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William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

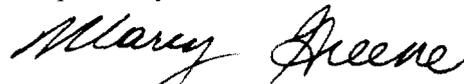
Re: Comments of RCN Corporation Telecom Services, Inc.
In the Matter of Implementation of the Subscriber Carrier Selection Changes
Provisions of the Telecommunications Act of 1996 -- CC Docket No. 94-129

Dear Mr. Canon:

On behalf of RCN Telecom Services, Inc. ("RCN"), please find enclosed for filing an original and twelve (12) copies of the Comments of RCN in the above-referenced Docket. Also enclosed is a diskette containing RCN's comments formatted using WordPerfect 5.1.

Please date-stamp the enclosed extra copy of this filing and return it with our courier. If you have any questions concerning this filing, please do not hesitate to contact the undersigned.

Respectfully submitted,



Jean L. Kiddoo
Dana Frix
Marcy Greene

Its Counsel

Enclosures

cc: Joseph Kahl
Cathy Seidel (CCB)
Formal Complaint Branch (CCB)
ITS

203475.1

3000 K STREET, N.W. ■ SUITE 300
WASHINGTON, D.C. 20007-5116

(202)424-7500 ■ TELEX 701131 ■ FACSIMILE (202)424-7643

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of)
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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 No. 94-129

**COMMENTS OF
RCN TELECOM SERVICES, INC.**

Joseph Kahl

RCN TELECOM SERVICES, INC.
105 Carnegie Center
Princeton, N.J. 08540
(609) 734-3827

Jean L. Kiddoo
Dana Frix
Marcy Greene

SWIDLER & BERLIN, CHARTERED
3000 K Street, NW, Suite 300
Washington, D.C. 20007
(202) 424-7500

Counsel for RCN Telecom Services, Inc.

Dated: September 15, 1997

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

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COMMENTS OF RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. and its operating subsidiaries (collectively "RCN"), by its undersigned counsel and pursuant to the Federal Communications Commission's ("Commission's") August 14, 1997 Public Notice, hereby submits these Comments on the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration in the above-referenced proceeding.¹ RCN is a provider of local and long distance telephone, video and Internet access services, primarily oriented toward the residential market. As such, RCN has a substantial interest in assuring that the Commission adopt policies and rules which assure that consumers are provided with adequate information and opportunity to make a carrier choice but which do not place unnecessary or undue burdens on the marketing process which might actually serve to inhibit those consumer choices. Accordingly, RCN has an interest in the rules which may be adopted in this

¹ *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, Further Notice of Proposed Rule Making and Memorandum Opinions and Order on Reconsideration, CC Docket No. 94-129 (rel. July 15, 1997) ("NPRM").*

proceeding and therefore files these comments to urge the Commission to modify and clarify certain aspects of its proposed rules.

INTRODUCTION AND SUMMARY

In this proceeding, the Commission considers amending its current primary interexchange carrier (“PIC”) change and letter of agency (“LOA”) rules and expanding the scope of its carrier change rules to apply to all telecommunications carriers, including changes of local exchange carriers. The Commission correctly recognizes that, as the local market opens to competition, its carrier change rules should apply equally to local and interexchange carriers. Such an expansion is in the interest not only of consumers, but also of carriers such as RCN, who already employ verification methods that exceed those required under the Commission’s current rules, since it will remove any incentive or economic benefit to be gained by carriers who do not employ such exacting verification methods when competing in the local market. Unauthorized PIC changes inevitably lead to increased consumer dissatisfaction and distrust -- and it would be unfortunate if the hard lessons learned in the interexchange marketplace were repeated in the newly competitive local market. RCN therefore strongly supports measures which protect the reputation and integrity of the telecommunications industry as a whole.

While RCN fully supports the Commission’s efforts to promulgate rules that provide ample consumer protection, and are fair and competitively neutral, RCN respectfully submits that the Commission’s proposed rules, in several critical respects, place undue burdens on carriers, without commensurate consumer protection benefits. RCN respectfully submits that the modifications it proposes in these comments further the Commission’s consumer protection goals and deter slamming, but do so in a manner which promotes (rather than restricts) competition among carriers.

I. THE COMMISSION SHOULD CLARIFY THAT ITS PRESUBSCRIBED CARRIER CHANGE RULES ARE INTENDED TO HAVE NATIONWIDE APPLICABILITY

RCN respectfully urges the Commission to affirmatively confirm that its PIC change and LOA rules are intended to provide a comprehensive nationwide framework for carrier marketing and PIC changes. Section 258(a) of the Telecommunications Act of 1996 supports this approach by requiring that all change orders be verified in accordance with such procedures as the Commission shall prescribe and giving states that authority to *enforce* such Commission-prescribed procedures for intrastate services.

It would be extremely detrimental to competition in the local and long distance markets if carrier marketing were to be required to comply with a patchwork of inconsistent and sometimes conflicting PIC change regulations on a state-by-state basis, as well as on an interstate basis. RCN and other industry participants have expressed concern with the growing number of states that have in the last six months initiated or completed rulemaking proceedings governing carrier change rules.

