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STATE CONSUMER PROTECTION BOARD

Timothy S. Carey
Chairman and Executive Director

George E. Pataki
Governor

Ann Kutter
Deputy Executive Director

September 12, 1997

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, D.C. 20554

Re: CC Docket No. 94-129: Implementation of the Subscriber Carrier Selection Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.

Dear Mr. Secretary:

Enclosed are an original and eleven copies of the Comments of the New York State Consumer Protection Board in Docket No. 94-129. A copy is being provided to Ms. Cathy Seidel of the Common Carrier Bureau. In addition, copies are being filed with the Formal Complaints Branch of the Enforcement Division and with the Commission's copy contractor.

Also enclosed is a copy of our comments on diskette, in the format specified by the Commission. A diskette containing our comments is also being provided to Ms. Cathy Seidel.

Sincerely,

Timothy S. Carey

Timothy S. Carey
Chairman and Executive Director

Enclosures
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FEDERAL COMMUNICATIONS COMMISSION

In The Matter Of	
Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	

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COMMENTS OF THE NEW YORK STATE
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FEDERAL COMMUNICATIONS COMMISSION

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Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	CC Docket No. 94-129

COMMENTS OF THE NEW YORK STATE
CONSUMER PROTECTION BOARD

The New York State Consumer Protection Board (NYSCPB) -- a state agency which represents the interests of New York's residential consumers, small businesses and farms -- respectfully submits these comments in response to the Federal Communication Commission's (FCC's or the Commission's) Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration released July 15, 1997 (NPRM and Order).[1] In general, the goal of this proceeding is to establish rules to eliminate slamming -- the unauthorized change of a consumers' telecommunications carrier(s). The NYSCPB advocates strong measures to prevent slamming and to protect consumers when slamming occurs. Such safeguards will help ensure that the pro-competitive and pro-consumer objectives of the Telecommunications Act of 1996 (Act) are realized.

We are concerned that several aspects of the FCC's proposals would not adequately prevent slamming or protect consumers who are the victims of slamming.

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[1] Unless otherwise indicated, all citations in these comments refer to the NPRM and Order.

In Point I, we explain that the FCC should ensure that stronger rules are implemented as soon as possible to prevent slamming and to protect consumers when slamming occurs. Rapid implementation of such rules -- as well as investigation of new types of slamming and identification of new measures to prevent such slamming -- should be a high priority of the FCC, since slamming undermines the FCC's pro-competition and pro-consumer objectives.

In Point II, we address the need to protect consumers who have been slammed. We explain why such consumers should not be required to pay any charges levied by slamming companies for up to four months after they have been slammed. We also explain why consumers who are the victims of slamming should be made whole promptly for any premiums[2] they would have earned had they not been slammed.

We explain in Point III why the FCC's proposed rules should be modified to address consumer-requested account freezes. In particular, FCC rules should explicitly require carriers to verify that a customer has not imposed a freeze on their telecommunications service provider(s) before executing a carrier change order for such service(s). In addition, FCC rules should also ensure that carrier freeze requests are obtained in a

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[2] As defined by the FCC, premiums are "additional products or services offered to customers for subscribing to a carriers' telecommunications services." (¶ 8, footnote 29) Premiums may include telecommunications services such as additional service minutes or volume discounts, as well as non-telecommunications services such as travel bonuses.

competitively neutral manner and that any carrier freeze procedures maintain customer privacy.

In Point IV, we demonstrate that the negative-option provision of an existing FCC carrier change verification procedure should be eliminated since that option would be virtually identical to the use of negative option letters of agency (LOAs), which are prohibited by Section 64.1150(f) of the FCC's regulations.

We explain in Point V that the FCC should recognize the ability of local exchange carriers (LECs) or other entities executing carrier change orders to discriminate in their handling of such orders among carriers including themselves and/or their affiliates, and non-affiliated companies. The FCC should ensure that its rules prevent discrimination and anticompetitive conduct by all entities executing carrier change orders.

