

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Petition of Robert A. Butterworth, Attorney General, and the Citizens of the State of Florida, by and through the Office of Public Counsel, for Initiation of Formal Proceedings, Pursuant to Section 120.57, F.S., to Investigate the Practice of Slamming and to Determine the Appropriate Remedial Measures

Docket No. 970882-TI

Filed: March 16, 1998

POST-HEARING BRIEF OF SPRINT COMMUNICATIONS COMPANY LIMITED PARTNERSHIP

Comes now Sprint Communications Company Limited Partnership ("Sprint"), pursuant to Rule 25-24.056, Florida Administrative Code, and submits this its post-hearing brief of the evidence presented to the Florida Public Service Commission ("Commission") in this proceeding.

PRELIMINARY STATEMENT

Sprint will address all issues, numbered 1-5, as set out in the Commission's Prehearing Order No. FSC-98-0200-PHO-TI, issued February 2, 1998.

References to testimony in the record transcript will be designated as ("Tr. Vol. __, Page __."). References to Exhibits in the record will be designated ("Exhibit __, (with further reference to transcript page number)).

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APP Caldwell

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INTRODUCTION

The instant rulemaking proceeding is the Commission's consideration of its proposed Rule 25-24.845, Florida Administrative Code, and proposed amendments to Rules 25-4.003, 25-4.110, 25-4.118 and 25-24.490, Florida Administrative Code.

The proposed rule and rule amendments would impose new requirements on the incumbent local exchange companies ("ILECs"), the alternative local exchange

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companies ("ALBOCs") and the interchange companies ("IXOCs") with respect to the circumstances under which changes may be made in a customer's prescribed carrier. The proposed rule and rule amendments would apply to local, local toll or "intraLATA", and toll service providers. Further, such providers must be certified by the Commission. The effect the Commission seeks to achieve from the proposed new rule and rule amendments is to reduce the possibility of "slamming".¹ "Slamming" is the unauthorized change of the primary local, local toll or toll provider of a customer.

Sprint supports efforts of the Commission to address the issue of unauthorized carrier changes. It should be recognized, however, that there are efficiencies to be realized through one set of uniform requirements that are mandatory for telecommunications carriers in all jurisdictions. The Federal Communications Commission ("FCC") issued a Notice of Proposed Rulemaking on July 15, 1997 in which it stated that it intended to adopt rules to reduce or eliminate "slamming", the practice of changing a customer's telephone service provider without his or her knowledge or consent.² The rules the FCC will adopt will govern the manner in which local and long distance companies will be required to verify changes in a subscriber's selection of a service provider. Sprint believes it would be premature for the Commission to adopt new requirements relating to verification of changes in subscriber carrier selection until the FCC concludes its Rulemaking.

Accordingly, Sprint would urge the Commission to refrain from adopting additional rules at this time. Any additional rules the Commission adopts should be consistent with the FCC rules to ensure that carriers are successful in implementing their verification process. There is no basis for differing rules, and in order to maximize effectiveness in reducing the incidence of PIC disputes and slamming

¹ Order No. PSC-97-1615-NOR-TT, issued 12/24/97.

² CC Docket No. 94-129.

complaints, state and federal rules should be similar. One particular concern is that there is no clearly defined basis for distinguishing between an "interstate" slam and an "intrastate" slam. Therefore, two different sets of rules, state and federal, will place a carrier in the position of possibly complying with the federal rules in such a way that would be in violation of the state rules. Sprint submits that state specific rules should mirror federal requirements. (Tr. Vol. 4, page 600; Sprint witness Buysse-Baker). Sprint also urges the Commission from adopting additional rules until the Commission as conducted an investigation into the root causes of slamming.

ARGUMENT

I. The evidence in this proceeding does not support proposed substantive changes and additions to the current rules at this time.

There is no evidence that adopting additional rules will curtail slamming. In fact, Witness Taylor, agreed under cross examination that if the current rules were complied with one would expect a decline in slamming. Witness Taylor testified that this has not happened, therefore, he believes additional rules are necessary. (Tr. Vol. 2, Page 174). Unfortunately, if certain carriers are not complying with the current rules, there is no reason to believe that they will comply with additional or more stringent rules. Moreover, only those carriers who make the necessary changes to follow additional rules will incur the associated costs. Consumers in turn will pay for those additional regulatory costs in the rates that they pay. This will result in consumers being punished. Clearly this is not the result this Commission envisioned when it fashioned its rules.

