

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, )  
to determine procedures to ensure that an end )  
user of a telecommunications provider is not )  
switched to another provider without the )  
authorization of the end user. )  
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Case No. U-11757

At the September 23, 1998 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. John G. Strand, Chairman  
Hon. John C. Shea, Commissioner  
Hon. David A. Svanda, Commissioner

**OPINION AND ORDER**

**I.**

**HISTORY OF PROCEEDINGS**

On July 16, 1998, Governor John Engler signed into law Public Acts 259 and 260 of 1998, which amend the Michigan Telecommunications Act, 1991 PA 179, as previously amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq., (the Act). The recent amendments prohibit a telecommunications provider from switching a customer to another provider without that customer's authorization. In addition, the amendments permit the Commission to order remedies and penalties to protect and make whole customers and other persons who have

suffered damages as a result of violations of these laws. Specifically, Section 505(2) of the Act, which was added by Public Act 260, requires the following:

The commission shall issue orders to ensure that an end user of a telecommunications provider is not switched to another provider without the end user's oral authorization, written confirmation, confirmation through an independent third party, or other verification procedures subject to commission approval, confirming the end user's intent to make a switch and that the end user has approved the specific details of the switch. The order issued under this section shall require that all providers comply with the regulations established by the federal communications commission on verification procedures for the switching of an end user's telecommunications provider.

MCL 484.2505(2); MSA 22.1469(505)(2).

On August 20, 1998, the Commission issued an order and notice of opportunity to comment in which it invited interested parties to submit proposed procedures to be utilized to ensure that unauthorized switches, commonly referred to as "slamming," do not occur. The order went on to express the Commission's intent to implement the required procedures by the October 1, 1998 effective date for Public Acts 259 and 260.

The Commission therefore established a schedule calling for the submission of all proposals and responses to those proposals by September 2 and 14, 1998, respectively. Comments were received from the following parties: The National Consumers League (NCL); MCI Telecommunications Corporation (MCI); Sprint Communications Co., L.P. (Sprint); AT&T Communications of Michigan, Inc. (AT&T); Excel Telecommunications, Inc. (Excel); LCI International Telecom Corp. (LCI); the Telecommunications Resellers Association (TRA); the Competitive Telecommunications Association (CompTel); GTE Communications Corporation, GTE North Incorporated, and Contel of the South, Inc., d/b/a GTE Systems of Michigan, (GTE); Ameritech Michigan; the Telecommunications Association of Michigan (TAM); the Commission Staff (Staff); Nu-Way

Supply Co., Inc.; Janet Richie Whitaker; William Sottile; Richard and Carolyn Hutton; Lisa M. Braendle; Chuck Johnson; William J. Vall; and Michigan State Senator Mat Dunaskiss.

## II.

### DISCUSSION

Following the expansion of competition in the telecommunications industry, Michigan has seen the rapid introduction of new services, entry of new providers, and development of new technologies. This competition has likewise provided customers with an ever-broadening range of prices, terms, and conditions of service from which to choose. However, it has also given rise to unscrupulous actions by a few service providers. One such action, which has become an ongoing problem throughout the country, is slamming.

Although the parties filing comments in this case unanimously agree that slamming must be stopped, their suggested methods for achieving that end are quite varied (and, in some cases, even contradictory). This order attempts to draw from the best of those suggestions to create a set of procedures that can offer Michigan's telecommunications customers immediate protection from slamming. In doing so, the Commission recognizes that subsequent changes and additions to these procedures may be needed in the future. However, as expressed in its August 20, 1998 order in this case, the Commission concludes that the seriousness of the problem necessitates swift and firm action. The procedures adopted in this order and attached as Exhibit A satisfy that need.

## Adoption of the Federal Rules Regarding Verification

A substantial majority of the comments received in this case<sup>1</sup> contend that the logical starting point for Michigan's anti-slamming procedures should be the Federal Communications Commission's (FCC) rules regarding the verification of primary interexchange carrier (PIC<sup>2</sup>) change orders. These parties primarily offer two arguments in support of using procedures similar to those adopted by the FCC. First, they note that this would be consistent with the Commission's orders in Cases Nos. U-10138 and U-11550, where it mandated application of those federal standards when dealing with PIC change requests in Michigan. Second, they point out that at least 30 states have already adopted a similar strategy for dealing with slamming and that doing likewise in Michigan would assist customers and members of the industry alike by providing consistent rules from state to state.

The FCC rules, set forth in 47 CFR 64.1100 and 64.1150 and adopted largely in response to questionable practices undertaken by telemarketers during the late 1980s and early 1990s, require interexchange carriers (IXCs) to verify PIC change orders in one of four ways. The first is to obtain a written letter of agency (LOA) from the customer. The second is to receive confirmation from the customer via a toll free number provided exclusively for the purpose of confirming PIC change orders electronically. The third is the use of third party verification (TPV), in which an independent party talks to the customer, verifies the customer's identity (through the use of a social security number, birth date, mother's maiden name, etc.), and confirms the customer's desire to change IXCs. The fourth is to have the prospective IXC send an information package to the

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<sup>1</sup>Commenting parties that specifically recommend adoption of the FCC rules, in one form or another, include MCI, LCI, Sprint, Excel, AT&T, GTE, the TRA, CompTel, the Staff, TAM, and Ameritech Michigan.

