

BEFORE THE PUBLIC SERVICE COMMISSION

OF

THE STATE OF MISSISSIPPI

98-AD-90

MISSISSIPPI PUBLIC SERVICE COMMISSION

IN RE: PROPOSAL OF THE MISSISSIPPI PUBLIC SERVICE COMMISSION TO ADOPT RULE 47.1 OF ITS RULES AND REGULATIONS GOVERNING PUBLIC UTILITY SERVICE, HERETOFORE INITIALLY ADOPTED BY THE COMMISSION EFFECTIVE SEPTEMBER 2, 1957, PURSUANT TO SECTION 77-3- MISSISSIPPI CODE OF 1972.

**ORDER ADOPTING RULE 47.1**

This day this cause came on before the Mississippi Public Service Commission ("Commission") and the Commission being fully advised, finds as follows:

**Procedural History**

- (1) On February 10, 1998, an Order was entered by the Commission proposing adoption of new Rule 47.1.
- (2) Notice was given to all interested parties which included all telecommunications service providers certificated in the State of Mississippi.
- (3) Orders to intervene were granted to BellSouth Telecommunications, Inc. ("BellSouth"); AT&T Communications of the South Central States, Inc. ("AT&T"); LCI International Telecom Corp. ("LCI"); WorldCom Technologies, Inc. ("WorldCom"); American Communication Services of Jackson, Inc. ("ACS"); Telecommunications Resellers Association ("TRA"); Sprint Communications Company, L.P. ("Sprint"); MCI Telecommunications Corporation ("MCI"); State Communications, Inc. ("SCI"); Brittan Communications International Corporation ("BCI"); and Excel Telecommunications, Inc. ("Excel")
- (4) Comments were filed by MCI, Excel, SCI, WorldCom, AT&T, Sprint, and BellSouth.
- (5) On March 3, 1998, an Order was entered consolidating this Docket with 98-AD-076.
- (6) A workshop was held on April 8, 1998.
- (7) All telecommunications service providers received notice of the workshop and were encouraged to attend.
- (8) Participating in the workshop were the Mississippi Public Utilities Staff, Sprint, MCI, AT&T, WorldCom, BCI, TRA, Excel, SCI, ACS, BellSouth, and participants from all three districts of the Mississippi Public Service Commission.
- (9) On April 29, an Order was entered amending the proposed new Rule 47. 1.
- (10) After issuance of the Order amending new Rule 47.1, additional comments were filed by AT&T, MCI, Sprint, WorldCom, TRA, and BellSouth.
- (11) On June 2, 1998, at 1:30 P.M., a hearing was held in this matter. At the hearing, comments filed by the parties were adopted and made a part of the record thereof.

(12) At the hearing, Chris Boltz testified on behalf of BellSouth.

### Findings

(13) The adoption of this rule on slamming is the first step of the Commission in addressing this massive problem. Slamming is a problem constituting more complaints than any other single issue or service regulated by the Commission. Therefore, the Commission finds that adoption of Rule 47.1 regarding slamming is in the public interest.

(14) The Commission further finds that it is in the public interest to invoke its statutory authority to put reasonable "terms and conditions" on the issuance of certificates of public convenience and necessity to resellers. The Commission further finds that the following "terms and conditions" are reasonable and that the public convenience, necessity and protection requires their use.

(15) Nothing in this Order should be considered or construed to preempt current codes governing the telecommunications industry. If a court of proper jurisdiction finds any provision(s) of this Order unenforceable or invalid, such shall not invalidate the other provisions herein contained.

IT IS THEREFORE ORDERED that Rule 47.1 be and is hereby adopted and made a part of the Mississippi Public Service Commission Rules and Regulations Governing Public Utility Service. A copy of Rule 47.1 as adopted by this Commission is attached hereto and incorporated herein by reference as Exhibit "A" to this Order.

IT IS FURTHER ORDERED that all certificates of public convenience and necessity granted to resellers after the date of this Order shall contain the following language:

Pursuant to Miss. Code . Ann., §77-3-13(3)(Supp. 1997) 1997) the Commission may attach to the exercise of the rights granted by this certificate, "Such reasonable terms and conditions as to time or otherwise as in its judgment the public convenience, necessity and Protection may require" emphasis *added*. *Section 77-3-13(3)* provides further that the certificate holder, "may forfeit such certificate after issuance for noncompliance with its terms."