With respect to some of the specific rules, there is no evidence that slamming will be curtailed by the rule that requires companies to file monthly reports on slamming. Monthly reports cannot be relied on for accuracy since one alleged slam can result in multiple reporting. Moreover, witness Foucher agreed that the reports would not necessarily result in decreased slamming complaints. (Tr. Vol. 2, Pages 291-3)

There is no evidence to suggest that recording third party verification (TPV) will curtail slamming. As witness Byrnes-Baker explained, the recording offers no guarantee that the person authorizing the order is the true customer with decision-making authority for the telephone service. (Tr. Vol. 4, Pages 600-01) Further, a requirement of customer consent to the recording prior to sale could deter customers from switching carriers. *Id.* In this regard, there is no evidence revealing how customers will react to being recorded at the point of third-party verification. (Tr. Vol. 1, Pages 86-87) Finally, witness Byrnes-Baker points out that a customer could easily deny that his or her voice is on the tape recording. *Id.*

There is no evidence that providing the identity of the third party verifier will reduce the slamming problem. Rather, as witness Byrnes-Baker testified, identification of the third party verifier will only create customer confusion. (Tr. Vol 4, Page 602) There is no reason to create more confusion in view of the fact that there is no evidence that the current procedure is failing the customer. As witness Byrnes-Baker pointed out Sprint has not received any complaints in this regard. *Id.* There is no evidence that requiring customer specific information in welcome packages will reduce the incidents of slamming. Rather, as witness Byrnes-Baker testified, if carriers are required to include state-specific information, they will incur substantial additional printing and administrative costs. (Tr. Vol 4, Pages 602-3) These costs will in turn be passed on to the consumer.

In contrast to the above, there is evidence that customers can receive free service by merely declining to be slammed under the proposed rules. (Tr. Vol. 1, Page 84) Furthermore, it is generally recognized that unauthorized changes will continue to occur no matter what rules are implemented.

There is also evidence that adoption of OPC's proposal to "take the LBC out of the Middle" will encourage litigation. (Tr. Vol. 2, Pages 271-272) As witness Poucher agreed, it would be tempting for a customer to be sued for nonpayment of telephone service. The result is not a win - win or a win-lose situation. The result

is a lose - lose situation. The consumer loses and the carrier loses. The only real winner may be the carrier who continues to evade the Commission's rules.

What is the solution? First, and as discussed more fully herein, the Commission and industry members should look at the underlying causes of unauthorized switches. Once the Commission has done this, it will be in a better position to fashion rules directly related to the cause or causes of the slamming problem. Second, the Commission should distinguish between those who fraudulently switch a consumer and those who through inadvertent mistakes switch a consumer. Unfortunately, solutions to some problems are not instantaneous. It is true consumers are increasingly upset about the slamming issue. As witness Foucher stated, this is an emotional issue. (Tr. Vol. 2, Page 231) A quick fix rule, however, will only make those same consumers more irate should they experience the same problems. As such the Commission should take a closer look at the underlying causes of unauthorized switches so that any rules or procedures the Commission adopts will be targeted at those underlying causes.

II. Efforts to reduce PIC disputes and slamming complaints must address the root cause.

The evidence in this proceeding suggests a number of root causes for PIC disputes and slamming complaints. Such causes may be characterized as ranging along a continuum from innocent and inadvertent mistakes by IXCs, ILECs and ALECs in the order entry process to fraudulent and deceptive practices of certain carriers or their marketing agents to convert consumers to their service.

Moreover, subscribers themselves may be contributing to this problem by claiming they have been slammed when in fact they or another person residing in their household authorized a change in carriers. Again, the real reason for the PIC dispute or alleged slam may be characterized as ranging along a continuum, from an innocent case of "buyer's remorse" to an attempt by some subscribers to fraudulently obtain a refund of applicable refunds of any carrier change fees already paid to the

ILEC, avoid new change fees incurred in switching to another carrier, or, under the Commission's proposed rules in this proceeding, obtain free service from the allegedly unauthorized carrier. (Tr. Vol. 4, page 611; Sprint witness Buysse-Baker.)