Finally, in Point VI, we demonstrate that the FCC's carrier change verification rules should be applicable to consumer-initiated calls to telecommunications carriers, as well as company-initiated calls to consumers. Further, such rules should be applicable to all calls to carriers, not just those to carriers' sales or marketing centers.

Based upon our review of the NPRM and Order, the NYSCPB urges the FCC to:

1) ensure that the establishment of rules and regulations to eliminate slamming and protect consumers where slamming does occur is one of the highest priorities of the FCC;

2) absolve consumers from paying charges levied by slamming companies for up to four months;

3) ensure that consumers who pay charges assessed by an unauthorized carrier are reimbursed within 30 days by the slamming company;

4) adopt rules which ensure that consumers are promptly made whole for premiums they would have earned if they had not been slammed;

5) require carriers to verify that a carrier freeze is not in place before executing a carrier change;

6) ensure that all executing carriers have access to information regarding existing freezes in a competitively neutral manner;

7) preserve customer privacy in carrier freeze procedures;

8) permit carriers to provide information about freeze programs, but limit their ability to conduct promotions regarding freezes;

9) extend carrier change verification procedures to freeze requests;

10) eliminate the negative-option provision of the "welcome package" verification procedure;

11) adopt additional rules to preclude anti-competitive conduct by incumbent LECs and other executing carriers, and

12) apply carrier change verification rules to in-bound calls.

Each recommendation is detailed below.

I. THE ELIMINATION OF SLAMMING SHOULD BE AN FCC PRIORITY.

Slamming is an inappropriate business practice that causes injury to telephone customers, losses to legitimate telephone companies and undermines the development of competitive telecommunications markets. Telephone customers who are victims of slamming are often overcharged, provided inferior service quality, unable to use calling cards issued by their selected carrier in

times of emergency and lose additional products or services offered by their selected carrier. Telephone customers who have their service changed without their authorization must expend valuable time and resources to investigate and reverse the action and suffer a loss of control over personal choices for telephone service.

Slamming also harms legitimate telephone companies and undermines competition. For any competitive marketplace to work, consumers must have information about their market choices and the opportunity to choose among providers. Slamming takes away those options from consumers.

Complaints received by the NYSCPB consistently demonstrate that victims of slamming are deeply offended that their telecommunications provider has been changed without their authorization. Consumers complain that they have been cheated, deceived and are the victims of fraud and illegal activity. Those complaints demonstrate that slamming decreases consumer confidence in increasingly competitive telecommunications markets.

Accordingly, strong rules must be established to prevent slamming and to protect consumers where slamming occurs. The FCC first implemented safeguards to deter slamming in 1985[3] and adopted further measures in 1992[4] and 1994[5]. The Telecommunications Act of

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[3] 101 FCC 2d 911 (1985).

[4] Policies and Rules Concerning Changing Long Distance Carriers, CC Docket 91-64, Report and Order, 7 FCC Rcd 1038 (1992).

[5] Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, Notice of Proposed Rulemaking, 9 FCC Rcd 6885 (1994); Report and Order, 10 FCC Rcd 9560 (1995).

1996 expands the scope of the FCC's authority to address slamming by all local telecommunications carriers, and also adds an economic disincentive for carriers to engage in slamming. In particular, Section 258 of the Act states:

> (a) Prohibition - No telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe. Nothing in this section shall preclude any State commission from enforcing such procedures with respect to intrastate services.
>
> (b) Liability for Charges - Any telecommunications carrier that violates the verification procedures described in subsection (a) and that collects charges for telephone exchange service or telephone toll service from a subscriber shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation, in accordance with such procedures as the Commission may prescribe. The remedies provided by this subsection are in addition to other remedies available by law.
>
> (47 U.S.C. Section 258)

This NPRM and Order, however, represents the FCC's first efforts to implement Section 258 of the Act -- more than 18 months after the Act was signed. Further, the NPRM and Order is the FCC's first action on several Petitions for Rehearing which requested stronger slamming-related regulations than were adopted in the FCC's 1995 Report and Order[6] -- more than two years after the 1995

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[6] Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995).