Therefore, pursuant to the above statutory authority, and for the reasons set forth in the final order adopting slamming rules, Docket No. 98-AD-90, the granting of this certificate is conditional. The condition is that the certificate holder shall not violate any of the Commission's Rules, and in particular Rule 47.1, Rules and Regulations Governing Public Utility Service, pertaining to slamming and telemarketing. If the Commission finds, after notice and a hearing, that the certificate holder has violated any Commission Rule, particularly Service Rule 47.1, the certificate may be forfeited, the company may be subject to a civil penalty pursuant to Miss. Code Ann., §77-1-53 (1992), as amended, and may be subject to all other fines and penalties pursuant to applicable law and rules of this Commission.

Due to the fact that many slammed customers will not be able to leave work to attend a hearing in Jackson, the Commission finds that it is in the public interest to accept sworn affidavits from ratepayers who have been slammed. Resellers will have an opportunity, through the hearing process, to dispute the affidavits.

The Final Order in Docket 98-AD-90 is incorporated herein by reference.

IT IS FURTHER ORDERED that said Rule 47.1 shall be effective as of the date of this Order, except that all telecommunications service providers, including the incumbent local exchange companies, will have sixty (60) days from the date of this Order to comply with Section 14 of Rule 47.1

IT IS FURTHER ORDERED that the Order in 98-AD-076, which was consolidated with this Docket, is rescinded.

IT IS FURTHER ORDERED that copies of this Order be mailed by the Executive Secretary of this Commission to all public utilities affected thereby, and that the appropriate filings be made with the Office of

the Secretary of State, pursuant to the Administrative Procedures Act.

Chairman Bo Robinson voted Aye; Vice-Chairman George Byars voted Aye and Commissioner Nielsen Cochran voted Aye.

SO ORDERED by this Commission on the 11<sup>th</sup> day of June, 1998.

MISSISSIPPI PUBLIC SERVICE COMMISSION

Bo Robinson, Chairman

George Byars, Vice-Chairman

Nielsen Cochran, Commissioner

#### **RULE 47.1**

##### **DEFINITIONS:**

**Competitive Local Exchange Carrier (CLEC):** A competitive local phone company.

**Customer:** The party responsible for paying local or toll charges and any party whom the carrier, in reliance on the verification requirements in (3) A-C, believes in good faith to have authority to authorize any conversion of telecommunications service provider

**Interexchange Carrier (IXC):** A telephone company that provides long distance service. Some IXC's may now also be allowed to provide local service.

**Letter of Agency: (LOA)** A written authorization by the customer allowing a telecommunications company to act on their behalf to change the customer's carrier of local and/or long distance service.

**Local Exchange Carrier (LEC):** A local phone company.

**Primary Interexchange Carrier (PIC)-.** The long distance company to which traffic from a given location is automatically routed when dialing 1+ in equal access areas. The PIC is identified by the Carrier Identification Code which is assigned by the LEC or CLEC to the telephone numbers of all the subscribers to that carrier to ensure the calls are routed over the correct network. When a subscriber switches long distance carriers, it often is referred to as a PIC change.

**Reseller:** A local or long distance company that does not own its own transmission lines. It buys lines and services from other carriers and resells them to its subscribers.

**Telecommunications Service Provider:** Any person, firm, partnership or corporation engaged in furnishing telephone service to the public.

(1) No telecommunications service provider shall provide for, bill for, or solicit any service that could involve intrastate services within Mississippi; without a Certificate of Public Convenience and Necessity from the Commission. If the telecommunications service provider provides, bills, or solicits for, interstate service only, then all intrastate services must be blocked by the telecommunications service provider. Mississippi intrastate service currently includes calls which originate and terminate within Mississippi. Telecommunications service providers unable to block intrastate services must obtain a Certificate of Public Convenience and Necessity to operate from the Commission.