<sup>2</sup>A PIC is the toll carrier that the customer chooses to handle its 1+ toll dialing on an intraLATA or an interLATA basis, or both.

customer, within three days following receipt of an oral PIC change request, including a prepaid postcard that the customer can use to deny, cancel, or confirm the requested PIC change. Moreover, based on a 1994 amendment adopted in response to situations in which sweepstakes entry forms and other documents (each containing obscure PIC change authorization language) were being used to slam customers, the FCC rules specifically delineate the form to be used for a valid LOA.

Several of the parties point out that the FCC is currently considering additional measures to combat slamming. According to them, these potential measures will likely arise from the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration issued by the FCC on July 15, 1997 in CC Docket No. 94-129. They therefore recommend that the Commission adopt procedures similar to the existing FCC rules on an interim basis, while specifically retaining the option of revising those procedures at a later date if needed.

The Commission agrees with these parties and finds that it should adopt interim procedures in this case that correspond to the current FCC rules regarding PIC change verification. It further concludes that, as suggested by several parties, the Commission should retain the option to revisit this issue at a later date if, for any reason, it appears that additional or different measures are necessary to eliminate slamming. In reaching this conclusion, the Commission specifically rejects as unnecessarily restrictive all suggestions to limit PIC change verification procedures to a single option (as recommended by Mr. Sottile and Ms. Braendle) or to designate one of the available procedures as “the industry standard” (as proposed by MCI). See, MCI’s initial comments, p. 4.

Nevertheless, the Commission finds that three slight modifications should be made to the language drawn from the FCC’s current PIC change verification rules. First, as recommended by Ameritech Michigan and the Staff, the language should be revised to indicate clearly that each

customer's selection of a new local, intraLATA, or interLATA service provider must be verified separately, even if the same company is chosen to provide two or more of these forms of telecommunications service. This will help alert customers to the fact that they currently have, or will have in the future, a choice of providers for all three types of service. Moreover, it will avoid situations in which a customer seeking to change its PIC or local exchange carrier (LEC) for one type of telecommunications service (such as interLATA toll) unwittingly also ends up with a new PIC or LEC for another service (such as basic local exchange service).<sup>3</sup>

Second, the language currently applied by the FCC should be revised to clarify that the verification requirements adopted in this order apply to all service provider change requests, regardless of whether a request arises from an in-bound call initiated by the customer or an out-bound call from the service provider. To do anything less would continue to leave customers exposed to the risk of being slammed whenever they contact a telecommunications service provider to compare prices, inquire about some other type of service, or dispute a bill for past service.

Third and finally, the Commission finds that one additional option should be available for verifying PIC or LEC change requests in Michigan. Specifically, verification of a PIC or LEC change request through the use of a three-way conference call also should be allowed, with the consent of the customer. Adding this option to the four PIC change verification methods currently contained in the FCC's rules is consistent with the Commission's August 1, 1996 order in Case No. U-11038 and its May 11, 1998 order in Case No. U-11550. As also indicated in those orders, in the course of any such three-way call (1) neither service provider shall be allowed to disclose

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<sup>3</sup>This modification is consistent with the FCC's proposal in CC Docket No. 94-129, in which it suggests expanding the verification requirements set forth in 47 CFR 64.1100 and 64.1150 to cover PIC change requests submitted by all telecommunications providers rather than only IXCs.

confidential or proprietary information, (2) the current service provider shall be precluded from attempting to persuade the customer not to switch providers, and (3) the current service provider shall not be allowed to market other services to the customer.

The Commission therefore adopts the FCC's PIC change verification requirements, as amended by this order and expanded to cover requests to change intraLATA service providers and LECs, and incorporates them as Sections 1 and 2 of Michigan's "Procedures for Changing Telecommunications Service Providers," attached as Exhibit A to this order.

#### Violations and Penalties for Slamming

The parties express the unanimous belief that vigorous enforcement of anti-slamming procedures, when coupled with the threat of severe penalties, will serve as a strong deterrent to slamming. However, that is where their unanimity ends.

With regard to the finding of a violation, some parties recommend imposing a form of strict liability. Under their proposed system, every time a customer is switched to a service provider that it did not specifically request (whether on purpose or by accident), penalties would be imposed on the unauthorized provider. Moreover, a few of these parties effectively suggest imposing what amounts to a bounty on those entities that are found to have provided service to a customer without that customer's direct authorization. For example, the NCL proposes that the customer be absolved from making any payment whatsoever for service received during the period in which it was slammed. Mr. Sottile goes a step further and recommends that the customer be given a rebate valued at four times the cost of all calls made while using an unauthorized service provider.