Order was issued. Meanwhile, since the Act became Law, the annual number of slamming-related complaints received by the FCC has approximately doubled.[7] In addition, the number of slamming-related inquiries received by other entities has also increased substantially in that time period. For example, US WEST Communications reported that the number of calls received by the Company about slamming increased nearly 150% from 1994 to mid-1997 -- to more than 23,000 per month.[8]

While the FCC has recently initiated some enforcement actions to penalize companies that have engaged in slamming, such actions do not substitute for effective rules to prevent slamming from occurring. Although these penalties may deter slamming, penalties alone do not prevent the substantial consumer harm and inconvenience that results from slamming, nor do they compensate consumers who are the victims of slamming for the financial harm and inconvenience they suffer.

Accordingly, it is in the public interest to establish rules as soon as possible which prevent slamming and protect consumers who have been slammed. Therefore, we recommend that the FCC make the establishment of rules and regulations to eliminate slamming

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[7] The FCC received 11,278 slamming-related complaints in 1995 and 12,000 in the first six months of 1997 -- an annual rate for 1997 that is approximately double the annual rate in 1995. It is our belief that these statistics substantially understate the number of slamming incidents since many slamming-related incidents are not reported to the FCC or to any other regulatory entity.

[8] U.S. WEST Communications, Press Release, issued June 30, 1997.

and protect consumers where slamming does occur, one of the highest agency priorities for the foreseeable future. We further recommend that the FCC devote adequate resources to investigate new types of slamming, and develop appropriate rules and regulations to address such new developments expeditiously.

II. ADDITIONAL RULES ARE REQUIRED TO PROTECT CONSUMERS WHO ARE THE VICTIMS OF SLAMMING.

The NYSCPB recommends that the FCC adopt additional rules to ensure that consumers are protected in those instances where slamming occurs. Section 258(b) of the Act addresses the liability of slamming carriers to authorized carriers, but does not specifically address either the liability of consumers who have been slammed to carriers, or the liability of carriers to consumers who are the victims of slamming. Nevertheless, it is clear from the legislative history of Section 258(b) that Congress intended that the FCC adopt rules to ensure that the victims of slamming are not permanently harmed.

In particular, the Conference agreement states:

> The conferees adopt the House provision as a new section 258 of the Communications Act. It is the understanding of the conferees that in addition to requiring that the carrier violating the Commission's procedures must reimburse the original carrier for forgone revenues, the Commission's rules should also provide that consumers are made whole. Specifically, the Commission's rules should require that carriers guilty of "slamming" should be liable for premiums, including travel bonuses, that would otherwise have been earned by telephone subscribers but were not earned due to the violation of the Commission's rules under this section.

(Joint Statement of Managers, S. Conference Report No. 104-230, 104th Congress, 2d Sess. Preamble (1996), at 136)

Current FCC rules require that consumer victims of slamming are liable to the slamming company for the amount the consumer would have paid if slamming had not occurred. In our view, these rules do not adequately protect consumers. To help ensure that consumers are not harmed as a result of slamming, the NYSCPB recommends that consumers be absolved from paying charges levied by unauthorized carriers for up to four months. Four months is a reasonable period of time since it often takes consumers several months to find out they were slammed.

The majority of consumers filing complaints regarding slamming with the NYSCPB express their outrage at being slammed and refuse to pay any charges to the carrier by which they were slammed. Those consumers view the slamming company as having provided services through fraudulent means -- services that were not requested by the consumer. Accordingly, such consumers do not believe the slamming company is entitled to any compensation.[9]

We recognize, however, that absolving customers from any liability to the slamming company might create an incentive for consumers to delay reporting that they have been slammed or to fraudulently claim that slamming occurred. To assure an appropriate balance between the need to protect consumers and carriers, we recommend that consumers who are victims of slamming

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[9] Federal Law provides that recipients of unsolicited merchandise may treat items received as a gift without any obligation. (39 U.S.C. Section 3009)

not be liable for charges levied by the slamming company for up to four months.