However, in the face of such overwhelming evidence in this proceeding that there are many causes for PIC disputes and slamming,³ it appears that the Attorney General ("AG") and Office of Public Counsel ("OPC") take the position that the cause of an alleged "slam" is not relevant. This is made vividly clear by witness R. Earl Poucher, testifying on behalf of the Attorney General and Office of Public Counsel. Witness Poucher stated that a slam occurs when the customer says "I've been slammed", without regard to the circumstances. (Tr. Vol. 2, page 239; A.G. and OPC witness Poucher) To further confuse the issue, witness Poucher makes no distinction between a legitimate PIC dispute and slamming. As AT&T witness Watts testified, not all PIC disputes are caused by slams but may arise from causes other than slamming. (Tr. Vol. 3, page 337; AT&T witness Watts).

Clearly, if the Commission ignores the cause of a PIC dispute or an alleged slam, as suggested by witness Poucher, and adopts the proposed rules herein, it places the Commission in the position of imposing "strict liability" upon the carriers with respect to PIC disputes and slamming complaints. Witness Poucher furnished no justification or authority for the imposition of a "strict liability" standard upon telecommunications carriers. Moreover, such a standard would raise serious constitutional concerns.

Sprint would urge the Commission, at this time, to refrain from adopting any rules that do not address the cause of PIC disputes and slamming. Until the Commission gathers the information necessary to develop a complete understanding as to why a slam occurs, and only the Commission has the ability to conduct such analysis on an industry wide basis, there is no way that it will be able to engage in

³ See also Tr. Vol. 3, page 337; AT&T witness Watts.

reasoned decision making. This Commission cannot regulate in a vacuum. It must identify the specific problems to be addressed and then it must weigh the likely effectiveness of any rule or regulation in eliminating the problems, against the cost of the regulation and its impact on competition. Specifically, without a cost/benefit or least cost analysis, the Commission may adopt rules that will be ineffective in reducing the number of slamming complaints while, at the same time, increase the costs of those carriers that do comply with the rules. In addition, such rules will make it more difficult for end users to switch carriers or make it more expensive for carriers to market to subscribers. This will have a negative impact on the development of competition.

Sprint would support any effort by this Commission to conduct an investigation to determine why a PIC dispute or slamming complaint occurs. It is only after the cause of the PIC dispute or slamming has been determined, and responsibility placed, that the Commission can implement appropriate rules to effectively reduce the number of PIC disputes and slamming complaints and penalize the responsible party. (Tr. Vol. 4, page 611; Sprint witness Buysse-Baker)

III. Any proposed rule to reduce PIC disputes and slamming complaints must address unauthorized changes caused by mistakes or errors in the order entry process.

As Sprint witness Buysse-Baker pointed out, one factor contributing to PIC disputes and slamming complaints is innocent and inadvertent mistakes or errors at the point of order execution. (Tr. Vol. 4, page 602; Sprint witness Buysse-Baker). Individual IXCs and ILECs process thousands of PIC changes monthly and with most of the order entry process being entirely manual, there is always a probability of human error. It is reasonable to expect that errors will occur. Specifically, a data entry error may be made when switching carriers pursuant to a valid request. (Tr. Vol. 3, page 337; AT&T witness Watts).

However, it should be noted that there are important distinctions between IXCs and ILECs with respect to incentives to reduce these mistakes. The competitive market already provides the necessary motivation for an IXC that has substantial fixed investment and is in the market for the long term to minimize order processing errors. In contrast, the ILECs are not now subject to the same competitive pressures and their control over the PIC change process gives them the opportunity to shift blame.