In contrast, the TRA and CompTel contend that unauthorized service providers should not be presumed guilty of slamming. Rather, they suggest that those service providers should have some

form of recourse against potential abuse by unscrupulous customers who, in seeking financial gain, falsely claim to have been slammed. The TRA and CompTel therefore argue that fines, sanctions, and damages should never be imposed against an unauthorized service provider unless the customer successfully proves that a willful violation of the Commission's anti-slamming procedures occurred.

The Commission finds that the Legislature envisioned the implementation of a system for determining liability, imposing penalties, and assessing damages that lies somewhere between the extremes discussed above. Specifically, Section 506 of the Act, which was added by Public Act 259, states in pertinent part that:

(2) If the commission finds that a person has violated section 505 or an order issued under section 505, the commission shall order remedies and penalties to protect and make whole end users and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

(a) Order the person to pay a fine for the first offense of not less than \$10,000.00 or more than \$20,000.00. For a second and any subsequent offense, the commission shall order the person to pay a fine of not less than \$25,000.00 or more than \$40,000.00. If the Commission finds that the second or any of the subsequent offenses were knowingly made in violation of section 505, the commission shall order the person to pay a fine of not more than \$50,000.00. Each switch made in violation of section 505 shall be a separate offense under this subdivision.

(b) Order an unauthorized provider to refund to the end user any amount greater than the end user would have paid to an authorized provider.

(c) Order an unauthorized provider to reimburse an authorized provider an amount equal to the amount paid by the end user that should have been paid to the authorized provider.

(d) If the person is licensed under this act, revoke the license if the commission finds a pattern of violations of section 505.

(e) Issue cease and desist orders.

(3) Notwithstanding subsection (2), a fine shall not be imposed for a violation of section 505 if the provider has otherwise fully complied with section 505 and shows that the violation was an unintentional and bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. Examples of bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligations under section 505 is not a bona fide error. The burden of proving that a violation was an unintentional and bona fide error is on the provider.

MCL 484.2506(2) and (3); MSA 22.1469(506)(2) and (3).

Based on the last sentence of the above-quoted language, the Commission concludes that, although strict liability does not apply, a presumption that the violation was willful must be placed on the unauthorized service provider. Unless the unauthorized service provider produces adequate evidence to overcome that presumption, it will be open to the imposition of any and all remedies and penalties provided for in Section 506(2) of the Act.<sup>4</sup>

With regard to the payment of damages, it is clear that the Legislature did not intend to establish a bounty system like that proposed by the NCL and Mr. Sottile. Rather, Sections 506(2)(b) and (c) merely require the unauthorized service provider to return all of the revenues collected from a customer in violation of Section 505. Those sections further direct that the improperly collected revenues be split between the authorized provider and the customer in a manner that leaves each of them in the same position as if the slamming had never occurred. Specifically, the Act requires reimbursing the authorized service provider at the rate that the customer would have paid had the calls been carried by its provider of choice, while directing that the customer be reimbursed for any additional amounts paid to the unauthorized service provider.

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<sup>4</sup>Service providers are placed on notice that the Commission takes very seriously the duty assigned by Section 506(2)(a) of the Act to impose substantial fines in all such circumstances.

Moreover, by providing for the payment of damages regardless of whether the slamming was willful, the Act ensures that unauthorized service providers will not be permitted to retain any money from a customer whose PIC or LEC was changed without permission.

### PIC Protection Programs

Several parties, including Ameritech Michigan, the NCL, and Senator Dunaskiss, recommend that the Commission authorize LECs to implement PIC protection (or PIC freeze) programs<sup>5</sup> as a means of providing customers additional protection from slamming. According to Ameritech Michigan, these programs constitute the most effective anti-slamming measures available. Nevertheless, it claims, recent Commission orders have made it impossible to continue operating its own PIC protection program in Michigan. Specifically, Ameritech Michigan argues that the Commission's August 1, 1996 order in Case No. U-11038 (the August 1 order) and the May 11, 1998 order in Case No. U-11550 make it far too easy for competing service providers to circumvent a customer's PIC protection. This is shown, Ameritech Michigan continues, by the fact that procedures approved in those two orders would allow a customer's service provider to be switched without first requiring direct contact (for the purpose of removing the PIC protection) between the customer and Ameritech Michigan. For those reasons, Ameritech Michigan asserts that it had no choice but to cease providing PIC protection, purportedly leading over 200,000 of its customers to contact the company to protest their loss of that protection.

Several other parties recommend that the Commission exercise great caution before specifically authorizing the use of PIC protection programs. In support of this recommendation, they note

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<sup>5</sup>PIC protection or PIC freeze programs are voluntary arrangements in which any request to change a participating customer's service provider must be preceded by written or oral authorization going directly from the customer to the LEC.

that incumbent LECs frequently use these programs for anticompetitive purposes. For example, the TRA and CompTel point out that Ameritech Corporation<sup>6</sup> was found in violation of regulatory statutes in Michigan and Ohio due to the manner in which it implemented its PIC protection programs in each of those states. Due to the potential for abuse, these parties question the wisdom of authorizing any PIC protection in Michigan.

