

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 94-559-C - ORDER NO. 95-658
MARCH 20, 1995

IN RE: Proceeding Addressing Marketing) ORDER ADDRESSING
Guidelines for Telecommunications) MARKETING PRACTICES
Companies.) AND MARKETING
) GUIDELINES

This matter comes before the Public Service Commission of South Carolina (the Commission) on the proceeding to review the marketing practices and to consider marketing guidelines for telecommunications companies operating within the State of South Carolina. The Commission's Notice of Filing stated that all local exchange companies and interexchange carriers, including resellers and operator service providers, could be affected by any decisions resulting from this proceeding.

Subsequently, the Notice of Filing was published in newspapers of general circulation one time in various newspapers across the state. The following parties thereafter intervened in the case: MCI Telecommunications Corporation (MCI), Southern Bell Telephone and Telegraph (Southern Bell), the Consumer Advocate for the State of South Carolina (Consumer Advocate), GTE South, Inc. (GTE), LDDS - Willtel, Sprint Communications Company, L.P. (Sprint), South Carolina Telephone Coalition (SCTC), AT&T Communications of the Southern States (AT&T), and United Telephone Company (United).

A public hearing was held in the offices of the Commission on January 18, 1995 at 10:30 a.m. with the Honorable Rudolph Mitchell, Chairman, presiding. The Commission Staff was represented by F. David Butler, General Counsel. The

Staff presented the testimony of James M. McDaniel. MCI was represented by John M.S. Hoefer, Esquire, and Martha McMillan, Esquire. MCI presented the testimony of Edward L. Anderson and Charles M. Alexander. Southern Bell was represented by Harry M. Lightsey, III, Esquire and William F. Austin, Esquire.

Southern Bell presented the testimony of C.L. Addis. The Consumer Advocate was represented by Hanna Pokorna-Williamson, Esquire, and Nancy Vaughn Coombs, Esquire. The Consumer Advocate presented no witnesses. GTE South, Inc. was represented by M. John Bowen, Jr., Esquire. GTE presented no witnesses. LDDS - Willtel was represented by Frank Ellerbe, Esquire. LDDS - Willtel presented the testimony of Blaine C. Gilles. Sprint was represented by Chanthina Bryant, Esquire, and Darra Cothran, Esquire. Sprint presented the testimony of Michael J. Nelson. SCTC was represented by John Bowen, Esquire, and Margaret M. Fox, Esquire. SCTC presented the testimony of L.B. Spearman. AT&T was represented by Frank Mood, Esquire, and Roger Briney, Esquire. AT&T presented the testimony of James M. Mertz. United was represented by William F. Austin, Esquire. United presented no witnesses.

The Commission was presented with an abundance of evidence for its consideration in this docket. The Commission wishes to compliment the Commission Staff and all the parties for a job well done in placing the matters of marketing practices and marketing guidelines squarely before this Commission for consideration.

James McDaniel testified for the Commission Staff. McDaniel testified that the Staff objective in this Docket was to establish a process to protect

the interests of consumers from the unauthorized conversion of an end-use customer's interexchange carrier (IXC) by another IXC, interexchange resale carrier, or subcontract telemarketer, while not unduly limiting or restricting the potential competitive benefits to be derived from changing primary interexchange carriers (PICs). McDaniel states that the focus of Staff's concern was those unauthorized or unintended conversions which result from confusing or misleading marketing approaches. Staff presented a process which, in its opinion, would contribute to the avoidance to the unauthorized or unintended PIC changes resulting from misleading marketing practices.

Staff's proposed process included recommendations that all facilities-based IXCs that allow their long distance services to be resold include within their resale tariffs acknowledgments concerning marketing practices, along with specifications of content for the letter of agency (LOA) and certain responsibility requirements pertaining to intrastate long distance PIC changing procedures in South Carolina.

