BEFORE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RULES RELATING TO WAC 480-120-139, CHANGES IN LOCAL EXCHANGE AND INTRASTATE TOLL SERVICES	)))	Docket No. UT-980675

COMMENTS OF MCI WORLDCOM, INC. ON PROPOSED SLAMMING RULES

I. INTRODUCTION

MCI WorldCom, Inc. ("MCIW") responds to the Notice of Opportunity to Submit Written Comments on Proposed Rules issued by the Washington Utilities and Transportation Commission ("Commission") on June 21, 1999. MCIW is committed to the proposition that a customer's right to select a competitive carrier for long distance and intraLATA toll service not be frustrated or impeded by slamming. MCIW also believes that consumers should only be charged for the telecommunications services they ordered, authorized, or used.

Slamming harms consumers and carriers. MCIW has lost millions of dollars in revenues in recent years because large numbers of our customers are switched away from MCIW without their consent. MCIW has been an industry leader in opposing slamming and working with regulators to develop anti-slamming rules. The Federal Communications Commission's ("FCC") rules[1] provide for third-party verification ("TPV") as an authorized method to validate customer change requests. MCIW began using TPV for outbound telemarketing in late 1991, before the first FCC anti-slamming order. MCIW has been using TPV for virtually every customer order since August 1996. Moreover, MCIW has voluntarily recorded the entire TPV conversation

[1] *See Second Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 94-129 (adopted December 17, 1998) ("FCC Second Report and Order").

since April 1998. MCIW has been in compliance with the FCC's TPV rules since they became effective on April 27, 1999.

MCIW provides services to consumers throughout the United States. As a national marketer of services and unique product offerings in a highly competitive environment, MCIW is committed to preserving consumer choice of services while establishing an efficient complaint resolution process which satisfies Washington consumers, as well as MCIW's other customers across the country. It is to that end that MCIW is leading national efforts to allow a third party administrator to resolve slamming disputes more expeditiously.

MCIW applauds the Commission and its Staff for seeking to draft rules "consistent with the newly adopted FCC rules." June 21,1999 Notice, page 2. MCIW supports consistency across states in terms of anti-slamming policies,[2] including the form and content of letters of agencies ("LOAs"). If a carrier operating in multiple states are allowed to follow one set of procedures for the form and content of LOAs nationwide, opportunities for errors and unnecessary expenses will be reduced. Customer education will also be made easier because a consistent, well developed education program can be put in place more rapidly and easily. Therefore, consistency across the states in terms of anti-slamming policies will prove to be an effective consumer protection measure in itself.

II. PROPOSED RULES

[2]The industry continues to work with the FCC in its anti-slamming rules. As discussed below, the Commission should incorporate into its rules the flexibility to respond to later developments in the industry plan and FCC rules, so that it may take advantage of any benefits offered by such developments.

Consistent with MCIW's pro-consumer history of working cooperatively with the industry and regulators toward development of rules governing slamming, MCIW provides the following comments on the proposed rules in Washington.

A. Definitions

The Commission's proposed rules could benefit from a "definitions" section to avoid any unnecessary confusion as to the application of the rules. For example, WAC 480-120-139(1) refers to "new telecommunications companies" while WAC 480-120-139(2)addresses "telecommunications carriers". An "executing carrier" is referenced in WAC 480-120-139(3). A definitions section and consistent use of terms will insure that no confusion arises in the implementation of the Commission's proposed rules. The Commission should consider adopting the definitions of the FCC: *Part 64, subpart K, § 64.1100 (e) 1-5 of the Amended FCC Anti-Slamming Rules.*

B. Resolution of Customer Complaints and Dispute - WAC 480-120-139(5) Remedies

Unauthorized Changes by Initiating Carrier

After setting out when a change of carrier is properly authorized (such as through use of TPV), *see* WAC 480-120-139(1)(c), the proposed rules go on to address the consequences of changes without authorization. Those rules apply to a "telecommunications company initiating an unauthorized change order...". *See* WAC 480-120-139(5). It is important for the Commission to clarify the meaning of a company "initiating" an unauthorized change. If the rules do not sufficiently clarify which company is the wrongdoer, the substantial ensuing consequences could fall on the wrong party. This is particularly true in two situations: (1) unauthorized changes

generated (i.e., "initiated") by local exchange carriers ("LECs"); and (2) inadvertent unauthorized changes.