Still other parties, like AT&T and the Staff, suggest that although the potential for abuse does exist, it can be reduced in several ways. These include (1) making all customer requests for PIC protection subject to the verification procedures adopted for PIC and LEC change orders; (2) requiring that an independent request be made, and separate verification provided, for each type of service to which PIC protection is applied; and (3) demanding that customers be allowed to suspend or terminate their PIC protection through use of the same procedure required when signing up for the program in the first place.

History shows that concerns regarding the potential use of PIC protection programs as a means of undermining competition and restricting customer choice are well founded. This is particularly clear in the case of Ameritech Michigan.<sup>7</sup>

In December 1995, Ameritech mailed a bill insert to approximately 12 million residential and small business customers in Michigan and four other states urging customers to sign up for the company's PIC protection program by filling out and returning a form attached to the insert. Due

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<sup>6</sup>Ameritech Corporation, which will be referred to simply as Ameritech throughout the remainder of this order, is the parent corporation of Ameritech Michigan.

<sup>7</sup>Although GTE has been implementing a PIC protection program for several years, the Commission is not aware of any instances in which a party claimed that GTE's program was being used for anticompetitive purposes. However, that may be due at least in part to the fact that less competition exists in GTE's service territory than in Ameritech Michigan's.

to its language and timing, the insert was subsequently found by the Commission to be anticompetitive in violation of both the Act and prior Commission orders. See, the August 1 order. Specifically, the Commission found that the insert was “deceptive and misleading” because it failed to inform customers that the PIC freeze would apply to all of a customer’s services, including intraLATA and basic local exchange service. Id., p. 5. In addition, the Commission found that by being distributed approximately one month before the implementation of intraLATA dialing parity in Michigan, the insert “created new hurdles to the exercise of the customer’s decision to change providers just as alternatives were becoming available.” Id., p. 12.

The Commission therefore ordered Ameritech Michigan to draft and distribute a corrective bill insert and to refrain from applying PIC protection requests to intraLATA and local exchange services until six months after mailing the insert unless the customer had first affirmatively selected a provider for those services and then requested PIC protection. Moreover, the Commission ordered that Ameritech Michigan should permit customers with PIC protection to change service providers as long as the PIC change orders are first verified either through use of one of the procedures adopted by the FCC or through the use of three-way conference calls with the consent of the customer. Finally, the Commission specifically prohibited Ameritech Michigan from using those three-way calls “to try to persuade the customer not to change providers” or to discuss confidential or proprietary information with the customer. Id., p. 22.

Immediately following expiration of the six-month moratorium imposed by the August 1 order, Ameritech Michigan began violating that order’s terms. For example, it refused to implement any intraLATA PIC change orders for customers with PIC protection unless they were first verified only through the use of three-way calls. According to evidence submitted in Case No. U-11550, a substantial number of PIC change orders were rejected by Ameritech Michigan between April and

October 1997 simply because MCI used one of the other verification procedures authorized for this purpose in the August 1 order.<sup>8</sup> The record in that case further revealed that, in addition to forcing its competitors to rely exclusively on the use of three-way calls to verify PIC change orders received for customers with PIC protection, Ameritech Michigan (1) used those contacts to try to persuade the customer not to change service providers, (2) refused to participate in those calls by leaving its competitor and the customer on hold for unreasonably long periods of time or by hanging up before verification of the service transfer could be completed, (3) made use of confidential customer data, such as the customer's past calling frequency and patterns, in an attempt to make the customer change his or her mind, and (4) used confidential customer information during those calls in an attempt to sell the customer additional Ameritech Michigan services and features.

In response to a complaint filed by MCI, the Commission issued an order on May 11, 1998 in Case No. U-11550 requiring Ameritech Michigan to cease and desist from further violations of the Act and the August 1 order. The Commission also renewed its directives regarding the implementation of Ameritech Michigan's PIC protection program, as well as the methods that should be made available to customers seeking to lift their PIC protection and convert their service to another provider. However, rather than abide by the terms of those orders and provide PIC protection in a competitively neutral manner, Ameritech Michigan initiated a public relations campaign designed to increase customer anxiety about the potential for slamming. Ameritech Michigan's campaign included, among other things, its unilateral decision to cease providing PIC protection to any of its

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<sup>8</sup>MCI alleged in that case that over 32,000 PIC change orders were rejected. Although the Commission found in its August 1 order that some orders were clearly rejected, it concluded that the specific number was not conclusively proven.

customers after May 31, 1998 and its election to spread (through the use of bill inserts and newspaper advertisements) deceptive accounts of both its actions and those of the Commission.

