Decision No. C01-1304

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 01R-385T

IN THE MATTER OF PROPOSED RULES REGARDING THE COLORADO NO-CALL LIST.

DECISION DENYING APPLICATIONS FOR REHEARING, REARGUMENT, OR RECONSIDERATION AND ADOPTING RULES

Mailed Date: December 20, 2001
Adopted Date: December 12, 2001

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I. BY THE COMMISSION

A. Statement

This matter comes before the Commission for consideration of Applications for Rehearing, Reargument, or Reconsideration ("RRR") to Decision No. C01-1138 (Mailed Date of November 13, 2001) filed by WorldCom, Inc. ("WorldCom"); AT&T Communications of the Mountain States, Inc. ("AT&T"); Qwest Corporation ("Qwest"); and the Colorado Telecommunications Association, Inc. ("CTA"). In Decision No. C01-1138, we adopted rules implementing the Colorado No-Call List Act[1] ("Act") Pursuant to § 40-6-114, C.R.S., WorldCom, AT&T, Qwest, and CTA now request reconsideration of certain provisions contained in the rules approved in Decision No. C01-1138. Now being duly advised, we deny the applications for RRR. The rules appended to Decision No. C01-1138 are adopted.

II. DISCUSSION

A. Limiting Telephone Solicitation by LECs

1. In the Notice of Proposed Rulemaking ("Notice"), we requested comment about adopting rules limiting the ability of telephone local exchange carriers ("LEC") to conduct telephone solicitations of their own local exchange customers. The Notice suggested that the Commission might define

[1] Sections 6-1-901, *et seq.*, C.R.S.

"voluntary" in the statutory term "existing business relationship" (§ 6-1-903(10), C.R.S.) to, in effect, limit telephone solicitations by LECs. After considering the filed comments, we concluded in Decision No. C01-1138 (pages 19-21) that the Act did not empower the Commission to adopt a rule limiting the telemarketing activities of LECs with respect to their own customers. WorldCom now objects to our conclusions on this issue.

2. In particular, WorldCom requests that we delete the discussion in Decision C01-1138 that the Act does not indicate an intent to limit the telemarketing activities of LECs. We deny this request. The discussion to which WorldCom objects reflects the Commission's legal conclusions with respect to its own authority under the Act. That is, the legal effect of the discussion relates solely to the Commission's rulemaking authority. Notably, the sole purpose of this docket is for the Commission to adopt No-Call List rules consistent with directives to the Commission in the Act. As the rulemaking agency under the Act, our conclusions reqarding our own authority were appropriate. No reason exists to modify that discussion.

B. The Bighorn List

In Decision No. C01-1138 (pages 12-18), we directed the Designated Agent to accept the Bighorn No-Call List with

verification. WorldCom and AT&T reassert that the Commission lacks the authority to adopt such a rule. The applications for RRR present no new arguments, and we affirm our reasoning in Decision No. C01-1138. Therefore, the applications for RRR on this issue are denied.

C. The Time for Updating the No-Call List

1. Rule 4.10 requires the Designated Agent to update the No-Call List by the 10th day of each calendar quarter. WorldCom requests reconsideration of that rule. WorldCom contends that Rule 4.10 should be modified to conform to § 6-1-904(4), C.R.S.. WorldCom argues: The Act (*i.e.,* § 6-1-904(4), C.R.S.) guarantees telemarketers 30 days after the beginning of every calendar quarter to update their no-call lists. Rule 4.10, on the other hand, gives the Designated Agent until the 10th day after the quarter's end to update the list. Thus, Rule 4.10 will likely allow a telemarketer only 20 days to update its no-call list. The inconsistency between Rule 4.10 and § 6-1-904(4), C.R.S., will cause confusion. For example, WorldCom states that if a telemarketer chooses to update its list within the first ten days of the calendar quarter (*i.e.,* before the Designated Agent has issued the quarterly updated list), that telemarketer has complied with the statutory requirements, even though the list is not actually an updated list. This could

result in telemarketers using an inaccurate list for an additional quarter.

2. We deny the request to modify Rule 4.10. We note that § 6-1-904(4), C.R.S., establishes *a maximum* 30 day period for telemarketers to update their no-call lists. Other provisions of the Act (*e.g.,* §§ 6-1-905(3)(b)(VII) and (X), C.R.S.) give the Commission the legal authority to specify how the Designated Agent will update the No-Call List. Requiring the Designated Agent to update the list within 10 days of the end of the quarter is within our authority.

3. It is in the best interest of consumers to utilize the most updated and accurate information available. If the rules were to allow for 30 days for updates as WorldCom suggests, the information reported to the Commission would not include the entire quarter. The deadline for updates from the Designated Agent would need to be pushed back ten days before the quarter end. This would require LECs to provide information to the Designated Agent on a date other than the normal reporting time, that is, the end of the quarter. Most LECs do monthly or quarterly reporting. Consequently, the requirement to provide a report ending on the 20th day of the month would likely be burdensome to the LECs. Moreover, we reject WorldCom's apparent assertion that telemarketers will find it burdensome to update their no-call lists within 20 days (as

opposed to 30). With no-call lists provided in electronic format, as required by the rules, 20 days is sufficient time for telemarketers to update their lists.