Staff noted that the Commission has received several complaints about the marketing practices of IXCs. In addition, McDaniel stated that Staff was aware that the Federal Communications Commission (FCC) has also received numerous complaints regarding unauthorized PIC changes. The FCC is currently addressing this issue under its Docket No. 94-129. The FCC has issued a Notice of Proposed Rulemaking, requesting comments related to this matter, including the content of the LOA. Staff stated that if the FCC finalizes conclusions regarding the content of the LOA and other related telemarketing practices,

these final conclusions could be incorporated within the process proposed by the Staff.

McDaniel presented two examples of marketing practices which the Staff felt were deceptive and could result in a consumer changing his PIC unintentionally. In general, the documents in the Staff's exhibit integrate assistance for homeless children, winning a new automobile, and free long distance service, along with changing the PIC of a customer. Staff's testimony is that at a minimum, such documents are confusing to the public and that these are inappropriate marketing practices which need to be examined and curtailed by this Commission. Staff proposed specific requirements for the content and format of the LOA used to change PICs.

Staff has proposed a tariff modification to be included within the tariffs of all facilities-based carriers which allow their long distance services to be resold. In addition, all subscribers of long distance service from a facilities-based IXC which resales those services, but are already certified in South Carolina and are thus on an existing tariff would sign a particular modification as an amendment to the existing tariff as proposed by Staff.

Staff also recommended that all facilities-based carriers maintain a list of the resellers and their long distance intrastate services in this State to assist in the monitoring process of reseller services.

McDaniel stated in his testimony that the Staff did not object to any alternative or additional recommendations or suggestions from any party which

might assist in the achievement of its objective. The Staff stated that it welcomed input from other parties, but believed that its proposed procedures meet the specific goals of protecting the public during a PIC change, while minimizing interference with competition.

In general, the Intervenorers were supportive of Staff's goals, but had varied responses as to specific Staff proposals. All interexchange carriers stated their belief that they could not accurately furnish lists of companies to whom they resold their services. Most IXC intervenors also opposed the addition of tariff language such as that proposed by the Staff. All agreed that a minimization of customer confusion with regard to an LOA was very appropriate and helpful.

Southern Bell, through C.D. Addis, pointed out a number of occasions where Southern Bell customers have called to complain that someone falsely claiming to be a Southern Bell employee was trying to get confidential information to be used to change the customer's primary interexchange carrier.

Addis stated Southern Bell's belief the Commission Staff's proposed guidelines should eliminate this problem.

The MCI witnesses presented testimony which illustrated the use of third party verification for customers acquired during the company's telemarketing. MCI stated its belief that the use of an LOA in this situation complicated matters and certainly slowed down the process of procuring customers. MCI noted that its experience with third party verification showed that such an approach was most appropriate for verifying that a customer intended to switch

to MCI as his long distance carrier.

Sprint, through witness Michael Nelson, urged the Commission not to establish any South Carolina-specific marketing guidelines prior to any action taken by the FCC. Further, Sprint stated that Commission approval of Staff's proposed rules would penalize the entire industry for the abuses of a few. Sprint urged the Commission to pursue marketing abuses on a case by case basis.

Blaine C. Gilles, who testified on behalf of LDDS - Willtel, stated that a consistent nationwide policy must be established governing LOA language and marketing practices. LDDS and Willtel have urged the FCC to take the concerns of interested state Commissions into account by convening a Federal-State Joint Board. LDDS and Willtel urge in their testimony that in the interest of promoting competition and minimizing costs, the Commission should adopt the FCC's final rules in FCC Docket 94-129.

L.B. Spearman testified on behalf of the South Carolina Telephone Coalition, and recommended that the Staff proposal be approved, with certain clarifications and changes. Spearman recommended that the LOA form should be amended to include not only the name of the company to which long distance service is being switched, but also the specific carrier code to which the service is being switched. Spearman also suggested that the Commission consider the appropriateness of the LECs using a procedure known as a "PIC freeze." According to Spearman, this is a procedure currently used by some LECs which allows the customer to notify the LEC that the customer's carrier cannot be changed unless the LEC is given express permission in writing by the

customer for a PIC change. According to Spearman, this procedure is only used if the customer requests the freeze.

James M. Mertz, testifying for AT&T, took the position that the Commission should not unnecessarily develop rules and regulations now which might conflict with current or future FCC requirements for IXCs and resellers.

