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DEC 23 1998

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

December 22, 1998

Via Overnight Delivery

Mr. Bill Bullard
Executive Director
SD Public Service Commission
500 East Capital Avenue
Pierre, SD 57501

Re: Proposed Telecommunications Rules, Docket No. RM98-001

Dear Mr. Bullard:

Enclosed is an original and ten copies of AT&T Communications of the Midwest Inc.'s Application for Reconsideration, Clarification or Rehearing regarding the Telecommunications Rules adopted by the Commission on November 25, 1998.

Please feel free to call me if there are any questions.

Sincerely,

Letty S.D. Friesen

LF/cg

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF PROPOSED)
TELECOMMUNICATIONS RULES)

Docket No. RM98-001

APPLICATION FOR RECONSIDERATION, CLARIFICATION
OR REHEARING

AT&T Communications of the Midwest, Inc. ("AT&T") hereby submits its Application for Reconsideration, Clarification or Rehearing in the above-referenced docket. In support of its Application, AT&T states as follows:

INTRODUCTION

AT&T participated in the hearing on November 2, 1998, and submitted its initial comments on November 13, 1998, regarding a number of the proposed rules under consideration in this docket. On or before November 25, 1998, the Commission approved—in private session—certain rules and revisions to the proposed rules. Because the rules were approved in private session, the participants did not have an opportunity to comment on the suggested revisions prior to their adoption or gain the necessary clarification related to the rules as proposed.

Although AT&T generally supports the rules and revisions as adopted, there are still some areas that remain unclear, and, therefore, AT&T requests that the Commission clarify or, alternatively, reconsider certain rules. In particular, AT&T seeks clarification of the rules on the unauthorized switching of carriers under Rule 20:10:34 (colloquially referred to as "slamming rules."). There are five specific sub-rules that AT&T requests

the Commission clarify or reconsider. They are: (1) whether the unauthorized switching rules apply to inbound calls; (2) whether the "electronic recording" of the third party verification calls requires audio recording of the entire call; (3) whether the added expense for the inclusion of the carrier's toll-free number in the third-party verification process is warranted; (4) likewise, whether the added cost for the inclusion of the toll-free number, to verify carrier changes, in the letter of agency is warranted; and finally, (5) whether the refund of unauthorized charges inviting consumer fraud while potentially harming the legitimate carrier's interests is appropriate.

Each of these sub-rules, as written, unnecessarily increases the costs to carriers (and ultimately consumers). Moreover, the added safeguards—if any—do not warrant the increase cost to consumers and added burden to carriers. AT&T will address all five areas in regard to the questions posed and the increased burdens.

1. APPLICATION OF THE RULES FOR UNAUTHORIZED SWITCHING TO INBOUND CALLS IS AN UNWARRANTED PRECAUTION THAT ONLY INCREASES THE COSTS OF PROVIDING SERVICE.

In its initial comments, AT&T requested clarification as to the proper scope of the proposed rules regarding unauthorized switching. As the Commission is aware, similar rules at the federal level apply only to carrier selections done via outbound telemarketing efforts. That is, calls the carrier or its telemarketing arm initiate should be scrutinized and not the customer initiated, inbound calls.

AT&T request that the Commission clarify whether the rule applies to inbound calls. If the Commission's intent is to apply Rule 20:10:34 to inbound calls, as well as outbound telemarketing calls, AT&T asks the Commission to reconsider its decision.

Like the Minnesota Commission, the FCC has considered whether verification of inbound calls should be required. Interestingly, the FCC's investigation produced no record evidence to support applying additional verification measures to inbound calls. Indeed, the information that has been uncovered lays bare the lack of any factual basis for extending verification to inbound calls. Specifically, since July 1996, AT&T on a monthly basis has performed statistical random sampling of its residential carrier change orders obtained through inbound telemarketing during the preceding month. Several million inbound orders were sampled in this manner through June 1997. The change orders in the monthly random samples were then compared, after a 45 to 60 day interval, with reports of PIC change disputes and complaints received by AT&T from LECs and customers to determine if the validity of any of those orders had been challenged.¹

Six of these monthly samples -- representing a total of several million PIC change orders -- have reflected not a single instance of a PIC change dispute. The remaining samples reflected a total of just 15 PIC change disputes or complaints among several million additional carrier change orders. Even these minimal occurrences cannot be equated with any actual slamming. AT&T's review of the fifteen cases show that virtually all of those orders were retracted by customers within a few days after their initial inbound calls, suggesting strongly that these were cases of "buyer's remorse" rather than an unauthorized carrier change. These data resoundingly confirm what has long been evident, namely, that inbound calling does not present a real risk of slamming nor is there any evidence that it is likely to do so.