In many cases, telephone customers may not even be aware that they have been "slammed" until well after they have received a bill for their first month of telephone service.[10] As a general practice, consumers may not examine their telephone charges until they pay that bill, which may be just before payment is due. Thus, even customers who scrutinize their telephone bills may not recognize that they have been slammed until as long as the end of the second month after slamming has occurred. Further, other customers may not immediately notice that they have been slammed since their telephone bills did not increase substantially -- perhaps because they made a relatively small number of calls that month.

Absolving consumers of all charges levied by carriers that slammed them for up to four months after the slamming occurred would help ensure that consumers are not liable to companies for service they did not order, and would help reduce the incentive for companies to engage in slamming. Further, it would balance measures to protect consumers with the need for consumers to be responsible for understanding the services they purchase and the charges for those services.

The FCC should also adopt rules which ensure that consumers who pay charges assessed by an unauthorized carrier -- perhaps

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[10] The FCC's 1995 Report and Order in CC Docket No. 94-129 stated that many consumers are not aware of unauthorized carrier changes for at least one billing cycle. 10 FCC Rcd at 9580.

because they are unaware that they have been slammed -- are fully reimbursed by the slamming company. Such rules should ensure that consumers are reimbursed within 30 days of the time their service is returned to their authorized carrier. Payments after that time must be accompanied by appropriate interest. Rules to ensure prompt reimbursement to consumers who have been slammed are required since there are likely to be disputes between authorized and unauthorized carriers to satisfy the carrier-to-carrier obligations of Section 258(b) of the Act. Consumer victims of slamming should be insulated from such disputes and should not suffer further harm or inconvenience.

Similarly, the FCC should ensure that consumers are promptly made whole for any premiums (e.g., discounts, travel bonuses) they would have earned if they had not been slammed. We agree with the NPRM and Order's proposal that restoration of such premiums that subscribers would have earned had they not been slammed is part of making subscribers whole. (¶ 30) The FCC should ensure that all premiums offered by telecommunications carriers are restored to slammed customers. As required by Section 258(b) of the Act, the unauthorized carrier should remit to the authorized carrier an amount equal to the value of such premiums. However, where unauthorized carriers do not promptly remit such amounts -- for whatever reason -- FCC rules should not permit authorized carriers to deny or delay full and prompt restoration of all premiums to their customers. Therefore, the FCC's proposal that authorized carriers restore premiums "upon receiving the value of such

premiums from the unauthorized carriers" (¶ 20) should be revised to ensure that consumers are promptly made whole, as Congress intended.

III. ADDITIONAL DEFINITIONS AND RULES ARE REQUIRED TO ADDRESS PREFERRED CARRIER FREEZES.

The FCC's proposed definitions and rules (¶¶ 13 - 14) do not adequately address consumer-requested account freezes. In particular, the FCC's proposals neither require companies processing carrier change requests to determine if a freeze exists nor to ensure that all entities processing carrier change requests have access to account freeze information that may reside with other carriers. FCC rules regarding account freezes should also preserve consumer privacy. Further, the FCC's carrier change verification procedures should also be applicable to freeze requests.

A. Carrier Obligations Regarding Existing Carrier Freezes

The FCC proposes definitions of "executing[11]" and "submitting[12]" carriers as well as obligations of those companies in fulfilling the FCC's carrier change order verification procedures. (¶¶ 13 - 14) The FCC's proposals, however, do not explicitly require any telecommunications company to determine whether a freeze of a

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[11] The FCC proposes that an "executing" carrier be defined as the carrier that affects the carrier change. (¶ 13)

[12] The FCC proposes that a "submitting" carrier be defined as the carrier that requests on behalf of a consumer that a carrier change be made. (Ibid.)

consumer's current provider is in place before a carrier change order is processed. In our view, executing carriers should not be permitted to process a carrier change request until and unless they have verified that a freeze is not in place for the relevant service.

