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MEMORANDUM

TO: Daisy Crockron, Chief
Docketing Division

FROM: Dan Shields *DFS*
Telecommunications Division

SUBJECT: Comments to be filed in the Telecommunications
Federal Activities Docket No. 93-4000-TP-FAD

DATE: April 15, 1999

Attached are two copies of a document to be filed in Case No. 93-4000-TP-FAD. The daily activities report description of the filing should read verbatim as follows:

The Public Utilities Commission of Ohio's comments filed with the Federal Communications Commission (FCC) in CC Docket No. 94-129 (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 Consumer's Long Distance Carriers). The comments filed in this proceeding respond to the FCC's Common Carrier Bureau's April 8, 1999, Public Notice inviting public comment on MCI Worldcom's (MCI's) Joint Petition for Waiver of slamming liability rules and MCI's third party administrator proposal.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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PUCO

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

COMMENTS OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

The Public Utilities Commission of Ohio (PUCO or Ohio Commission) hereby submits its comments pursuant to the Federal Communications Commission's (FCC's) Common Carrier Bureau's April 8, 1999, Public Notice (Notice) in CC Docket No. 94-129 (CC 94-129) (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 Consumer's Long Distance Carriers). The FCC's Notice invites public comment on MCI Worldcom's (MCI's) Joint Petition for Waiver of slamming liability rules and MCI's third party administrator proposal.

BACKGROUND

On December 23, 1998, the FCC released its Second Report and Order and Further Notice of Proposed Rulemaking in CC 94-129 (Order). The FCC's new slamming rules implement section 258 of the Telecommunications Act of 1996 (1996 Act), which provides that the FCC shall prescribe verification procedures that carriers

must use when a carrier seeks to implement a customer change request, and requires unauthorized carriers to compensate authorized carriers if the unauthorized carrier has collected payment from a customer.

Under the FCC's new rules, any carrier that a customer contacts to report being slammed must inform the customer that he or she is not required to pay any slamming charges incurred for the first 30 days after the unauthorized switch. If the customer does pay the unauthorized carrier, the authorized carrier may recoup from the unauthorized carrier any slamming charges. Under this scenario, the authorized carrier is required to refund to the customer any amount paid in excess of charges that would have been rendered by the authorized carrier. The Order also placed certain obligations on carriers in administering the liability provisions. In particular, the authorized carrier to which a customer subscribes determines whether its subscribers have been slammed and further must provide the corresponding appropriate relief consistent with the FCC rules. The FCC also determined that there are three acceptable methods to verify carrier changes: a customer signature on an authorization form; an electronic authorization, *e.g.*, a customer-initiated call to a toll-free number; and verification by an independent third party.

The Order acknowledges that a third party administrator of slamming complaints would provide customers with one point of contact to resolve slamming problems. Consequently, the FCC indicated that it would entertain requests for waivers of the liability provisions of its decision for those carriers that can develop an acceptable alternative slamming administrative system. The FCC's Order indicates that, upon furnishing a waiver petition for its slamming rules, carriers should observe several specific policy goals. First, a third party liability administrator proposal

should honor the FCC's intention to absolve customers of up to 30 days' worth of charges, including the requirement that charges be removed from customers' bills. Second, in cases where an unauthorized conversion has occurred, charges incurred on Day 31 or later should result in the customer paying at the preferred carrier's rates, not at the unauthorized carrier's rates, and the payment should be made to the preferred carrier. If the customer has paid the unauthorized carrier, the neutral administrator must ensure that the unauthorized carrier remit all payments to the authorized carrier, and that the customer receives a refund or credit of any amount paid in excess of its preferred carrier's rates. If the authorized carrier is unable to collect monies that the subscriber has paid, the administrator must notify the subscriber of his or her rights to pursue a complaint to the FCC.

On March 30, 1999, MCI and several other parties filed a Joint Petition for Waiver of certain of the new slamming liability rules adopted by the FCC. Specifically, MCI requests that the FCC waive the following liability rules for carriers electing to participate in neutral third party liability administration: section 64.1100(c); section 64.1100 (d); section 64.1170; and section 64.1180. Section 64.1100(c); provides that, in cases where the customer elects to pay, the unauthorized carrier is liable to the preferred carrier in an amount equal to the customer's charges; Section 64.1100 (d); among other things, establishes a 30-day "absolution period" so that the subscriber may elect not to pay the unauthorized carrier for 30 days after an unauthorized change occurred; Section 64.1170 governs reimbursement of charges; and Section 64.1180, among other things, sets forth investigation procedures that preferred carriers follow in deciding whether an unauthorized conversion occurred. As a substitute for these rules, MCI would utilize a neutral third party liability administrator.

DISCUSSION

MCI's application proposes a voluntary, industry-funded neutral third party liability administrator system that will provide consumers, government agencies, and carriers a single point of contact. MCI posits that its proposed third party administrator will: (1) quickly resolve customer allegations of unauthorized conversion; (2) independently determine a carrier's compliance with the Commission's verification procedures; (3) honor the Commission's requirements that customers be compensated for their inconvenience; and (4) administer carrier-to-carrier liability.

MCI indicates that its proposal differs from the FCC's announced rules in several respects: (1) for unpaid charges incurred beginning on the 31st day from the date an unauthorized conversion occurred, the unauthorized carrier must provide the total invoice amount to the third party liability administrator, which will refer it to the preferred carrier; the preferred carrier shall bill the customer at a proxy level of 50 percent of the unauthorized carrier's total charges for service rendered on or after Day 31; (2) customers who paid their bill will receive a refund of 50 percent of their payment, provided the unauthorized carrier compensates the preferred carrier, an amount that in most cases is likely to exceed the payment a customer would receive under the Commission's rules; (3) while carriers will immediately suspend billing and collection activity for a customer raising a challenge, credits and compensation only flow once the third party administrator has been given 30 business days to decide if an unauthorized conversion occurred; and (4) carrier-to-carrier compensation and customer proxy payments, if applicable, are limited to the most recent three months of usage from the date of the customer complaint to the slamming administrator.