(2) All telecommunications service providers operating under a Certificate of Public Convenience and Necessity will, upon notice from the Commission, cease to provide telecommunications service, including interconnection service, directly to or on behalf of an uncertified telecommunications service provider that is required to be certified and which is providing telecommunications service in Mississippi, unless the uncertified telecommunications service provider is exempt from the Commission's certification requirements pursuant to state or federal law or explicit Commission order.

(3) No telecommunications service provider, including LECs and CLECs, authorized to provide service in this state shall submit to a customer's LEC or CLEC a local change and/or primary interexchange carrier change order unless confirmed by one of the following methods:

a) obtaining the customer's written authorization by Letter of Agency (LOA). The LOA must conform to Rule (4).

b) obtaining the customer's electronic authorization by a tollfree number called from the telephone number(s) on which the telecommunications service provider is to be changed; or

c) obtaining by audio recording the customer's oral authorization and verified by an independent third party. The audio recording should contain both the original solicitation and verification. The third party must:

i state the name of the person calling and the name of the carrier on whose behalf he is calling;

ii state that he is calling to confirm the customer's agreement to change providers to the named carrier for local, local toll or long distance service (as may be applicable);

iii inquire whether the consumer is the decision maker/person authorized to change the telecommunications service for the telephone number(s); and

iv inquire whether the consumer is at least 18 years old.

The above rule does not apply to inbound calls initiated by the customer.

(4) The LOA must contain the following information:

a) The LOA shall be a separate document whose sole purpose is to authorize a change in the customer's telecommunications service provider. The LOA must be signed and dated by the customer to the telephone line(s) requesting the telecommunications service provider change.

b) The LOA shall not be combined with inducements of any kind on the same document. The LOA must not be associated with or attached to any display promoting anything other than telecommunications service. This includes, but is not limited to, the use of contests or sweepstakes entries of any kind.

c) Notwithstanding paragraphs (1) and (2) of this section, the letter of agency may be combined with checks that contain only the required LOA language prescribed in this Rule and the necessary information to make the check a negotiable instrument. The letter of agency check shall not contain any promotional language or material. The LOA check shall continue, in easily readable, bold-face type on the front of the check, a notice that the customer is authorizing a telecommunications service provider change in the telecommunications service provider by signing the check. The LOA language also shall be placed near the signature line on the back of the check.

d) at a minimum, the LOA must be printed with a type of sufficient size and readable type to be clearly legible and must contain clear and unambiguous language that confirms:

(1) the customer's billing name and address and each telephone number to be covered by the telecommunications service provider change order; and

(2) the decision to change the telecommunications service provider carrier from the current carrier to the prospective carrier; and

(3) that the customer designates the telecommunications service provider to act as the customer's agent for the telecommunications service provider change; and

(4) that the customer understands that any telecommunications service provider the customer chooses may involve a charge to the customer for changing the telecommunications service provider.

(5) All telecommunications service providers shall within 10 days mail to the customer a confirmation letter which includes:

a) the name and address of the soliciting telecommunications company;

b) the name, address and telephone number of the customer of record;

c) a description of any terms, conditions or charges that will be incurred; and

d) a toll-free telephone number of the soliciting telecommunications company for

consumer complaints.

The above Rule does not apply to inbound calls initiated by the customer.

(6) Any telecommunications service provider shall cooperate with the customer to return the customer to the telecommunications service provider from which the customer was changed, or the telecommunications service provider of the customer's choice, within three business days of the customer's request. The LEC or CLEC obligations are covered separately in Rule (8).

(7) Any telecommunications service provider in violation of this rule

a) pay or credit, if not previously credited, all usual and customary charges associated with returning the customer to the original telecommunications service provider as soon as feasible;

b) provide upon request of the customer's previous carrier, all billing records to the original telecommunications service provider that are related to the unauthorized provision of service to the customer within 45 business days of the customer's request to return the customer to the original telecommunications service provider; c) pay the original telecommunications service provider any amount paid to it by the customer that would have been paid to the original telecommunications service provider if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications service provider; if the unauthorized carrier has already made payment to the customer's original carrier pursuant to any federal laws/regulations, the payment under this rule shall be reduced by the amount already paid pursuant to such federal laws/regulations;

d) return to the customer any amount paid by the customer in excess of the charges that would have been imposed for identical services by the original telecommunications service provider if the unauthorized change had not occurred, within 30 business days of the customer's request to return the customer to the original telecommunications service provider; and

e) maintain a record related to customers that experienced an unauthorized change in telecommunications service providers that contains:

(1) the name of the telecommunications service provider that initiated the unauthorized change;

(2) the telephone number(s) that were affected by the unauthorized change;

(3) the date the customer requested that the telecommunications service provider that initiated the unauthorized change return the customer to the original carrier; and

(4) the date the customer was returned to the original telecommunications service provider.