Further, the FCC's proposals do not address carrier access to information regarding whether a freeze is in place for the service for which a carrier change order has been submitted. Currently, freeze information generally resides with the LEC and the customer's existing telecommunications provider. However, to ensure that executing carriers honor all existing freeze requests, information regarding existing freezes must be available to all executing carriers in a competitively neutral manner.

FCC rules to achieve such an objective must explicitly recognize the increasing role of resellers in telecommunications markets. Further, since many service resellers share the same facilities-based provider, carrier change orders involving two resellers of the same facilities-based provider may be problematic.[13] In those situations, the executing carrier may not have information regarding whether a freeze exists on the customer's service, since the freeze information likely resides with the LEC and/or the current carrier and/or the underlying facilities-based provider.

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[13] The slamming problems related to Sonic Communications Corporation (NYS PSC Case 95-C-1026; cited at NPRM and Order ¶ 20), that resulted in the termination of that reseller's ability to serve New York consumers, were a result of this type of switch.

There are two apparent ways in which freeze information may be provided to executing carriers. First, executing carriers could be required to verify with the existing provider that no freeze is in place before processing a carrier change order.[14] However, this potential solution would require that the executing carrier know the identity of the current service provider -- information that is not necessarily currently available to executing carriers. Further, this potential solution would provide advance knowledge of a requested switch to the existing provider, thereby providing a competitive advantage for that entity. Worse, it could provide an incentive to the existing provider to claim account freezes where none exist, thereby denying consumer choice and impeding competition.

Alternatively, the FCC could require implementation of a master or centralized list of frozen accounts by geographic location, perhaps for each incumbent LEC's traditional service franchise.[15] This solution would not provide any competitive market advantage to a customer's existing provider, unlike the case in which all carrier change requests would be checked for freezes by existing providers prior to execution. However, any additional costs associated with creation and maintenance of this database must be also be considered.

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[14] This approach would require a formal definition of "existing" carrier, such as the carrier previously selected by the consumer, as a result of explicit consumer request or LEC incumbency.

[15] The creation of this database would create consumer privacy concerns which are addressed in Point III.B.

B. Customer Privacy Issues In Carrier Freeze Procedures

Regardless of how executing carriers are provided access to account freeze status information, consumer privacy protection must be maintained. Consumers are entitled to reasonable assurance that they have control over their preferred carrier. However, they are equally entitled to reasonable assurance that only the information absolutely necessary to facilitate execution of their preferences is provided only to those entities that have a demonstrable need for that information.

For instance, if all account freeze information is to be retained and maintained by the existing carrier, the submitting carrier's identity should not be provided to the existing carrier. To do so, would not only provide the existing carrier with advance notice of the potential loss of a customer, but also the competitor and potential offer with which it must compete.

Alternatively, if a central clearinghouse were to be implemented for the purpose of compiling and distributing customer account freeze information, such information should only include the type of service (e.g.: local, intraLATA toll, interLATA - intrastate) frozen, if any. It should <u>not</u> include the provider of the service or details of the specific service purchased. If a customer has no freezes in place, no information should be provided at all. Access to this database should <u>only</u> be allowed where a legitimate carrier change request exists.

C. Carrier Freeze Solicitation and Verification Procedures

The FCC's proposal to permit carriers to provide information about carrier freeze programs but limit the use of promotional material for carrier freezes is sound. (¶ 23) Educational materials which explain the nature of carrier freezes and the procedures for requesting them are correctly distinguished from promotional materials designed to increase the competitive advantage of an entity, especially during the infancy of competition where the incumbent LEC already has a potentially overwhelming market advantage.

The FCC requests comments on whether the carrier change verification procedures should be extended to freeze requests. (¶ 24) The NYSCPB believes that the same verification procedures used for carrier change requests should be used for freeze requests. Since account freezes produce an additional incentive and method to deprive consumers of control over their choice of preferred carrier (see Point III.A. above), the rules governing the appropriate form and verification of carrier change requests should also apply to freeze requests. That solution would balance consumer protection with the ability of consumers to freeze their telecommunications provider(s) in a convenient manner.