¹ This interval for the comparison was selected because PIC disputes usually are raised within 45 to 60 days after a subscriber's carrier change occurs.

Equally important is the expense that would be incurred because of the imposition of unneeded verification on carriers submitting change requests. Available information demonstrates that the costs of such a procedure for carriers, and the losses to consumers in foregone savings, are wholly disproportionate to the virtually non-existent risk of slamming on inbound calls.

AT&T compiled cost information in connection with the FCC's consideration of this issue as it relates to PIC changes in the interexchange market. In connection with a Petition for Reconsideration of an FCC 1995 Report and Order, AT&T submitted a declaration from its Director of Prospect Markets showing that implementing inbound verification would cost AT&T tens of millions of dollars annually in compliance expenses; would result in substantial lost revenues (due to additional delays in processing PIC changes); and would deprive AT&T customers of significant annual savings due to those same delays. Other parties echoed that showing.²

Although offered in a different forum, the evidence starkly contrasts the extremely large cost of performing inbound verification against the miniscule possibility of slamming attributable to inbound calls. Here in South Dakota, the record in this proceeding is similarly devoid of evidence suggesting any significant potential for slamming from inbound calls. AT&T, therefore, requests that the Commission make clear that its rule applies only to outbound calls. Alternatively, if the Commission believes that there exists a significant potential threat of slamming related to inbound

² For example, MCI estimated that as a result of the inbound verification requirement, it would incur as much as \$10 million in additional costs in the first year alone. For its part, Sprint estimated that it would incur first year costs of \$10.1 million for implementation, and annual revenue losses of \$8.9 million.

calls, AT&T requests that the Commission develop a record including evidence that shows that the benefits of verifying inbound calls outweighs the costs to carriers and consumers alike.

As in the federal forum, applying this rule to inbound calls would cause carriers doing business in South Dakota to incur significant additional costs, resulting in higher rates for customers. Since verifying an inbound request for carrier change provides no meaningful additional protection, the additional costs are even more onerous for both the carriers and the consumers in South Dakota. Thus, the scope of the rule should be limited to outbound calls only.

2. TO THE EXTENT THAT THE TERM "ELECTRONIC RECORDING" OF THE ENTIRE CALL MEANS AN AUDIO RECORDING, THE RULE IS UNNECESSARILY BURDENSOME AND COSTLY.

AT&T requests clarification of the Rule 20:10:34:02, which states, "[t]he third-party verification company shall electronically record, in its entirety, the telephone call that confirms the subscriber's change of a designated telecommunications company."

The specific part of the sentence that causes the confusion is the "electronically recorded, in its entirety" statement. South Dakota statute, SDCL 37-30A-9(4), upon which this rule is based, states, "[t]he third-party verification company shall obtain the consumer's oral confirmation regarding the change and shall record that confirmation." AT&T makes an "electronic record" of the customer's oral choice during its third party verification process ("TPV") and maintains that record for an entire year. While AT&T's process is consistent with federal rules and the South Dakota statute, it does not "electronically record, in its entirety" an audio version of the entire telephone call. AT&T electronically records only the pertinent information, but not every word of the telephone call.

If the Commission's intent is that an audio recording be made of the entire conversation, AT&T requests that the Commission reconsider this decision. For a variety of reasons, AT&T does not support audio recording of TPV calls. Two of the primary reasons are the substantial cost this process adds to the procedure, which would be passed on to the consumers, and the host of consumer-related privacy issues that arise from such a process. While the Commission's rule does not expressly direct the call to be audio recorded, it appears to be implied by the directive to record the telephone call, in its entirety. Since audio recording is beyond the intent of the statutory requirement, AT&T requests the Commission strike the "in its entirety" portion of the rule so as to clarify that "electronic recording" of the pertinent information is sufficient for compliance.