As an example, if a customer complains about being assigned to the wrong IXC or ALBEC, the ILEEC need only make the change and is free to blame the mistakes assignment to slammings by the IXC or ALBEC. It is extremely difficult for an IXC or ALBEC to dispute the source of the error with a subscriber that does not want its services. Under these circumstances, what is needed to ensure that the order entry process is as free from errors as possible is to relieve the ILECs of the responsibility to execute FCC change orders and assign it to a neutral third party. Neutral third party administration would ensure equal treatment of all carriers and avoid any appearance of impropriety or anti-competitive behavior. While Sprint recognizes it would take some time to accomplish this transition, Sprint would recommend that the Commission include in its proposed rules conditions that would minimize ILEEC involvement in administering the FCC change process. (Tr. Vol. 4, page 605-606; Sprint witness Daynes-Baker).

As indicated above, it makes no sense, either from a business or economic point of view, for any IXC or ALBEC to deliberately engage in slammings. Slammings makes it harder for IXCs to compete in the marketplace because it will quickly destroy valued customer goodwill. Slammings also increases a carrier's customer service costs associated with handling customer and PSC complaints. Further, slammings has no permanent revenue impact as slammed customers are eventually returned to their carrier of choice.

However, even those IXCs that recognize that slammings is not a rational business or economic strategy have, at one time or another, been accused of

switching customers without authorization. As discussed above, there is no doubt but that some of these complaints were due to such causes as "buyer's remorse", an allegedly improper decision maker, inadvertent mistakes by the IXC's personnel, miscommunication between the IXC's sales agents and respective customers about a request for service, a spouse or other household member may change carriers without express authorization from the account holder, a new customer may run up a larger than usual bill and have second thoughts about the validly selected carrier, a person who frequently changes carriers ("spinner") may wish to avoid PIC change charges, or a data entry error. (Tr. Vol. 4, page 605; Sprint witness Bynae-Baker); (Tr. Vol 3, page 337; AT&T witness Watts).

Sprint recognizes that even though an inadvertent IXC mistake may have caused the slam, the customer is, nevertheless, seriously inconvenienced. For this reason, Sprint has adopted a "no-fault" policy of not challenging customers' claims that they were switched to Sprint without proper authorization even though Sprint may have a signed LOA from the complaining customer or has otherwise verified the customer's choice of Sprint. Therefore, when Sprint receives a PIC dispute from the customer's choice of Sprint. Therefore, when Sprint receives a PIC dispute from the customer's ILEC, it instructs such ILEC to return the complaining customer to his previous carrier and reimburses the customer for all carrier change charges incurred. (Tr. Vol. 4, page 605; Sprint witness Bynae-Baker)

Additional and more stringent rules, purporting to reduce the slamming problem, will only have a negligible effect.

IV. Any proposed rules to reduce PIC disputes and slamming must recognize that any carrier that intentionally seeks to convert customers without authorization is committing fraud.

The proposed rules herein are unlikely to have any impact on those carriers that engage in fraudulent and illegal practices in order to convert customers to their network. These carriers currently do not comply with the Commission's rules and there is no reason to believe that imposing additional and more stringent rules will

correct that problem. What is needed is not more rules and regulations but stricter enforcement of existing rules with appropriate sanctions against those carriers that deliberately engage in this activity. (Tr. Page 606; Sprint witness Byrnes-Baker).

Sprint believes that the only way to deter slamming by those companies that intentionally engage in misleading and illegal practices to obtain revenue is for this Commission, to the extent of its authority, seek criminal prosecution and perhaps imprisonment of the principals involved. In other words, the Commission should "take the slammers." Sprint recognizes that such a recommendation is extreme. However, intentional slamming is theft. Slamming robs customers of money both in terms of higher rates paid to the slamming carriers and the loss of any premiums. It deprives customers of the use of their chosen carriers' calling cards in emergencies or when traveling. It costs customers the time they must devote to ensuring that they are returned to their chosen carrier. Further, it is obviously a cause of great aggravation. In the final analysis, slamming deprives customers of the primary benefit of competition: the right to be served by carriers of their own choosing.

Therefore, Sprint recommends that the Commission investigate all slamming complaints it receives against each and every carrier to determine whether such complaints establish a pattern of deceptive and illegal activities. If so, the Commission should submit its findings to the appropriate agency.

V. ILECs, as competitors or seem to be competitors, have economic incentive to exploit their status as gatekeepers in order to impede competition.