First, interexchange carriers should not be held liable for unauthorized changes generated by LECs. Assume, for example, that a LEC sends to an interexchange carrier a transaction record indicating that a customer's Primary Interexchange Carrier ("PIC") was switched. The interexchange carrier then establishes an account and begins serving and billing the customer, consistent with the record received from the LEC. Later, the interexchange carrier discovers that the change was unauthorized.

In this situation, the interexchange carrier has not voluntarily initiated an unauthorized change in the customer's telecommunications company. This interexchange carrier should not be liable under the Commission's rules, even though that carrier would not be able to provide proof of authorization. Only by investigation involving the collaboration of the LEC may ultimately uncover the error that caused the interexchange carrier to begin providing services to the customer. Defining unauthorized changes by initiating carriers to exclude liability in these cases is consistent with the federal Act. Section 258 of the Act makes it illegal for a carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." 47 U.S.C. ¶ 258 (emphasis added). When the LEC initiates, submits, or executes the unauthorized change, the interexchange carrier is not the wrongdoer and should not be held liable.

Second, interexchange carriers should not be held liable for the penalties available under Washington law in cases involving inadvertent unauthorized changes. Inadvertent errors

inevitably occur in any process that involves large numbers of transactions. As recognized by the FCC, "even with the greatest care, innocent mistakes will occur and may result in unauthorized changes." FCC Second Report and Order, ¶ 52. While otherwise holding carriers liable for inadvertent unauthorized changes, the FCC determined that it "will take into consideration in any enforcement action the willingness of the carriers involved." Id. The Commission's rules should clarify that any liability beyond that available under the FCC rules should not be assessed when a carrier acts in good faith but nevertheless inadvertently makes an unauthorized change.

Third Party Liability Administrator Proposal

The Commission's June 21,1999, Notice of Opportunity to Submit Written Comments on Proposed Rules references to the FCC's slamming rules and states that staff has drafted rules consistent with the newly adopted FCC rules. As the Commission may be aware, even after extensive investigation into procedures for resolving disputes among carriers and subscribers with regard to slamming, the FCC recognized that carriers may be able to develop other procedures that "better serve to address" the FCC's concerns. FCC Second Report and Order ¶ 55. The FCC endorsed an alternative to its rules, recognizing that an independent third party liability administrator ("TPA") could "discharge carrier obligations for resolving disputes among carriers with regard to slamming." *Id.* The FCC pointed out that:

> Consumers would benefit by having one point of contact to resolve slamming problems. Carriers would benefit by having a neutral body to resolve disputes regarding slamming liability. LECs would no longer be the recipients of angry phone calls from consumers who have been slammed by long distance carriers, while IXCs would be able to divert their resources by preventing slamming rather than resolving slamming disputes.

Id. The FCC encouraged carriers to develop a TPA proposal and indicated that, if an adequate proposal were submitted, it would "be open to receiving requests for waiver of the liability provisions of our rules for carriers that agree to implement" such an alternative. *Id.*

Sharing the FCC's view that a TPA system would be the best solution to the problem of unauthorized conversions, industry participants have worked diligently and expended substantial resources to develop a satisfactory TPA proposal and have submitted that proposal to the FCC. The proposal calls for a neutral, industry-funded TPA to switch consumers back to their preferred carriers and, if appropriate, ensure credits are issued. Various consumer groups, including the Consumer Federation of America, the Small Business Survival Committee, the Competitive Policy Institute, and the American Association of Retired Persons, have advised the FCC that they prefer a TPA solution to the FCC's current rules. Under the TPA proposal, customers will receive faster resolution of complaints than under the FCC rules.