The same issue arose in Massachusetts. In fact, Massachusetts is one of the few states that does specifically require audio recording of the third-party verification calls. On December 10, 1998, legislation went into effect in that state that requires a telecommunications carrier to obtain either a letter of agency from the customer or a tape recording of the TPV call made to the customer, in order for the change in carrier to properly authorized. The Massachusetts law, however, provides that where a carrier's TPV system ensures a level of protection for consumers equivalent to that of tape recording, the Massachusetts Department of Telecommunications and Energy ("DTE") may waive the tape recording requirement.

AT&T petitioned the DTE for a waiver of the tape recording requirement. On December 11, 1998, after an exhaustive review of AT&T's third party verification processes, the DTE, in Docket 98-94, determined that AT&T's third-party verification processes did provide protection equivalent to audio recording. Accordingly, the DTE

granted AT&T a waiver of the tape recording requirement. A copy of this order is attached for the Commission's review as Exhibit A.

3. THE RULE REQUIRING INCLUSION OF THE NAME AND TOLL-FREE NUMBER OF THE NEW TELECOMMUNICATIONS COMPANY DURING THE THIRD PARTY VERIFICATION PROCESS, CREATES LESS CONVENIENT, DUPLICATIVE INFORMATION EFFORTS AND UNNECESSARILY INCREASES COSTS.

AT&T requests that the Commission reconsider its adoption of Rule 20:10;34:02(4), which requires the name and toll-free number of the new telecommunications company to be included as a part of the third-party verification. As discussed in its initial comments, AT&T provides customers with its toll-free number in a fulfillment letter, not during the third-party verification. For a number of reasons, AT&T believes the fulfillment letter is the appropriate vehicle to provide this information to the customer. AT&T understands and agrees that it is vital to provide the carrier toll-free number to the customer. However, it currently provides this information in a vehicle that is most convenient to the customer. To require the same information be provided in the third-party verification procedure would result in developing a duplicative procedure unique for South Dakota, resulting in increased costs that would likely be passed on to the customer in the form of higher rates. Therefore, AT&T respectfully requests that the Commission delete this rule or, alternatively, include language that exempts inclusion of the toll information in the TPV process where it is included in, for example, fulfillment correspondence or the like.

4. LIKEWISE, INCLUSION OF NAME AND TOLL-FREE NUMBER FOR VERIFICATION OF CARRIER CHANGE IN THE LETTER OF AGENCY CREATES DUPLICATION AND INCREASES COSTS

AT&T requests that the Commission reconsider its adoption of Rule 20:10:34:03(9), which requires a toll-free number to be included in the letter of agency so that customers can verify if their requested carrier change has taken place. Again, AT&T agrees with the Commission that this information should be provided to the customer. However, AT&T does not provide this toll-free number in its letter of agency, but rather in its fulfillment letter. As stated in our earlier comments, the letter of agency will be sent to the selected carrier and kept by the carrier as verification of the customer's authorization. The carrier change will not be implemented until after the customer sends the letter of agency to the selected carrier. For that reason, AT&T provides that information in the fulfillment letter, which will be sent to the customer after the change has been made. In that manner, the fulfillment letter actually serves as a notice that the change has been implemented and providing the customer with the toll-free number to verify the change is just one additional method for the customer to verify that their carrier selection has been completed.

AT&T agrees that it is important to provide customers with a toll-free number to enable them to verify that their carrier selection has been implemented. However, AT&T believes that it currently provides this information in a vehicle that is most convenient to the customer. To require the same information be provided in the letter of agency would result in developing duplicative and unique material for South Dakota, resulting in increased costs that could produce higher rates for the customers. And again, AT&T requests that the Commission strike this obligation from the rules or alternatively, make agency letters one of several alternatives in which carriers may notify customers of toll numbers.

5. RULE 20:10:34:07 AS ADOPTED INVITES CONSUMER FRAUD AND THEREBY HARMS THE LEGITIMATE CARRIER'S INTERESTS.

In AT&T's November 13, 1998, comments, it proposed a rule that would balance the needs of both the "slammed" customer and the legitimate carrier, while removing the financial incentive for unauthorized carriers. Absolving customers of all charges as adopted in Rule 20:10:34:07, is a direct invitation to consumer fraud. The rule does not even limit how long a period the customer could receive service free of charge.