Slamming is not always the result of an error on the part of the DXC. ILECs maintain control of the carrier change process. DXCs do not, and cannot, perform the switch changes necessary to convert customers to their services. That responsibility has thus far fallen to the ILECs which execute the carrier change orders they receive either from the DXCs or directly from customers who call the ILEC's business office to request a change in DXCs or to select an DXC for the first time. The ILECs, however, do not always properly execute such orders, and

their errors contribute to the slamming problem or, at least to customers' perceptions that they have been slammed.

As an example, under the ILECs' order entry process, a customer's selection of an IXC must be recorded in the ILEC's billing or subscription records as well as well as in the ILEC's switch. If the ILEC fails to change a customer's billing or subscription record to reflect a newly chosen IXC, the customer will be informed upon calling the ILEC's business office that he is the customer of his previous IXC. The customer, therefore, may assume, or perhaps even be advised by the ILEC, that they had been slammed by the previous IXC. Further, ILECs must pass PIC information to IXCs so IXCs know that the customer has selected them for long distance. If that is not done promptly and correctly, the IXCs will "see" traffic on their network, but will not know that the telephone number should be a 1+ pic'd customer. This ILEC/IXC data interchange must work correctly entered every time or slams could occur.

If this Commission is to minimize mistakes in the execution of these PIC changes, it must relieve the ILEC of their control of the PIC change process. The carrier change order process should be assigned to a neutral third party. Neutral third party administration would ensure equal treatment of all carriers and avoid any appearance of improprieties or anti-competitive behavior. (Tr. Vol. 4, page 605; Sprint witness Bryano-Baker).

The problem of ILEC order processing errors will substantially worsen as the ILECs become direct competitors of the IXCs. Under such circumstances, it is difficult to expect that the ILECs will devote sufficient resources to minimize their mistakes or administer the order process in a competitively neutral process.

VI.**SUMMARY**

Sprint strongly supports the efforts of the Commission to address the issue of unauthorized carrier changes. Sprint does not believe, however, that additional rules and regulations are the answer at this time. Nor does the record support such changes at this time. The Commission must look at the root causes of slamming, then and only then should the Commission proceed with rules should they be deemed necessary. These rules should be fashioned specifically to address the root causes. Moreover, there are efficiencies to be realized through one set of uniform rules and regulations. Accordingly, Sprint urges the Commission to adopt rules that are consistent with the FOC rules. The record in this proceeding shows no basis for varying state and federal rules.

The evidence of record in this proceeding does not support, at this time, the proposed substantive changes to the Commission's existing rules. As an example, the Commission's proposed rules do not address the root causes of slamming complaints. Further, no evidence has been presented to support claims that slamming complaints will be reduced by recording third party verification or filing monthly reports; and no evidence has been presented to address the issue of order entry errors or mistakes. To the contrary, evidence was presented to show that customers can receive free telecommunications service simply by claiming to be slammed.

Control of the carrier change process must be taken from the ILECs and reassigned to a neutral third party. This will minimize mistakes in the execution of PIC changes. Neutral third party administration will assure equal treatment of all carriers.

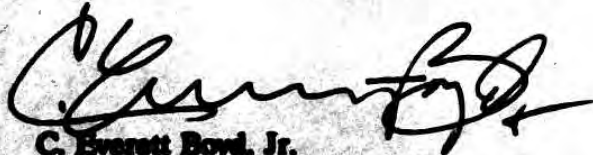
The record in this proceeding clearly shows that simply implementing the proposed rules herein will not, in any way, reduce the number of slamming complaints. To the contrary, the proposed rules will provide incentives for false claims of slamming and impede competition.

VI.

CONCLUSION

Sprint respectfully suggests that any Commission effort to reduce the incidence of slamming complaints must proceed along the lines Sprint recommended herein.

Respectfully submitted this 16th day of March, 1998.



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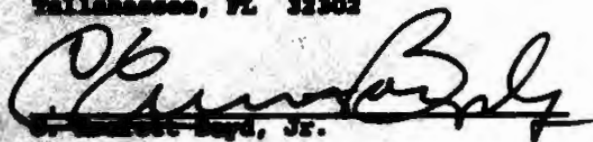
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