The apparent goal of that campaign was to pressure the Legislature and the Commission into allowing Ameritech Michigan to implement PIC protection on its own, albeit anticompetitive, terms. The Legislature did not succumb to that pressure in adopting Public Acts 259 and 260. Likewise, the Commission will not do so in establishing today's anti-slamming procedures.

The Commission agrees with Senator Dunaskiss and the numerous other parties who believe that PIC protection can play an important role in reducing the incidence of slamming. Therefore, to resolve any confusion that may have been created by Ameritech Michigan's recent public relations campaign, the Commission finds that the anti-slamming procedures established by this order should specifically state that LECs are free to implement PIC protection programs.

However, based on its previously described experience with Ameritech Michigan's program, the Commission likewise finds that four steps should be taken to ensure that PIC protection is not used for anticompetitive purposes. First, customer requests to initiate PIC protection should be subject to verification procedures that are nearly identical<sup>9</sup> to those adopted for PIC and LEC change orders. Second, a separate request should be made, and separate verification required, for each type of service to which PIC protection is applied. Third, any LEC offering PIC protection should make that protection available to all customers, including those taking one or more services from a provider other than that LEC. Fourth, PIC change orders submitted on behalf of customers with PIC protection should be processed immediately following the LEC's receipt of proof that the

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<sup>9</sup>The only substantive difference pertains to the use of the information package described in Section 1(d) of the procedures attached as Exhibit A to this order. Specifically, the provisions setting forth the information to be included in the package should be revised to more accurately apply to requests for the initiation of PIC protection.

PIC change order was verified through one of the five methods adopted earlier in this order and set forth in Sections 1 and 2 of the procedures attached as Exhibit A.<sup>10</sup>

Other proposals offered by the parties with regard to PIC protection may also have value. These include (1) the Staff's proposal that customers be allowed to suspend or terminate PIC protection by employing the same procedure used to initiate that protection, (2) Ameritech Michigan's suggestion to use voice mail systems and Internet-based technology to initiate, suspend, or terminate PIC protection, and (3) the joint proposal by AT&T and MCI to require LECs to publish, in electronic form, a list of all customers who are signed up for PIC protection. The Commission finds that additional proceedings should be undertaken to more fully investigate the need for, and merit of, adopting these and other proposals.

The Commission therefore concludes that a prehearing conference should be held in this docket on Wednesday, October 7, 1998, at 9:00 a.m., for the purpose of establishing a procedure and schedule for creating a more detailed record regarding the proposals for PIC protection that are not specifically addressed in this order. All subsequent proceedings in this case should be completed, and all filings must be made, within five months of that date. Because the Commission will read the record and comments, there will be no need for a proposal for decision.

#### Procedures for Handling Violations of Section 505

The next area to be addressed concerns the adoption of procedures specifying who can bring a claim for alleged violations of Section 505 of the Act, as well as how that claim should be

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<sup>10</sup>Allowing customers with PIC protection to use the same PIC change verification procedures as other customers, but requiring that proof of verification actually be received by the LEC prior to suspending that protection and processing the change order, will serve the purpose of providing these customers with enhanced protection from slamming while maintaining their ability to change service providers without unnecessary hardship or delay.

submitted and processed. Section 506(1) of the Act, which was added as part of Public Act 259, goes a long way toward answering these questions. It reads as follows:

Upon the receipt of a complaint filed by a person alleging a violation of section 505, an end user who has been switched to another provider in violation of section 505, or a provider who has been removed as an end user's provider without the end user's authorization, or upon the commission's own motion, the commission may conduct a contested case as provided under section 203.

MCL 484.2506(1); MSA 22.1469(506)(1).

With regard to who can bring a claim based on allegations of slamming, the Legislature clearly intended to open the door as wide as possible. In addition to the customer who was slammed, the customer's authorized service provider, and the Commission itself, this provision authorizes the filing of a complaint by any "person" alleging a violation of Section 505. Id. Because the Act defines "person" as "an individual, corporation, partnership, association, governmental entity, or any other legal entity," the Commission finds that the procedures adopted by this order should allow anyone having knowledge of an unauthorized transfer of service to file a complaint against the alleged offender. MCL 484.2102(w); MSA 22.1469(102)(w).

As for the question of how the claim should be submitted and processed, Section 506(1) concludes by stating that it should be handled as a contested case under Section 203 of the Act. This means that the Commission may "conduct an investigation, hold hearings, and issue its findings and order" pursuant to the contested case provisions of the Administrative Procedures Act, 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq., and that the 180 to 210 day limit on the completion of proceedings and issuance of a "final order" shall apply. See, MCL 484.2203(1) and (6); MSA 22.1469(203)(1) and (6). The Commission further finds, in the absence of any reason to conclude otherwise, that the parties to those complaint proceedings should adhere to the Commission's Rules of Practice and Procedure, 1992 AACS, R 460.17101 et seq.