Furthermore, the rule also removes the opportunity for the authorized carrier to recover its lost revenue, as set forth in Section 258(b) of the Telecommunications Act of 1996. On December 17, 1998, the FCC approved new "slamming" rules. Although the rules are not expected to be released in their final form until January 1999, it is expected that the new rules will provide for a 30-day absolution period for customers that have experienced an unauthorized carrier change. If the customer has not been changed back to the authorized carrier by that time, the customer would not pay the offending company anything. Instead, the customer would pay their authorized carrier at the normal rate. At this time, the rest of the details are not clear. Also, the FCC decision on this issue was a split decision. Two of the FCC Commissioners expressed concern about the loss of revenue to the authorized carrier during the 30-day absolution period. The FCC will likely address this issue further and request comment from interested parties.

AT&T strongly urges this Commission to reconsider adoption of this rule as written. At a minimum, AT&T asks that the Commission consider limiting the charge-free period in which a customer can receive free service to the likely 30-day period under consideration at the federal level. In addition, AT&T urges the Commission to adopt an

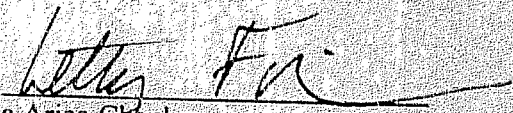
appropriate appeal mechanism by which carriers could challenge a "slamming" complaint.

CONCLUSION

For the foregoing reasons, AT&T hereby requests that the Commission clarify or reconsider its adoption of the rules discussed above. To the extent the Commission believes reargument is necessary on any issue discussed herein, AT&T requests rehearing on those issues.

Respectfully submitted this 22nd day of December, 1998.

**AT&T COMMUNICATIONS OF
THE MIDWEST, INC.**

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I. INTRODUCTION AND PROCEDURAL HISTORY

On September 16, 1998, AT&T Communications of New England, Inc. ("AT&T") filed with the Department of Telecommunications and Energy ("Department") a petition for a waiver of the requirement contained in G.L. c. 93, § 109 that the change of a primary telecommunications provider be confirmed by a tape recording made by a third party verification company. Section 109 was part of a new Massachusetts law ("Slamming Law") designed to protect consumers from the unauthorized switching of their local or long distance telecommunications carrier, also known as "slamming." This law was enacted on September 11, 1998 and will go into effect on December 10, 1998. The Department docketed AT&T's petition as D.T.E. 98-94.

Massachusetts' Slamming Law requires a telecommunications carrier to obtain either a letter of agency from the customer or a tape recording of a third party verification ("TPV") call made to the customer, in order for that change in carrier to be considered properly authorized. G.L. c. 93, § 109(a). The Department is given the discretion to waive the tape recording requirement if the carrier can demonstrate that its proposed verification system provides a level of protection for consumers equivalent to that of a tape recording. G.L. c. 93, § 109(c)(5).

Pursuant to notice duly issued, a public hearing on AT&T's petition was held at the Department's offices on November 9, 1998, at which time the Department granted the petitions to intervene of Sprint Communications Company L.P. ("Sprint"), New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts ("Bell Atlantic"), and MediaOne Telecommunications of Massachusetts, Inc. The Attorney General of the Commonwealth

("Attorney General") intervened as of right pursuant to G.L. c. 12, § 11E. The Department conducted an evidentiary hearing on November 23, 1998. AT&T sponsored the testimony of two witnesses: Dawn M. Russell, an AT&T marketing manager for the metro market small business organization; and Candace Ryan, an AT&T staff manager.

Initial briefs were filed by AT&T on November 30, 1998 and by the Attorney General on December 1, 1998, one day after the deadline. Reply briefs were filed by both parties on December 3, 1998.

On November 19, 1998, the Department received a petition from Sprint requesting that it be granted a similar waiver of the tape recording requirement in this proceeding. Rather than consider Sprint's petition simultaneously with AT&T's earlier-filed petition and because consideration of Sprint's petition in D.T.E. 98-94 raised concerns of inadequate public notice, the Department docketed Sprint's petition as D.T.E. 98-115 and is investigating it separately.

II. POSITION OF THE PARTIES

A. AT&T¹

¹ At the Department's request, AT&T provided the Department with the following summary of its position. The Department added the citations and the reference to AT&T's Reply Brief.

