

Service Date: February 24, 1992

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Petition of)	UTILITY DIVISION
MCI, US Sprint and AT&T Communica-)	
tions to Amend Rule 38.5.3345 and)	DOCKET NO. 92.1.8
Request for Stay of Enforcement.)	ORDER NO. 5611

ORDER DENYING PETITIONS TO AMEND ARM 38.5.3345
AND
GRANTING MOTIONS FOR INTERIM STAY OF ENFORCEMENT

BACKGROUND

On December 27, 1991 the Montana Public Service Commission (Commission) adopted ARM 38.5.3345. This rule provides:

- (1) A local exchange carrier shall not change a customer's choice of interexchange carrier to another carrier at a carrier's request unless the customer's written authorization has been obtained by the requesting carrier prior to the request.
- (2) A written authorization must contain the following information:
 - (a) name and address of customer.
 - (b) phone number affected by the change.
 - (c) all fees associated with the change.
 - (d) statement that the written authorization is for the purpose of changing the customer's choice of interexchange carrier.

This rule was intended to address the much publicized problem of "slamming." In more conventional language "slamming" translates into the unauthorized switching of a consumer's choice of interexchange carrier (IXC), also referred to as the primary interexchange

carrier (PIC) or long distance carrier, from one carrier to another. As an example, a representative of the Alpha long distance company will telephone a customer of Beta long distance company and request permission to switch that customer from Beta to Alpha. Though the customer may deny permission, the representative will proceed with the switch and the consumer will have been "slammed."

On January 9, 1992 the Federal Communications Commission (FCC) issued a report and order in CC Docket No. 91-64, In the Matter of Policies and Rules Concerning Changing Long Distance Carriers, which requires that before an IXC can request a local exchange company (LEC) to change a customer's PIC as a result of a telemarketing order, it must utilize one of the following confirmation procedures: (1) obtain a signed letter of authorization from the customer; (2) obtain a customer's authorization by use of an 800 number (the customer calls an 800 number); (3) obtain the customer's authorization by use of an independent third party verifier; or (4) send to the customer within three business days of the telemarketing contact an information package that describes the change and offers the customer the opportunity to confirm or deny the order, and then wait fourteen days more before submitting the change request to the LEC (assuming no confirmation or denial is received).

On January 24, 1992 MCI Telecommunications Corporation (MCI) and US Sprint Communications Company Limited Partnership (Sprint) jointly filed a petition to amend ARM 38.5.3345. AT&T Communications (AT&T) filed a similar motion on the same day. The petitioners allege that the rule is inconsistent with the FCC's guidelines and should be amended to allow the same range of options. MCI and Sprint further allege that this inconsistency is violative of the Supremacy Clause of the U.S. Constitution, and also works a denial of valuable

rights and privileges in violation of the Commerce Clause of the U.S. Constitution. Both MCI, Sprint and AT&T maintain that the rule is burdensome and unnecessary.

MCI and AT&T also filed motions requesting an interim stay of enforcement of ARM 38.5.3345 pending action by the Commission on their respective petitions.

On January 30, 1992, pursuant to ARM 1.3.205, the Commission heard oral presentation by MCI and Sprint on their petition. AT&T did not participate.

DISCUSSION

Slamming is a serious problem. When a consumer's PIC is switched without his/her authorization, it generally takes significant time and effort to rectify the situation. Often-times this involves interaction between the customer, the original PIC, the new PIC, the LEC and this Commission. Petitioners MCI and Sprint argue that the situation is improving with the advent of increased corporate oversight and in-house telemarketing. They further argue that these self-imposed efforts combined with the new FCC guidelines make ARM 38.5.3345 unnecessary.

Nonetheless, the Commission still receives slamming complaints from consumers. The continuing nature of these complaints leaves only marginal hope that the FCC guidelines, which are considerably more lenient than the Commission's rule, will improve the situation. For this reason, and because of the seriousness of the slamming problem, the Commission is reluctant to amend its rule.

However, the Commission recognizes that steps have been taken at the federal level and is willing to defer implementation until the effectiveness of both the IXC's continuing efforts and the FCC's guidelines can be fully evaluated. The Commission therefore will institute rulemaking proceedings to amend ARM 38.5.3345 to reflect an effective date of January 1, 1993.

The Commission also will stay enforcement of ARM 38.5.3345 until the completion of the rulemaking proceeding.

ORDER

1. The petition of MCI and Sprint and the petition of AT&T to amend ARM 38.5.3345 to conform with the new FCC guidelines is denied.
2. Enforcement of ARM 38.5.3345 is stayed pending the completion of a rulemaking proceeding to amend ARM 38.5.3345 to show an effective date of January 1, 1993.

Done and Dated this 18th day of February, 1992 by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

HOWARD L. ELLIS, Chairman

DANNY OBERG, Vice Chairman

BOB ANDERSON, Commissioner

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.