(8) The customer's LEC or CLEC shall change the customer back to their previous carrier or another carrier of the customer's choice within 24 hours of being notified of the unauthorized switch, if feasible. The customer's LEC or CLEC shall not disconnect for non-payment of disputed charges related to a slamming incident.

(9) The original telecommunications service provider from which customer was changed may:

a) provide the telecommunications service provider that initiated the unauthorized change with the amount that would have been imposed for identical services by the original telecommunications service provider if the unauthorized change had not occurred, within 10 business days of the receipt of the billing records required under paragraph 6(b);

and shall

b) provide to the customer all benefits associated with the service(s), e.g., frequent flyer miles, that would have been rewarded had the unauthorized change not occurred, on receipt of payment for service(s) provided during the unauthorized change.

(10) All telecommunications service providers shall cooperate completely and fully with any request of the Commission regarding investigation of unauthorized changes in a customer's telecommunications service provider. All telecommunications service providers shall provide to the Commission a contact person and phone number to assist the Commission in resolving consumer slamming complaints.

(11) All letters of agency, audio recordings of both the original solicitation and verification, or other evidence of change orders shall be maintained by the soliciting telecommunications company for one year. Failure to maintain such records shall constitute prima facie evidence that consent from the customer was not obtained,

(12) All telecommunications service providers must provide to the Commission a copy of the letter of agency, audio recordings, or other evidence of change order, and if applicable, scripts used for customer solicitation and/or verification, upon request by the Commission within ten (10) days.

(13) Companies shall not engage in abusive telemarketing practices. These practices shall include but not be limited to:

a) Threats, intimidation or the use of profanity;

b) Repeatedly causing a prospect's telephone to ring, repeatedly engaging a prospect in annoying continuous conversation with intent to harass or abuse the prospect;

© Engaging in calls to a prospect other than between the hours of 9:00 A.M. to 9:00 P.M. unless the prospect has given prior consent to such a call; and

d) Falsely purporting to be associated with a local exchange company or another long distance interstate or intrastate carrier. Being a reseller of a company's services does not constitute being associated with or an agent of such company.

(14) Any bill for telecommunications service must contain the following

a) The certificated name of the telecommunications service provider; and

b) a toll-free number directly to the telecommunications service provider. Each telecommunications service provider shall provide a live operator or shall record end user complaints made to its customer service number 24 hours a day, 7 days a week. A combination of live operators and recorders may be used. All calls must be answered within a reasonable time frame. If a recorder is used, the telecommunications service provider shall attempt to contact each slamming complainant no later than the next business day following the date of the recording and each subsequent day until the customer reached. Alternatively, if the telecommunications service provider is unable to contact the complainant after two telephone calls, then the telecommunications service provider may respond to the complainant in writing mailed to the complainant by U.S. mail, postage prepaid. If both local and toll charges are on the same bill, the bill should include the certificated name and toll-free number for providers of both servers, if different.

(15) Penalties:

Any willful or intentional violation of this article may subject the telecommunications service provider to a penalty not to exceed \$5,000.00 for each day during which such violation continues. Violations may also

constitute grounds for forfeiture after a public hearing, of a telecommunications service provider's Certificate of Public Convenience and Necessity to provide service in Mississippi. Notwithstanding anything to the contrary contained elsewhere in this article, any other activity or conduct engaged in during the course of changing a customer's carrier which is intended to mislead, deceive, confuse, or perpetrate a fraud or unfair or deceptive act or practice shall constitute cause, with the discretion of the Commission, to invoke the penalties or revocation, or both, provided for in this article.