AT&T states that it has demonstrated, through evidence of the TPV procedures that it follows as well as through evidence of the small number of customer complaints regarding primary interexchange carrier ("PIC") or primary local exchange carrier ("PLEC") changes initiated by AT&T in Massachusetts, that independent TPV providers used by AT&T operate verification systems that ensure a level of protection for consumers at least equivalent to that of tape recording (AT&T Initial Brief at 1). The independent TPV representatives used by AT&T follow mandatory scripts to verify customer requests to be switched to AT&T (*id.* at 2). These scripts solicit from the customer all of the information specified in G.L. c. 93, § 109(c), and obtain from the customer a unique and verifiable code, and that information is recorded and saved electronically (*id.* at 2-3). If the customer is unwilling to provide a unique security code to confirm his or her responses and choice, the verification is unsuccessful and no PIC change is processed (AT&T Reply Brief at 2). TPV employees are monitored to ensure that they follow these scripts, and all specified procedures (AT&T Initial Brief at 3). The TPV providers used by AT&T comply with the requirements of G.L. c. 159, § 12E(2) (*id.* at 4-5). AT&T states that its verification systems have operated successfully, pointing to the fact that in both 1997 and 1998 it has received only two slamming complaints each year in Massachusetts related to PIC changes involving TPV, and that this small number of complaints represents a negligible percentage of AT&T's total PIC changes in Massachusetts (*id.* at 5). AT&T takes the position that it has demonstrated that its TPV systems and procedures provide consumers with protection against slamming that is equivalent if not superior to that afforded by tape recording of TPV requests, and that it should therefore be granted a waiver from the tape recording requirement as provided

in G.L. c. 93, § 109(c)(5) (id. at 6).

B. ATTORNEY GENERAL

The Attorney General argues that AT&T's system provides no means of verifying a customer's assent to a carrier change; rather, it memorializes only a verifier's data entries (Attorney General Initial Brief at 5). AT&T's system, according to the Attorney General, does not provide consumers with reliable, objective evidence to prove or disprove that a third party verifier inaccurately verified a consumer's PIC change request. Instead, it provides only an electronic record which can produce a printout listing the consumer's telephone number, transaction code of the sales office and agent that took the call, the transaction date, and the disposition of the PIC change request (id. at 5-6).

The Attorney General argues that the critical answer to the question of whether the consumer authorized AT&T to switch the consumer's carrier to AT&T is manually entered into the record by the TPV agent. Therefore, the electronic record and printout are no more reliable than the individual inputting the data into the record (id. at 6).

Without a tape recording, or an equivalent alternative, the Attorney General argues that there will be no objective evidence upon which the Department may rely in disputed cases. The Department will instead have to guess which party is telling the truth or which party made a mistake (id.). The Attorney General argues that equivalent protection is "objectively verifiable evidence of consent beyond the mere say so of some third party verifier" (Attorney General Reply Brief at 1).

III. ANALYSIS AND FINDINGS

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Under the recently enacted anti-slamming law, the Department may waive the above-mentioned tape recording requirement if the requesting entity demonstrates to the satisfaction of the Department that it has "an adequate [third party] verification system according to standards that ensure a level of protection for consumers equivalent to that of recording." See G.L. c. 93, § 109(c)(5). While it is clear from the statute that the petitioning entity, in this case AT&T, has the burden of proof with regard to demonstrating the adequacy of its verification system, the statute is silent about what "standards" the Department must apply to determine equivalency with tape recording.² Therefore, the Department must determine such standards in this order.

² The Department notes that it requested the parties in this proceeding to address the appropriate standard of review, and what factors the Department should apply under that standard (see Tr. at 81), but the parties declined.

To receive a waiver of the tape recording requirement, the Department finds that the petitioner's system must capture in written or electronic form the information required to be tape recorded under § 109(c)(2).³ This written or electronic record must be maintained by the petitioning entity or the TPV company for at least one year and be available, at no charge and upon request, to the Department, the Attorney General, or the customer. The information gathered from the TPV call shall not be used for any marketing purpose by the TPV company. To ensure consistency, the employee of the TPV company shall read from a script that elicits the information required in § 109(c)(2), and shall be prohibited from deviating from the script. Moreover, the TPV employee shall be prohibited from modifying, or otherwise altering, the billing telephone number ("BTN") and information regarding the service to be changed. Should a discrepancy arise between the BTN or service information provided to the TPV employee by the carrier's agent or employee and that information given by the customer, no verification may occur. Lastly, monitoring of the TPV employees for quality assurance must be performed by both the petitioning carrier and the TPV company. The Department finds that, at a minimum, these factors must be present in a petitioner's TPV system in order to obtain a waiver.