Mertz stated that once the FCC acts in Docket No. 94-129, the Commission can adopt the FCC's decision and consider the need for supplemental regulations at the state level. Mertz also notes that, in the meantime, if the Commission wants to address this issue, it can adopt the existing FCC rules and vigorously enforce them.

The Consumer Advocate, on the other hand, urged the Commission to take action now. The Consumer Advocate's brief stated that, given current inclinations in Congress and the Administration to freeze or slow down or shrink the body of Federal regulations, it is uncertain when the FCC rules might come into effect. Meanwhile, the South Carolina consumers would remain vulnerable to deceptive and misleading market practices. The Consumer Advocate noted that the Staff proposal should be modified to allow independent third party verification in telemarketing situations with proper safeguards, and that this procedure represents a proper balance between consumer and industry interests.

The Commission has examined the record in this matter, including the testimony of all parties and the briefs, and has reached a number of conclusions. With regard to the LOA, we believe that it is best to postpone

any action on the letter of agency issue until a final decision is rendered by the FCC, so that a conflict is not created between this Commission's decision and the FCC's final decision. However, the Commission hereby establishes a guideline for the use of an LOA as follows: Whenever a document contains a letter of agency in combination with other information, including, but not limited to inducements to subscribers to purchase service, the document taken as a whole must properly inform the consumer that, by executing the letter of agency, the consumer is authorizing a change in his or her primary interexchange carrier. We believe that this guideline is in the public interest and if adhered to, will minimize the potential confusion to subscribers.

We have examined in detail the Staff proposal concerning the proposed tariff modification and believe it to be appropriate. We hereby adopt the Staff proposal concerning the proposed tariff modification which will be included within the appropriate tariffs of all facilities-based IXCs which will have their long distance services resold, and as an amendment to existing tariffs of all subscribers of long distance service from a facilities-based interexchange carrier which resells those services (resellers), but are already certified in South Carolina, and are thus on an existing tariff. This modification is approved as follows:

As a telephone utility under the regulation of the Public Service Commission of South Carolina, I do hereby assert and affirm that as a reseller of intrastate telecommunications service, I will not indulge or participate in deceptive or misleading telecommunications marketing practices to the detriment of consumers in South Carolina, and I will comply with those

marketing procedures, if any, set forth by the Public Service Commission. Additionally, I will be responsible for the marketing practices of my contracted telemarketers for compliance with this provision. I understand that violation of this provision could result in a rule to show cause as to the withdrawal of my certification to complete intrastate telecommunications traffic within the state of South Carolina.

This language must also appear in the new tariffs of any facilities-based IXCs or resellers granted authority to operate by the Commission in the future.

As urged by various parties, the Commission holds that it will adamantly enforce the FCC's telemarketing rules and regulations. (See Exhibit A.) The Commission hereby adopts the FCC telemarketing rules as part of our approved procedure in this docket.

With regard to the Staff proposal concerning the marketing practices of the IXCs, we hereby hold in abeyance any decision until the final FCC rules are determined.

With regard to the Staff proposal that facilities-based IXCs maintain a list of all resellers of their long distance intrastate services within South Carolina, we hereby reject this proposal. We are convinced, after listening to the testimony, that such a requirement is burdensome to the IXCs. We do, however, hold that the facilities-based IXCs shall be responsible for addressing complaints submitted to them by the Commission relating to their marketing practices, and shall also assist the Commission in its investigation of any complaints relating to the marketing practices of any interexchange resale carriers subscribing to and reselling the facilities based carriers' intrastate long distance services within South Carolina.

Pursuant to the adoption of the tariff modification as stated above, we hereby hold that the determination of violations of the Commission's procedures and the intent of the Commission regarding this matter could require a Rule To Show Cause regarding the certification of any entity in non-compliance.

Finally, we deny the proposal of Staff concerning the procedures addressing verbal PIC changes directed to the local exchange carrier, since the FCC telemarketing procedures as adopted by this Commission will allow the Commission to address this area. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Chairman

ATTEST:

Executive Director

(SEAL)