It should also be noted that Section 506 concludes with a specific provision designed to penalize parties that abuse the complaint process in slamming cases. Specifically, Section 506(4) of the Act states that if the Commission finds that “a party’s complaint or defense filed under this section is frivolous,” it shall tax costs, including reasonable attorney fees, “against the nonprevailing party and their attorney.” MCL 484.2506(4); MSA 22.1469(506)(4). Parties should be forewarned that the Commission intends to look closely at all pleadings submitted and positions taken by both the complainants and the respondents, and that it will be exceedingly vigilant in watching for frivolous assertions.

#### Miscellaneous Issues

One issue that was not raised in the parties’ comments, but which should be addressed, is the range of penalties to be imposed for a service provider’s violation of the procedures adopted in this order regarding PIC protection. Because the specific penalties and damages imposed by Public Act 259 apply only to a person that “has violated section 505 or an order issued under section 505,” they do not cover situations in which service providers use PIC protection in an anticompetitive manner. See, MCL 484.2506(2); MSA 22.1469(506)(2). Nevertheless, the Commission finds that a service provider’s failure to adhere to the PIC protection procedures adopted earlier in this order (and set forth in Section 4 of attached Exhibit A) constitutes a violation of Sections 205(2) and 502 of the Act. The Commission therefore concludes that such a violation would expose the service provider to the imposition of penalties authorized under Section 601 of the Act.

Finally, the Commission notes that numerous other anti-slamming measures have been suggested that, following a more detailed presentation and an opportunity for closer examination by the parties, may be worth considering in the future. These include, but are not limited to,

(1) establishing a jointly funded customer education program regarding the range of available competitive telecommunications services and the customers' rights regarding the selection of their service providers, (2) developing a standardized script for use during the TPV process, (3) imposing specific notification requirements to be provided to customers before the implementation of a PIC freeze, (4) requiring changes to the form and wording of customers' bills for telecommunications service to, among other things, highlight any new charges or changes to the customers' services, and (5) setting minimum periods for the retention of data used to verify a customer's PIC change or PIC protection request. These suggestions should be included in, and examined during, the proceedings undertaken pursuant to the schedule to be established at the October 7, 1998 prehearing conference.

The Commission FINDS that:

- a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACR, R 460.17101 et seq.
- b. The procedures for changing telecommunications service providers, attached as Exhibit A to this order and designed to ensure that end users are not switched to other service providers without their authorization, should be approved.
- c. These procedures should be implemented effective October 1, 1998, so that their implementation coincides with that of Public Acts 259 and 260.
- d. Additional proceedings should be conducted to allow the parties to create a more detailed record regarding proposals to combat slamming that were not specifically addressed in this order.

THEREFORE, IT IS ORDERED that:

A. The procedures for changing telecommunications service providers, attached to this order and designed to ensure that end users are not switched to other service providers without their authorization, are approved and shall be implemented effective October 1, 1998.

B. A prehearing conference shall be held on Wednesday, October 7, 1998, at 9:00 a.m., at the offices of the Commission, 6545 Mercantile Way, Lansing, Michigan, at which the Administrative Law Judge, with the advice of the parties, will establish the procedures and schedule for creating a more detailed record regarding proposals to combat slamming that are not specifically addressed in this order.

C. All subsequent proceedings in this docket shall be completed, and all filings submitted, by March 5, 1999.

D. Parties participating in these additional proceedings shall file an appearance by October 2, 1999.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand  
Chairman

( S E A L )

/s/ John C. Shea  
Commissioner

/s/ David A. Svanda  
Commissioner

By its action of September 23, 1998.

/s/ Dorothy Wideman  
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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Its Executive Secretary

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Case No. U-11757

Suggested Minute:

“Adopt and issue order dated September 23, 1998 establishing procedures to ensure that end users of telecommunications service providers are not switched to other providers without their authorization, adopting penalties for violations of those procedures, and providing for additional proceedings, as set forth in the order.”

**PROCEDURES FOR CHANGING TELECOMMUNICATIONS SERVICE PROVIDERS****Section 1. Verification of orders for telecommunications service.**

No telecommunications service provider, whether operating as an interexchange carrier (IXC) or a local exchange carrier (LEC), shall submit to an LEC, or implement by itself, a primary interexchange carrier (PIC) or LEC change order unless and until the order has first been confirmed in accordance with the following procedures:

(a) The prospective IXC or LEC has obtained the customer's written authorization in a form that meets the requirements of Section 2 of these procedures; or

(b) The prospective IXC or LEC has obtained the customer's electronic authorization, placed from the telephone number(s) on which the PIC or LEC is to be changed, to submit the order that confirms the information described in Section 2(e) of these procedures to confirm the authorization. IXCs or LECs electing to confirm sales electronically shall establish one or more toll-free telephone numbers exclusively for that purpose. Calls to the number(s) will connect a customer to a voice response unit, or similar mechanism, that records the required information regarding the PIC or LEC change, including automatically recording the originating automatic number identification; or