The Department also may look to the carrier's slamming history in the Commonwealth, and whether the carrier's agreement with the TPV company requires anti-slaming training for

³ Section 109(c)(2) requires that the following information be confirmed by a TPV employee and tape recorded: the identity of the person as well as appropriate verification data; the authority of the person to authorize a change in the primary long distance or local service provider for the identified telephone line(s); and the identity of the carrier that the customer has authorized to be the new primary long distance or local service provider. G.L. c. 93, § 109(c)(2).

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the TPV employees as evidence that the carrier's system provides a level of protection for consumers equivalent to recording. Consideration of a carrier's slamming history may indicate how that carrier's TPV system, as represented to the Department on paper, works in practice. The Department recognizes that mandatory anti-slaming training of TPV employees would make these employees aware of the legal significance to the carrier for unauthorized service changes.

In applying these standards to AT&T's petition, we find that AT&T's TPV system meets our test. The Department finds that the scripts used by the employees of AT&T's TPV vendors elicit the information required by § 109(c)(2) (Exhs. AG-11, DTE-19). The electronic copies of the TPV calls with residential customers are maintained by AT&T for at least one year (Exh. DTE-7). For business customers, AT&T maintains an electronic copy of the verification for four years (Exh. DTE-19, at 2). The information collected during the TPV call is proprietary to AT&T and AT&T does not sell this information to third parties (Exh. DTE-6).⁴

Employees of AT&T's TPV vendors are required to read verbatim from AT&T-provided

⁴ The record is silent, however, on the issue of the availability of these records at no cost to the Department, the Attorney General, or the customer. To ensure consistency with our standard, we will require AT&T to meet this standard on a going-forward basis.

scripts, which contain the information described above, when verifying customer requests to be switched to AT&T (Exhs. AG-3, AG-11, AG-26, AG-29, DTE-19). This requirement is made explicit in AT&T's contracts with TPV companies (Exh. DTE-18, exh. B at 4), and TPV employees cannot change the BTN or services to be verified (Exhs. AG-3, AG-7).

Under AT&T's TPV system, no verification occurs if there is a discrepancy in the information provided to the TPV company by the AT&T telemarketing agent concerning the phone number or requested service to be changed and the information the consumer provides (Exhs. AG-3, AG-7). Should such a discrepancy arise, the order is withheld from the provisioning process (Exh. AG-7), and, thus, the change is not forwarded to the local exchange service provider. Finally, both AT&T and the TPV companies monitor TPV employees to ensure that they adhere to the scripts (Exhs. AG-3, AG-13, AG-29).

In addition, slamming complaints involving AT&T's TPV system in 1997 comprise a minuscule or de minimis percentage of AT&T's PIC changes in the Commonwealth (Exhs. AG-1, AG-23, RR-DTE-2), which suggests that AT&T's TPV system is effective at protecting Massachusetts consumers from being slammed.

We note that while the Attorney General urges the Department to require "objectively verifiable evidence" as a substitute to tape recording, he fails to indicate what form such evidence should take (see Attorney General Reply Brief at 1). The Attorney General's unwillingness or inability to suggest any means by which a carrier could provide "objectively verifiable evidence," leads the Department to conclude that for the Attorney General, nothing short of tape recording is acceptable. This position cannot find support within the statute because to give effect to the

waiver provision contained in § 109(c)(5), the Department must "presume that the Legislature does not intend 'to enact a barren and ineffective provision.'" (see Commonwealth v. Angiulo, 415 Mass. 502, 525 (1993), quoting Insurance Rating Bd. v. Commissioner of Ins., 356 Mass. 184, 189 (1969)).

The Attorney General argues that AT&T's system provides no means of objectively verifying a customer's assent to a carrier change, but rather merely memorializes a verifier's data entries. We disagree. AT&T's TPV system does procure objective evidence from the customer in the form of the unique code that the TPV employee must obtain at the end of the call for the verification process to be complete (Exhs. AG-3, AG-11, DTE-19, Tr. at 20, 26-27, 34-35). This unique code is maintained electronically in the TPV record and, thus, is accessible should a dispute arise (Tr. 26-27).