MCI avers that these deviations from the FCC's new slamming requirements will permit the creation of a much more streamlined and efficient process that will operate to resolve the vast majority of complaints quickly, while providing financial disincentives for carriers to switch customers without proper authorization.

The Ohio Commission commends MCI for its efforts in putting forth its proposal regarding an alternative third party slamming administrator. The Ohio Commission submits, however, that, in its present form, MCI's proposal will provide consumers with inadequate slamming solutions. Therefore, the Ohio Commission maintains that several modifications and clarifications to MCI's proposal must be effectuated prior to adoption and implementation by the FCC.

First, the Ohio Commission maintains that the FCC must make clear that MCI's third party administrator plan is only setting minimum slamming liability requirements and that any federal rules on this matter do not supersede individual state initiatives. In particular, the Ohio Commission notes that the 123rd Ohio General Assembly currently has before it proposed anti-slamming legislation (H.B. 177) that would promulgate the following laws:

- prohibit any person from switching a consumer's provider of natural gas or public telecommunications service without first obtaining the consumer's verified consent.
- when the Ohio Commission determines an illegal switch has taken place, it is required to see that the customer is switched back to their original provider. The slamming carrier is required to reimburse all of the costs the consumer incurred because of the switch and hold the customer harmless for illegal charges.
- would authorize the assessment of a fine of up to \$1,000 per day or \$5,000 per day for repeat offenders.

If enacted by the Ohio General Assembly, these requirements would surpass many aspects of MCI's proposal. Consequently, the Ohio Commission maintains that any third party slamming liability proposal embraced by the FCC must also include a provision that would ensure that individual state initiatives on slamming that exceed the FCC's requirements are not preempted by federal rule. Therefore, any proposal adopted by the FCC on this matter should ensure that the third party administrator will enforce individual state slamming requirements in addition to the FCC's rules. The Ohio Commission does not acknowledge "administrative simplicity" as a reasonable justification for not enforcing individual state slamming remedies. We note that all industries must deal with a host of variations in state commercial and consumer laws and, therefore, subjecting IXCs to the same operating parameters as other industries cannot be construed as unduly burdensome.

The Ohio Commission also notes that MCI's proposal to refund 50 percent of slammed customer's charges may be inadequate in many instances. Specifically, a 50 percent refund is inadequate in those instances where a slamming carrier's rates are 200 percent in excess of the authorized carrier's charges. For example, if the authorized carrier is assessing a message toll service rate of \$0.10 per minute and the slamming carrier has charged the customer \$0.30 per minute, under MCI's proposal the customer's net charge would equal \$0.15 per minute. The adjusted \$0.15 charge represents a 50 percent increase over the charges guaranteed by the authorized carrier. To ensure that customers are afforded the charges to which they have contracted, the Ohio Commission recommends that MCI's proposal should be amended to reflect that actual authorized charges will be rendered or the 50 percent discount, whichever is greater. If MCI believes this proposal to be administratively burdensome (as a result

of the number of individual rate agreements between customers and their authorized carriers) it should be required to increase significantly its proposed discount to charges. This discount should be increased to a level that would ensure that no slammed customer is assessed higher charges than those that he or she would have been normally rendered by the authorized carrier.

MCI's proposal at Part IV indicates that credits and compensation for slamming would not be available "in cases where the customer authorized a carrier change, but claims he or she was misled or deceived regarding the nature of the authorized carrier's service." The Ohio Commission maintains that the FCC's verification rules should be amended to require that customers be made aware of all charges that they might normally be assessed for placing 1+ calls. For example, an IXC's per minute rates may differ between interstate and intrastate usage, the charges may vary based on the time of day, or there may be a nonrecurring monthly charge. Consequently, at the time a customer verifies a carrier change request, the Ohio Commission recommends that an explanation of 1+ related charges be provided to the customer. If such procedures were adopted by the FCC, a customer's allegations of deceptive sales practices could be easily confirmed, and MCI's third party verification proposal could be amended accordingly to reflect that charges resulting from deceptive sales practices would be refunded.

The Ohio Commission further notes that MCI's proposal is reticent on the issue of cost recovery for instituting a third party slamming administrator program. Specifically, while the proposal indicates that the program will be funded by all participants, carrier recovery of such charges should be controlled. More specifically, the FCC should take steps to ensure that IXCs are precluded from establishing line

item charges on customers' bills to recover expenses associated with this program. Likewise, such charges should not be recovered through existing line item charges.

Finally, the Ohio Commission recommends that MCI be required to amend its proposal to reflect that customer disputes over the third party administrator's final decision regarding whether he or she has been slammed can be informally and formally appealed to either the involved state commission and/or the FCC for final resolution. Consequently, the third party administrator should be required to provide the telephone number and address of the relevant state commission and the FCC to any customer dissatisfied with the administrator's final decision. Specifically, the FCC should require the administrator to inform customers in writing of the administrator's finding that he or she has not been slammed. The written notification must also inform the customer of his or her right to appeal to the state commission and/or the FCC. Accordingly, the addresses and toll free telephone numbers of each must be included in the administrator's written notification. On a related matter, to increase customer confidence in this industry-sponsored process, the Ohio Commission recommends that MCI include on the slamming administrator's board of directors a consumer advocate in addition to state and federal regulatory participation.

CONCLUSION

In closing, the PUCO wishes to thank the FCC for the opportunity to file comments in this proceeding responding to MCI's proposal.

Respectfully submitted,



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Dated: April 15, 1998