceivable is if the customer's long-distance or intraLATA toll carrier

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<sup>14</sup> In some cases, a site visit may also be necessary if, for example, a new line must be installed.

selection is improperly implemented, but here again there are significant differences between carrier changes and new service orders. As noted, one of the reasons slamming has become so pervasive is that a customer's carrier easily can be changed without the customer ever noticing. When customers have not requested any change in their service, they have no reason to monitor the status of their account or to pay special attention to their bill.

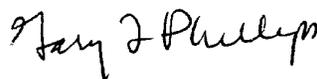
In contrast, consumers who order new products or services of any kind routinely check to see that their order is properly implemented. For example, consumers who order tickets or merchandise by phone ordinarily scrutinize those tickets and merchandise when they arrive to ensure they are as ordered. Likewise, consumers who sign up for cable television service by phone generally check to ensure that they are not receiving a higher or lower level of service than ordered. So too when customers order telephone service, they normally monitor the status of their order to ensure it is implemented in accordance with their instructions. In addition, they pay particularly close attention to the first bill they receive for a new service. Not only are they likely to check to see that their order has been properly filled, they are likely to closely scrutinize their first bill, and under the Commission's new truth in billing requirements, any slam would be revealed on that bill. Particularly as local competition increases, it would be suicidal for a LEC to risk alienating its customers by engaging in fraudulent conduct that customers are likely to detect.

The critical differences between new service orders and PC changes with respect to both the risk and likelihood of detection of slamming are scrupulously ignored by AT&T. Indeed, AT&T provides no evidence at all that slamming is or could be a

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problem in the context of new service orders or second lines. Its argument consists entirely of a few conclusory generalizations. This total lack of support is particularly ironic because throughout this proceeding AT&T has insisted that verification requirements should not be imposed unless there is solid evidence that they are necessary. It claimed, for example, "it is incumbent on the Commission to support the need for its proposed rules, and not the duty of the commenters to disprove the need for such regulations."<sup>15</sup> It has also staunchly claimed that verification requirements are not necessary on inbound service orders – and new service is always ordered on an inbound basis.<sup>16</sup> As seen in this light, AT&T's request is nothing more than a hypocritical attempt to saddle its competitors with regulatory burdens that AT&T itself has claimed to be unnecessary and inappropriate. Its transparent, improper regulatory gamesmanship should be rejected.

Respectfully Submitted,



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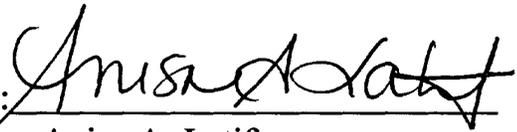
<sup>15</sup> AT&T Comments, filed Sept. 15, 1997 at 24, 27.

<sup>16</sup> Once it became clear that the Commission would require verification of PC changes resulting from in-bound calls, AT&T attempted to score public relations points and fend off further congressional action by announcing that it would "voluntarily" verify PC changes on inbound calls. Prior thereto, however, AT&T staunchly maintained that verification requirements for PC changes on inbound calls were wholly unnecessary.

CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of **Ameritech Partial Opposition to Petitions for Reconsideration** has been served on the parties attached via first class mail – postage prepaid on this 23<sup>rd</sup> day of June 1999.

By:

A handwritten signature in black ink, appearing to read "Anisa A. Latif", written over a horizontal line. A long, sweeping flourish extends from the bottom left of the signature.

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