The standard we have created in this proceeding ensures a level of protection for consumers equivalent to tape recording. In summary, unless and until modified by a subsequent decision or rulemaking,⁵ the standard created in this order is as follows: (1) the information required to be recorded under § 109(c)(2) shall (a) be captured in written or electronic form, (b) be maintained by the petitioning entity for at least one year (c) be available at no charge upon request to the Department, the Attorney General, or the customer, and (d) not be used for any marketing purpose by the TPV company; (2) to ensure consistency, the employee of the TPV company shall read from a script that elicits the information required and shall be prohibited

⁵ As required by the Slamming Law, the Department must promulgate rules implementing the statute. The Department expects to issue proposed rules shortly.

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from deviating from it; (3) the TPV employee shall be prohibited from altering the BTN and the service to be changed; (4) any discrepancy between the BTN or service information provided to the TPV employee by the carrier's agent and that provided by the customer shall prevent a verification; and (5) the carrier, along with the TPV company, must monitor TPV employees for quality assurance. In addition, the Department may consider the carrier's slamming history in the Commonwealth and review its agreements with TPV companies to determine whether adequate anti-slamming training of TPV employees is provided.

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V. ORDER

Accordingly, after due notice, hearing, and consideration, it is

ORDERED: That the petition of AT&T requesting a waiver, under G.L. c. 93, § 109(c)(5), of the requirement that it tape record TPV calls, be and hereby is GRANTED; and it is

FURTHER ORDERED: That AT&T shall be required to make its written or electronic records of TPV calls available to the Department, the Attorney General, or the customer, upon request and at no charge.

By Order of the Department,

Janet Gail Besser, Chair

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr., Commissioner

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Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December, 1998, the original and 10 copies of AT&T Communications of the Midwest, Inc.'s Application for Reconsideration, Clarification or Rehearing in Docket No. RM98-001 were delivered via overnight delivery to:

William Bullard, Jr
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and true and correct copies were delivered via regular mail this 22nd day of December, 1998 to:

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Via Facsimile and Overnight Delivery

January 5, 1999

FAX Received JAN 05 1999

RECEIVED

JAN 05 1999

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Mr. Bill Bullard
Executive Director
SD Public Service Commission
500 East Capital Avenue
Pierre, SD 57501

Re: Proposed Telecommunications Rules, Docket No. RM98-001

Dear Mr. Bullard:

AT&T Communications of the Midwest Inc. submits for filing in the above referenced docket its Amended Application for Reconsideration, Clarification or Rehearing regarding the Telecommunications Rules adopted by the Commission on November 25, 1998. An original and ten copies have been sent via overnight delivery.

Please feel free to call me if there are any questions.

Sincerely,


Letty S.D. Friesen (mfl)

Enclosures

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF PROPOSED)
TELECOMMUNICATIONS RULES)

Docket No. RM98-001

AMENDED APPLICATION FOR RECONSIDERATION, CLARIFICATION
OR REHEARING

On December 22, 1998, AT&T filed an Application for Reconsideration, Clarification, or Rehearing regarding the Telecommunications Rules adopted by the Commission on November 25, 1998. In particular, AT&T sought clarification of the rules on the unauthorized switching of carriers under Rule 20:10:34 (colloquially referred to as "slamming rules.") One of the five areas that AT&T specifically requested the Commission clarify or reconsider was whether the unauthorized switching rules applied to inbound calls.

In its December 17, 1998, meeting, the FCC adopted new anti-slamming measures. From discussion at the meeting and initial releases of information, AT&T believed that the FCC had not ordered that these new rules be applied to inbound calls. With that belief, AT&T requested this Commission to clarify its intent as to the applicability of the new South Dakota rules. Furthermore, if this Commission's intent was to apply verification to inbound calls, AT&T urged the Commission to reconsider its decision. The primary driver of this request was to avoid additional, unnecessary costs that would be incurred by having a requirement that was inconsistent with federal rules and unique to South Dakota.

On December 23, 1998, the FCC issued its Order.¹ Contrary to AT&T's initial understanding, the FCC did order verification of all calls that result in changes of customers' carrier selections, both outbound and inbound. Therefore, AT&T respectfully amends its Application for Reconsideration, Clarification or Rehearing by withdrawing its request on this particular issue. AT&T appreciates the Commission's prompt review of the other requests made in this Application at its meeting tomorrow.