The FCC's rules, unfortunately, did not allow time for implementation of the TPA proposal. Recently, however, the D.C. Circuit Court of Appeals stayed the liability and dispute resolution portions of the FCC's rules. *MCIW v. FCC*, Docket No. 99-1125 (D.C. Cir. May 18, 1999). The stay will allow time for consideration and further development of the TPA proposal.

The Commission should adopt rules that are flexible enough to allow the incorporation of plans and rules approved later by the FCC. This will allow the Commission to take advantage of the diligent work of the industry and the FCC on these issues and the resulting benefits to consumers from the procedures adopted, such as the benefit of having one point of contact to resolve slamming problems. It will also avoid conflicts between the rules that could lead to legal delays (such as preemption and jurisdiction claims) and practical problems with implementing

different procedures. Moreover, consistency across states in terms of anti-slamming policies and procedures will reduce errors, unnecessary expenses, and customer confusion.

Industry participants, the FCC, and this Commission have the same objective - a swift and efficient mechanism to combat unauthorized carrier switches. The industry coalition has taken a leadership role in developing a neutral, consumer-friendly proposal. As MCIW and its customers are major victims of slamming, MCIW wants to work with this Commission, as well as with the FCC, in prompt consideration of workable anti-slamming rules.

In summary, the Commission should modify its rules to make them flexible enough to allow the use of a TPA mechanism when it is finalized by the FCC.

C. Preferred Carrier Freezes - WAC480-120-139((d) Lift of Freeze

Preferred carrier freeze rules are going to become more critical than ever as the last markets closed to competition are opened up and while the incumbent local monopoly is in control of executing virtually all carrier switches. MCIW believes the Commission should use this rulemaking to establish third party verification ("TPV") as an automatic override of a carrier freeze.

MCIW believes that carrier freezes can be used as anti-competitive tools just as new markets are being forced open to competition. Even the limited experience to date of opening up markets to competition shows that incumbents misuse carrier freezes during the vulnerable transition from monopoly to competition to shield their own customer base from competition and to refuse to implement carrier changes that customers clearly want. A carrier freeze acts as a block to the typical method of executing customer switches of service, which today overwhelmingly occurs as: 1) a carrier makes a sale to a customer; 2) the carrier obtains the

customer's authorization either verbally or in writing to switch his service; 3) the carrier may verify the sale through third party verification; and 4) the carrier acts as the agent of the customer and implements the authorization by sending a carrier-to-carrier electronic feed to the LEC that accomplishes the switch.

The potential dangers posed by an incumbent LEC's misuse of its monopoly power in the context of soliciting carrier freezes are graphically demonstrated by the recent practices of U S WEST. With the introduction of dialing parity for intrastate intraLATA toll service, U S WEST has unilaterally extended the customer-authorized carrier freezes to designate themselves as the frozen intraLATA carrier selection. These extensions are done without the prior knowledge or authorization of the impacted customers. MCIW has complained of this practice in Colorado.[3] AT&T and SPRINT have filed similar complaints against U S WEST in Arizona, Colorado, Minnesota, Montana, New Mexico, Oregon, Utah, Washington, and Wyoming.[4]

The reality is that incumbent LECs strategically market carrier freezes as a device to shield their own customer base from competition. Moreover, customers are often unaware of the carrier freeze, and incumbent LECs can and do take advantage of this opportunity to discourage

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[3] *See MCI WorldCom, Inc.'s Formal Complaint Against US West Communications RE: IntraLATA PIC Freezes ("Jamming")* filed in Colorado, Docket No. 99F-094T, dated March 8, 1999.