Finally, the account freeze request and verification procedures should apply to all carrier changes. A customer's new provider of a particular telecommunications service should not be able to adopt a previously existing PC freeze for that service. Without such protection, consumers would be denied the right to

make such a freeze decision for particular services when they change providers of that service, and consumers could not account for any change in the circumstances which originally led them to freeze their service provider. Of course, however, any freezes on services for which the provider is not being changed would remain in effect, such as in the example cited by the FCC (¶ 24) in which a consumer that has frozen their IXC selection switches LECs.

IV. NEGATIVE-OPTION VERIFICATIONS SHOULD BE PROHIBITED.

In ¶¶ 16-18 and 63-64 the FCC describes the fourth acceptable carrier change confirmation procedure, known as the "welcome package" or negative-option verification option, and seeks additional comment on its use to verify PC changes. Under this procedure, a carrier receiving oral approval of a PC change on a telemarketing call could send a new customer an information package including a pre-paid postcard. If the customer does not return the postcard within 14 days, the customer's telecommunications provider(s) would be changed. The NYSCPB strongly believes that this option is inappropriate for use in verifying carrier change orders.

While the FCC has prohibited the "negative-option LOA," wherein the consumer must "take some action to *avoid* a PIC change," (¶ 18) it distinguishes the negative-option verification procedure as part of the welcome package "in that consumers have already given their oral agreement..." to change their telecommunications provider(s) during a telemarketing call. (¶¶ 17, 64) However, since the

verification procedure is designed to prevent or deter slamming, the use of a negative-option verification to check oral acceptance of a telemarketing offer provides no assurance at all that the submitting carrier is not engaging in slamming. If a carrier is willing to falsify the results of telemarketing efforts, there can be no assurance that this carrier would not also falsify the records concerning whether a postcard to confirm a consumer's choice was ever mailed or returned.[16] Additionally, there would be no way to determine after-the-fact whether the carrier did more than merely obtain the name and current address of the consumer whose account is to be switched.

All other FCC-approved carrier change verification options create an audit trail that can be examined. LOAs, electronic records of consumer verification of their selections, and independent third party records can be retained for review. Carrier changes using any of these three verification options provide regulators assurance that some auditable record exists for their use in investigating alleged slamming. However, when the only records of a consumer's acceptance of a carrier switch are an unverifiable oral acceptance and a post card that has not been returned, enforcement of anti-slamming laws and regulations becomes

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[16] Even if the assumption is made that the carrier is not willfully "slamming," the negative-option confirmation procedure could not distinguish between 1) consumer acceptance of the carrier switch, 2) consumer non-receipt of the negative-option package, 3) consumer loss of the negative-option package, 4)consumer disregard of the negative-option package, and 5) loss in transit of the consumer's response rejecting the negative-option package.

virtually impossible. As the FCC indicates, negative-option verification "could have the practical effect of operating like a negative-option LOA, to the detriment of the consumer." (¶ 64) Despite this finding, the FCC declined to ban negative-option verification as part of the welcome package and requested additional comments on this issue. The NYSCPB believes that in the face of FCC recognition that, in the hands of unscrupulous telemarketers, a negative-option verification process is a *de facto* negative-option LOA, there can be no reasonable course of action that falls short of a complete and unconditional ban on the use of negative-option for requesting or verifying carrier changes, as well as for requesting or verifying carrier freezes. (See also Point III above.)

V. THE FCC SHOULD ADOPT ADDITIONAL RULES TO PRECLUDE ANTI-COMPETITIVE CONDUCT BY INCUMBENT LECs AND OTHER "EXECUTING" CARRIERS.

As recognized by the FCC, incumbent LECs have a dual role as competition is introduced and expands in local telecommunications markets since they both execute carrier change requests and compete in telecommunications markets. As the FCC explains, "the incumbent LEC could potentially delay or refuse to process PC-change requests ...[or] send to its subscriber who has chosen a new LEC a promotional letter in an attempt to change the subscriber's decision to switch to another carrier." (¶ 15) Such dual roles create a conflict of interest since LECs have the responsibility to execute the carrier change, but also have the conflicting financial

incentive to retain the customer. The FCC seeks comment on whether the dual role of incumbent LECs requires additional safeguards for consumers and competition. (Ibid.)