Respectfully submitted this 5th day of January, 1999.

**AT&T COMMUNICATIONS OF
THE MIDWEST, INC.**

By: 
Maria Arias-Chapleau
Letty S.D. Friesen
AT&T Law Department
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¹ Second Report and Order and Further Notice of Proposed Rulemaking in the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket 94-129, Adopted December 17, 1998 and Released December 23, 1998.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 1999, AT&T Communications of the Midwest, Inc.'s Amended Application for Reconsideration, Clarification or Rehearing in Docket No. RM98-001 was delivered via facsimile and the original and 10 copies were sent via overnight delivery to:

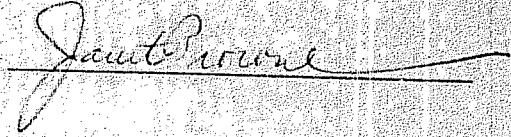
William Bullard, Jr.
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and true and correct copies were delivered via regular mail this 5th day of January, 1999 to:

William P. Heaston, Esq.
Dakota Telecommunications Group
P.O. Box 66
29705 453rd Avenue
Irene, SD 57037

Richard D. Coit
South Dakota Independent Telephone Coalition
207 East Capitol Avenue, Suite 206
Pierre, SD 57501

Donald A. Low
Sprint Communications Company, L.P.
8140 Ward Parkway - 5E
Kansas City, MO 64114


A handwritten signature in cursive script, reading "Janté Proune", is written over a horizontal line.

RECEIVED

JAN 19 1999



Letty S. D. Friesen
Attorney

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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January 15, 1999

Mr. Bill Bullard
Executive Director
SD Public Service Commission
500 East Capital Avenue
Pierre, SD 57501

Re: Changes in Contacts for AT&T Communications of the Midwest, Inc.
Docket No. RM98-001, TC96-184.

Dear Mr. Bullard:

AT&T has recently reorganized some of its staffing for the states within its Western Region. As a result, AT&T's primary contact people for the State of South Dakota have changed. I am writing this letter to introduce myself to you and to let you know whom the other new staff members are that will be serving South Dakota. We all look forward to meeting and working with you, your staff and the Commissioners.

To start, I am the attorney that will be replacing Mary Tribby, and you can reach me at the following address:

Letty S.D. Friesen
AT&T Communications of the Midwest, Inc.
1875 Lawrence Street, Suite 1500
Denver, CO 80202
(303) 298-6475
e-mail: lfriesen@lga.att.com

Assisting me with the many tasks we anticipate in South Dakota is Janet Jensen. Janet is the South Dakota Docket Manager, and she is an additional person that is available to assist you in answering any questions that relate to AT&T and the various regulatory matters that arise. You can reach Janet at (303) 298-6930. Her mailing address is the same as mine except her Suite number is 1400.

Tom Berkleman is AT&T's new South Dakota State Manager replacing Loren Hiatt. Tom primarily concentrates on legislative matters, and he can be reached at (612) 376-6767. Sandy Hofstetter is the new Assistant State Manager, and she is the primary contact for any regulatory matters. Sandy can be reached at (612) 376-6765. The mailing address for both Tom and Sandy is as follows:

901 Marquette Avenue, 9th Floor
Minneapolis, MN 55402-3205

Please forward copies of all correspondence, notices, filings, and any other materials concerning AT&T to me and to Sandy at the addresses noted above.

In addition, I am sending this letter to the parties on the service lists for all cases in which AT&T is currently active to inform them of the needed changes to those lists. See the attached Service list which includes all parties involved in Docket Nos. RM98-001 and TC96-184. Should you have any questions or concerns in regard to these changes, please do not hesitate to call me.

Sincerely,



Letty S.D. Friesen

LF/bsg

cc: Tom Berkleman
Sandy Hofstetter
Janet Jensen
Maria Arias-Chapleau

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 1999, the original and 10 copies of AT&T Communications of the Midwest, Inc.'s Correspondence Regarding Changes in Contacts for AT&T Communications of the Midwest, Inc. in Docket Nos. RM98-001 and TC96-184 were delivered via regular mail to:

William Bullard, Jr
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

and true and correct copies were delivered via regular mail this 15th day of January, 1999 to:

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