4. We also reject the notion that Rule 4.10 will cause confusion. It is obvious that if a telemarketer "updates" its list prior to the tenth day of the quarter, it will not be using a truly updated list, and, therefore, may violate the Act. That is, such a telemarketer will risk calling someone who has been added to the updated No-Call List in the previous quarter. That telemarketer would thus risk having complaints issued against them, and may face penalties in enforcement actions by the Attorney General.

D. Updates to the No-Call List by LECs

1. Both Qwest and CTA request reconsideration of Rule 5[2] which requires LECs to provide electronically to the Designated Agent a list of changed, transferred, and disconnected residential telephone numbers on a quarterly basis. Qwest requests clarification of the definition of the information required by Rule 5, and also requests that it be allowed to provide the Designated Agent the same information which it currently provides to the Federal Communications

[2] This rule appeared as Rule 5.1 in the proposed rules attached to the Notice (Decision No. C01-865). Qwest recommends here that Rule 5.1 be changed to 723-22-5 to reflect the elimination of Rule 5.2. The Commission agrees.

Commission ("FCC") pursuant to 47 CFR § 52.15(f)(iv). For the FCC, Qwest divides its numbers into six categories: aging, available, assigned, intermediate, administrative, and reserved. For the purpose of complying with Rule 5, Qwest proposes to supply the numbers in the available category and asks that the rule be changed to state that provision of that information would be acceptable. Qwest is willing to provide this information to the Designated Agent on a quarterly basis even though it does not file with the FCC as frequently.

2. CTA argues that, while maintaining updated records may be a traditional public utility function of LECs, providing such information to a third party for non-public utility purposes is not. Therefore, CTA requests that LECs be permitted to bill the Designated Agent directly for the costs of providing this information. CTA also contends that an exception is needed to the electronic filing requirement because some of the small LECs do not have this capability. Finally, CTA proposes that a LEC provide the required information in a format that it already uses. For example, rural LECs already provide updated information to each Public Service Answering Point on a daily basis and so, according to CTA, they should be able to use the same information in the same format to comply with Rule 5. If this is acceptable, CTA further argues, the Designated Agent must take responsibility for protecting any proprietary customer

information, which the LECs would be providing through this process. The Designated Agent must also provide "hold harmless" liability protection to the LECs. Concerning Qwest's proposal to use the same information it provides to the FCC, CTA states that this report is neither required nor supplied by rural LECs to the FCC, and, thus, is not an alternative available to them for compliance with Rule 5.

3. The Commission finds that CTA's two proposals (1) that LECs be allowed automatically to bill the Designated Agent for costs associated with providing the updates, and (2) that an exception to the electronic filing requirement now be given to those LECs that may not possess this capability are not supported by the record in this case. If any LEC wishes relief in either of these areas, it should apply for a waiver under Rule 6 or make another appropriate filing with the Commission, and offer evidence to support such a request. In this case, however, this portion of CTA's application for RRR will be denied.

4. Both Qwest and CTA propose to comply with Rule 5 by supplying reports that are already being compiled for other purposes. However, we lack sufficient information here to determine whether either of the proposals would actually provide the required information in the required format, as specified in Rule 5. Consequently, we cannot endorse either proposal at this

time.[3] Each LEC will need to work out the details of complying with Rule 5 with the Designated Agent. The Designated Agent, for its part, should implement reporting processes that comply with the rule, but are also as efficient and inexpensive as possible. If disputes arise during this effort, the LEC may seek a waiver from the Commission under Rule 6. For purposes of this docket there is no need to change Rule 5. The rule is general and flexible, and the LECs should be able to comply with the rule without unreasonable burden. For these reasons, the Commission denies Qwest's and CTA's applications for RRRs on this issue.

III. CONCLUSION

For the foregoing reasons, we deny the applications for RRR. The rules appended to Decision No. C01-1138 as Attachment A are adopted as the final rules in this matter.

IV. ORDER

A. The Commission Orders That:

1. The Applications for Rehearing, Reargument, or

[3] While we do not rule on either proposal for purposes of this proceeding, it does appear that the Qwest proposal would not be satisfactory. Qwest is proposing to provide, on a quarterly basis, all numbers that appear in the "available" category in the report to the FCC. However, it appears that this category alone does not comply with the content requirement of Rule 5. Qwest might explore the possibility of providing numbers from two of the six categories from this report, namely the "aging" and "available" categories.

Reconsideration to Decision No. C01-1138 filed by WorldCom, Inc.; AT&T Communications of the Mountain States, Inc.; Qwest Corporation; and the Colorado Telecommunications Association, Inc. are denied.

2. The rules appended to Decision No. C01-1138 as Attachment A are adopted. Within twenty days of the effective date of this decision, the adopted rules shall be filed with the Secretary of State for publication in the next issue of the *Colorado Register* along with the opinion of the Attorney General regarding the legality of the rules.

3. This order is effective immediately upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING December 12, 2001

(S E A L)

ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

POLLY PAGE

JIM DYER

Commissioners

CHAIRMAN RAYMOND L. GIFFORD
CONCURRING, IN PART,
DISSENTING, IN PART.

V. CHAIRMAN RAYMOND L. GIFFORD CONCURRING, IN PART, AND DISSENTING, IN PART:

Consistent with my views expressed in Decision No. C01-1138, I dissent from the rule allowing the Designated Agent to accept the Bighorn list as part of the official No-Call List.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

CHAIRMAN RAYMOND L. GIFFORD

Commissioner

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