(c) An appropriately qualified and independent third party operating in a location physically separate from the prospective service provider's customer service or telemarketing representatives has obtained the customer's oral authorization to submit the PIC or LEC change order that confirms and includes appropriate verification data (e.g., the customer's date of birth or social security number); or

(d) Within three business days of the customer's request for a PIC or LEC change, the prospective IXC or LEC must send the new customer an information package by first class mail containing at least the following information concerning the requested change:

- (1) The information is being sent to confirm an order placed by the customer within the previous week;
- (2) The name of the customer's current service provider;
- (3) The name of the newly requested service provider;
- (4) A description of any terms, conditions, or charges that will be incurred;
- (5) The name of the person ordering the change;
- (6) The name, address, and telephone number of both the customer and the soliciting service provider;
- (7) A postpaid postcard that the customer can use to deny, cancel, or confirm a service order;
- (8) A clear statement that if the customer does not return the postcard, the customer's service will be switched to the new service provider within 14 days after the date the information package was mailed;
- (9) The name, address, and telephone number of a contact point at the Commission for consumer complaints; and
- (10) The service provider must wait 14 days after the form is mailed to the customer before either submitting its PIC or LEC change order to the customer's current LEC or implementing the change order itself. If customer has canceled its order during the waiting period, the IXC or

LEC, of course, cannot submit the customer's order to the customer's current LEC or implement the order itself; or

(e) A three-way call has been undertaken by the LEC, the customer, and the customer's prospective service provider, in which the customer affirmatively states a desire to change service providers. A separate affirmation must be specifically expressed for each type of service for which the customer seeks to change providers. In the course of the three-way call:

- (1) Neither service provider shall disclose confidential or proprietary information;
- (2) The current service provider shall not attempt to persuade the customer not to switch service providers; and
- (3) The current service provider shall not be allowed to market other telecommunications services to the customer.

## **Section 2. Letter of agency form and content.**

(a) An IXC or LEC shall obtain any necessary written authorization from a subscriber for a PIC or LEC change by using a letter of agency (LOA) as specified in this section. Any LOA that does not conform with this section is invalid.

(b) The LOA shall be a separate document (or an easily separable document containing only the authorizing language described in paragraph (e) of this section) whose sole purpose is to authorize an IXC or LEC to initiate a PIC or LEC change. The LOA must be signed and dated by the subscriber to the telephone lines(s) requesting the PIC or LEC change.

(c) The LOA shall not be combined with inducements of any kind on the same document.

(d) Notwithstanding paragraphs (b) and (c) of this section, the LOA may be combined with checks that contain only the required letter of agency language prescribed in paragraph (e) of this section and the necessary information to make the check a negotiable instrument. The LOA check shall not contain any promotional language or material. The LOA check shall contain, in easily readable, bold-face type on the front of the check, a notice that the consumer is authorizing a PIC or LEC change by signing the check. The LOA language also shall be placed near the signature line on the back of the check.

(e) At a minimum, the LOA must be printed in a type of sufficient size and readability to be clearly legible, and must contain clear and unambiguous language that confirms:

- (1) The subscriber's billing name and address and each telephone number to be covered by the PIC or LEC change order;
- (2) The decision to change the customer's preferred service provider from the current IXC or LEC to the prospective IXC or LEC;
- (3) That the subscriber designates the prospective IXC or LEC to act as the subscriber's agent for the PIC or LEC change;
- (4) That the subscriber understands that only one telecommunications service provider may be designated as the subscriber's interLATA PIC for any one telephone number. To the extent that the law allows the selection of additional preferred service providers (e.g., for local, intraLATA, or international calling), the LOA must contain separate statements regarding each of those choices. Any carrier designated as the customer's PIC or LEC must be the carrier directly setting the rates for the subscriber. One service provider can be a subscriber's

interLATA PIC, the subscriber's intraLATA PIC, and the subscriber's local service provider; and

- (5) That the subscriber understands that any PIC or LEC selection the subscriber makes may involve a charge to the subscriber for changing the subscriber's PIC or LEC.

(f) Letters of agency shall not suggest or require that a subscriber take some action in order to retain the subscriber's current IXC or LEC.

(g) If any portion of a LOA is translated into another language, then all portions of the LOA must be translated into that language. Every LOA must be translated into the same language as any promotional materials, oral descriptions, or instructions provided with the LOA.

### **Section 3. Violation of PIC or LEC Change Verification Procedures.**

(a) No telecommunications service provider shall submit, or execute on its own behalf, a change in a customer's selection of a service provider except in accordance with the verification procedures prescribed in Section 505 of the Michigan Telecommunications Act (the Act), MCL 484.2505; MSA 22.1469(505) and as further defined in these rules or Commission orders pursuant to Section 505.

(b) Any individual, corporation, partnership, association, governmental entity, or other legal entity, including the Commission, having knowledge of a violation of paragraph (a) of this section may initiate an action against a telecommunications service provider for failure to adhere to the PIC or LEC change verification procedures prescribed in Section 505 of the Act. Any such action will be treated as a complaint case under Section 203 of the Act, MCL 484.2203; MSA 22.1469(203), and will be processed in accordance with the Administrative Procedures Act and the Commission's Rules of Practice and Procedure.