[4] *See Petition's of AT&T Communications, Inc. and Sprint Communications Company L.P.'s for a Commission Order Requiring the Release of All IntraLATA Toll Carrier "FREEZES" Instituted Without Prior Customer Authorization* filed in Arizona, Docket No. T-02427A-99-0232, dated May 19, 1999; Colorado, Docket No. 99F-162T, dated April, 12, 1999; Minnesota, Docket No. P442, 446/EM-616, dated May 3, 1999; Montana, Docket No. D99.5.114, dated May 3, 1999; New Mexico, Docket No. PRC3030, dated April 30, 1999; Oregon, Docket No. UC 411, dated April 12, 1999; Utah, Docket No. 99-087-02, dated April 13, 1999; Washington, Docket No UT-990657 dated May 4, 1999 and Wyoming Docket No. ATT-72000-TA-99-132 dated on May 3, 1999.

the switch or sell other services to the costumer, even with the MCIW representative on the line.[5]

Meanwhile, available procedures to remove preferred freezes are cumbersome and ineffective. Once MCIW learns of sales that have been rejected because of preferred carrier freezes, it must engage customer service personnel to try to have the freezes removed by calling the new customers and setting up three-way conference calls with incumbent LEC representatives. Clearly, if MCIW had known that a customer's preferred carrier freeze was frozen during the initial sales call, when incumbent LEC sales representatives have this information, MCIW could do what incumbent LEC representatives presumably do – conduct a three way conference during the initial telemarketing solicitation when the service was successfully sold. This discrimination ensures that only an incumbent LEC can wield preferred carrier freezes as a shield against competition, because the incumbent LEC has sole control of the mechanism for creating and removing preferred carrier freezes, as well as sole control of the information as to which customers have preferred carrier freezes on their accounts.

MCIW submits that the preferred carrier practices described above constitute a violation of Section 201(b) of the Communications Act of 1934, as amended, which requires that all carrier practices be "just and reasonable." Incumbent LECs are exploiting their local monopoly power to insulate themselves from interexchange competition and from potential local competition by impeding the ability of consumers to move easily from their affiliated companies

[5]On one three-way conversation, a customer was trying to get their intraLATA toll service switched to MCI. The Ameritech representative asked the customer why she was switching to MCI and whether Ameritech had done anything wrong. The Ameritech representative also asked the MCI representative what the rate being offered was. In another incident, while the carrer freeze was being removed and change executed, the Ameritech representative began trying to sell local services like caller I.D. and three way calling.

to other carriers. Preferred carrier freezing also results in substantial confusion among consumers at a time when significant and complex telecommunications changes are occurring and will continue to occur. Public interest factors require, then, that the Commission take action to eliminate this confusion whenever it arises as a result of carrier undertakings designed to fuel such confusion or which, in fact, result in confusion.

Accordingly, since TPV has been shown to be an extremely effective means of verifying a sale, MCIW recommends that the Commission's rules should provide that a TPV sale which meets the standards established in WAC 480-129-139(1)(c) should override a carrier freeze. This can be accomplished by adding a new subsection (f) to section (4) of the proposed rule, providing: "A change order submitted in accordance with the procedures outlined in 480-120-139(1)(c) shall override a previously approved preferred carrier freeze." The proposed language will ensure that the consumer's choice remains paramount, not the interests of the incumbent carrier.

III. CONCLUSION

For all of the reasons stated, the Commission should incorporate into its proposed rules a "definitions" section, clarify that any liability beyond that available under the FCC's rules should not be assessed when a carrier acts in good faith but nonetheless inadvertently makes an unauthorized change, modify its rules to make them flexible enough to allow the use of a TPA mechanism when it is finalized by the FCC, and establish TPV as an automatic override of a preferred carrier freeze.

MCIW appreciates the opportunity to submit these comments regarding the Commission's proposed slamming rules, and looks forward to assisting the Commission as it

crafts a permanent rule.

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MCI WorldCom, Inc.

By:_____

Rogelio E. Peña, Senior Attorney
707 17th Street, Suite 3600
Denver, Colorado 80202
(303) 390-6106