In our view, such additional rules are required not only for incumbent LECs who execute carrier change requests and are market participants, but for all carriers who both execute carrier change requests and compete in the market for which they execute such carrier change requests.[17] All carriers serving these dual roles have a conflict of interest, which creates the incentive and opportunity for anti-competitive conduct. Such a conflict of interest is not limited to LECs since carrier change requests among resellers of telecommunications services may be executed without the involvement of LECs.[18] Accordingly, FCC rules to prevent anti-competitive conduct should be applicable to all carriers who execute carrier change requests and participate in non-monopoly telecommunications markets either themselves or through affiliates.

One solution to this conflict of interest would be to require independent, third-party verification of all carrier change requests. If such an approach is not adopted, the FCC should

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[17] Such rules are also required to address situations in which a carrier executes a change request for a market in which an affiliate competes.

[18] For example, companies X and Y resell the long distance service of carrier ABC. If company Y submits a fraudulent carrier change request regarding the service currently provided by carrier X, such a request would be executed by carrier ABC. The LEC would not even be aware of such a carrier change. Nevertheless, there is a potential for anti-competitive conduct since carrier ABC would execute the change and may have an interest in, or be an affiliate of company X or Y.

require carriers to develop procedures which ensure that carrier change orders are processed in a non-discriminatory fashion. Under that approach, carriers would also be required to submit periodic reports which illustrate any differences between the rejection rate and the time to process carrier change requests submitted by that company and its affiliates, in comparison with such requests submitted by non-affiliated companies. Such reports would also be subject to FCC audit.

VI. CARRIER CHANGE VERIFICATION RULES SHOULD BE APPLICABLE TO IN-BOUND CALLS.

In its NPRM and Order, the FCC affirmed that its interexchange carrier (IXC) change verification procedures are applicable to consumer-initiated "in-bound" calls to IXCs, in addition to outgoing telemarketing calls from IXCs. (¶¶ 44 - 51) The FCC also proposes extending its IXC change verification procedures to local and intrastate toll services, and seeks comment on whether carrier change verification procedures applicable to "outgoing" telemarketing calls regarding local and/or intraLATA toll services should also be applicable to consumer-initiated "in-bound" calls concerning those services. (¶ 19)

The NYSCPB strongly supports application of FCC carrier change verification procedures for outgoing calls to such in-bound calls. Section 258 of the Telecommunications Act does not differentiate between in-bound and out-bound calls. Therefore, any limitation of the applicability of carrier change verification procedures would undermine the letter and the spirit of Section 258. Further,

exempting consumer-initiated calls from carrier change verification procedures would create a powerful incentive for carriers to develop creative means to induce consumers to call carriers -- such as contests -- possibly for the purpose of switching the consumer to another carrier through inappropriate practices. To help ensure that a record of customer verification of a carrier change is established, the carrier change verification procedures should apply to consumer-initiated calls.

The NPRM and Order proposes that FCC carrier change notification procedures would be applicable on consumer "calls to carrier sales or marketing centers." (¶ 19) The FCC should clarify that its carrier change verification rules would be applicable to <u>all</u> consumer-initiated calls to telephone corporations on which sales or marketing activities occur. Consumers calling carriers regarding local or intraLATA toll service issues -- such as billing or service quality matters -- should not be provided less protection against inappropriate marketing practices than customers calling sales or marketing centers directly. Indeed, such customers may be more susceptible to inappropriate carrier changes since they would likely not initiate a carrier change on that call. Further, as RBOCs enter new telecommunications markets and LECs are permitted to market on behalf of their affiliates, consumers initiating calls regarding traditional local and/or intraLATA toll matters may be subjected to marketing of a full spectrum of telecommunications services. Accordingly, the FCC should confirm that its carrier change