(c) If a hearing is necessary to resolve a complaint filed pursuant to paragraph (b) of this section and alleging a violation of Section 505 of the Act, the Commission shall have 180 days from the date the complaint was filed to issue its final order. However, if the principal parties of record agree that the complexity of issues involved requires additional time, the Commission may have up to 210 days from the date of the complaint's filing to issue its final order.

(d) If a telecommunications provider is found by the Commission to have violated the verification requirements of Section 505 of the Act, the procedures set forth in Sections 1, 2, or 3(a) above, or an order issued by the Commission under Section 505, the Commission shall order remedies and penalties to protect and make whole end users and other persons who have suffered damages as a result of the violation, including, but not limited to, 1 or more of the following:

- (1) Order the person to pay a fine for the first offense of not less than \$10,000 or more than \$20,000. For any subsequent offense, the Commission shall order the person to pay a fine of not less than \$25,000 or more than \$40,000. If the Commission finds that the second or any subsequent offenses were knowingly made in violation of Section 505 of the Act, these procedures, or a Commission order issued under Section 505, the Commission shall order the person to pay a fine of not more than \$50,000. Each unauthorized or unverified change in a customer's telecommunications provider or providers shall be a separate offense under this subsection.
- (2) Order an unauthorized service provider to refund to the customer any monies received from the customer that are greater than what the

customer would have paid for taking the same service from its authorized provider.

- (3) Order an unauthorized service provider to reimburse the authorized provider in an amount equal to the revenues that the authorized provider would have received had it been allowed to provide service to the customer.
- (4) If the person is licensed under the Act, revoke the license if the Commission finds a pattern of violations of Section 505 of the Act.
- (5) Issue cease and desist orders.

(e) Although all other remedies and penalties may be ordered whether or not a violation is intentional, the fines authorized in Section 506(2)(a) of the Act, MCL 484.2506(2)(a); MSA 22.1469(2)(a), and restated in Section 3(d)(1) of these procedures may not be imposed if the telecommunications provider that committed the violation shows that it has otherwise fully complied with Section 505 of the Act and further persuades the Commission that the violation was an unintentional and bona fide error that occurred despite the provider's maintenance of procedures reasonably adopted to avoid the error. Examples of a bona fide error include clerical, calculation, computer malfunction, programming, or printing errors. An error in legal judgment with respect to a person's obligation under Section 505 of the Act is not a bona fide error.

(f) The telecommunications provider that committed the violation bears the burden of proving that the violation was an unintentional and bona fide error.

(g) If the Commission finds that a party's complaint or defense filed under Section 505 of the Act is frivolous, the Commission shall tax costs, including reasonable attorney fees, against the nonprevailing party and its attorneys, and in favor of the prevailing party.

#### **Section 4. PIC or LEC Protection Programs.**

(a) Any LEC may offer, and a customer may request, implementation of a PIC or LEC protection program under which the service provider cannot implement a PIC or LEC change order submitted by or on behalf of the customer until after it receives proof that the PIC or LEC change order was verified in accordance with one of the five verification methods set forth in Sections 1 and 2 of these procedures.

(b) A customer's request for PIC or LEC protection service cannot be implemented unless and until that request has first been verified in substantially the same manner as one of the five verification options set forth in Section 1 of these procedures. The only substantive difference between the options for verifying PIC or LEC change orders in Sections 1 and 2, on the one hand, and the options for verifying PIC or LEC protection requests in this Section, on the other, is that the information package provided to the customer pursuant to Section 1(d) would contain certain information (specifically, the name of the newly requested service provider, and the name, address, and telephone number of the soliciting service provider) that would not be necessary for verification of a customer's request for PIC or LEC protection.

(c) A separate request shall be made, and separate verification required, for each type of telecommunications service to which a customer seeks to apply PIC or LEC protection.

(d) Any LEC that offers PIC or LEC protection should make that protection available under the same terms and conditions to all customers, including those taking service from a telecommunications provider other than that LEC.

(e) Upon receipt of a PIC or LEC change order involving a customer with PIC or LEC protection, the LEC receiving that request shall promptly notify the person submitting the change

order of the existence of the customer's PIC or LEC protection, and shall request proof of verification of the change order. Immediately following the LEC's receipt of proof that the customer's PIC or LEC change order was verified in accordance with one of the five verification methods set forth in Sections 1 and 2 of these procedures, the LEC shall process and implement that change order.

(f) Any failure of a telecommunications service provider to adhere to the terms of this section may be found to be a violation of Sections 205(2) and 502 of the Act, MCL 484.2205(2); MSA 22.1469(205)(2) and MCL 484.2502; MSA 22.1469(502), respectively, and may give rise to the imposition of penalties authorized under Section 601 of the Act, MCL 484.2601; MSA 22.1469(601).