Once the Commission's rules take effect, in the states where different or inconsistent rules have been adopted carriers will be governed by multiple sets of rules for the same services.

In such an environment, consumer confusion is unavoidable. For example, if a business with offices in numerous states were to decide to change its local and/or long distance service for all of its offices, differing or inconsistent PIC change rules would require that the carrier satisfy different marketing requirements for each state and that the business execute multiple verifications and/or LOAs. A similar confusion would result even for customers who do not have multi-state telecommunications needs, since the choice of a single carrier for both inter- and intrastate service might entail compliance with differing and/or inconsistent rules for a service which is being

purchased by consumers as a single, unified telephone service.

The expense of attempting to comply with as many as 51 varying sets of carrier change regulations will also be unduly prohibitive and will stifle marketing. Rather than embarking on cost-effective nationwide (or even regional) marketing campaigns, carriers will be forced to target their marketing on a state-by-state basis. Just the start-up time and costs for a carrier to bring its procedures into compliance with various states' requirements may stifle, and will certainly delay, the onset of competition, and the associated benefits. In fact, in certain states (*e.g.*, California), carriers will have to modify their verification procedures based on the end-user customer (residential versus business).² Ultimately, the costs associated with tailoring marketing and verification programs to multiple state requirements, as well as FCC requirements, will significantly drive up the cost of doing business, without commensurate consumer protection benefits. Carriers will be forced to pass those costs on to consumers. Thus, it is decidedly in the public interest for the Commission to declare at the outset that its rules preempt inconsistent state rules.

II. VERIFICATION SHOULD NOT BE REQUIRED FOR IN-BOUND CALLS

The Commission's Notice tentatively proposes to extend its verification procedures to customer-initiated in-bound calls.³ RCN respectfully submits that the Commission should refrain from imposing verification requirements on in-bound carrier change orders. If the Commission does impose verification requirements on in-bound calls, RCN submits that those requirements should

² California law now requires (by statute) that carriers obtain independent, third-party verification when executing a change in a residential subscriber's telephone service provider. *See* California Annotated Code §2889.5.

³ NPRM, ¶¶ 19 - 20, 44 - 51.

be less onerous than those required to confirm carrier-initiated (*i.e.*, telemarketing generated) carrier change orders. At a minimum, RCN urges the Commission to allow carriers to use the “welcome package” as an option to verify in-bound change requests.

RCN respectfully submits that requiring verification of in-bound calls is duplicative, unduly burdensome and will delay customer changes and the benefits of competition. In the instance of in-bound calls where the customer has chosen to contact the carrier to purchase a service, there is little potential for the customer confusion sometimes associated with out-bound telemarketing solicitations. Indeed, this type of call is essentially the same as any instance where a customer calls a catalog marketer to order a product. In that instance, it would clearly be odd (and would indeed be contrary to consumer choice) to advise the customer that his or her selection would not be honored at that time and that some third party would be calling the customer to ensure that he or she *really* wants the product selected. Moreover, the cost of such an unnecessary effort would lead to increased costs to consumers.

RCN respectfully questions whether it is necessary or appropriate to implement rules on the assumption that carriers engage in dishonest behavior or do not comply with the Commission’s rules. In the event that a carrier is engaged practices with which the Commission’s proposal seeks to address, they can be handled on an individual case basis, as would any violation of the Commission’s rules. Drafting rules that are expensive, uneconomical, and unduly burdensome to carriers based on the above-articulated rationale is tantamount to penalizing carrier for violations which they have not committed. Indeed, the broad reach of the Commission’s proposed rule will unnecessarily penalize carriers that do not engage in dishonest behavior. As drafted, this rule discourages not only deceptive conduct, but also legitimate, reasonable and efficient marketing

practices.

RCN therefore respectfully submits that the Commission should adopt a more narrowly tailored approach so that its rules target only specific instances of consumer harm without inhibiting marketing flexibility and discouraging competitive marketing efforts. Specifically, RCN urges the Commission to include language in its rules which disallows the changing of any presubscribed carrier without authorization from the subscriber (including in-bound calls) and to require that some record of the transaction be created and maintained. The Commission does not need to require additional verification steps be taken with respect to in-bound calls.

III. THE COMMISSION SHOULD REQUIRE NOTICE TO CUSTOMERS WHEN A RESELLER CHANGES UNDERLYING CARRIER ONLY WHERE THE RESELLER HAS SPECIFIED A PARTICULAR UNDERLYING CARRIER IN ITS MARKETING OF SERVICE

RCN supports the Commission's proposal to require notification of a reseller's change in underlying carrier under certain specific and clearly defined circumstances. Specifically, that notice must be provided when the reseller has made statements that it "either (1) would provide service to its subscribers using a particular underlying carrier, or (2) would not change its underlying carrier (with or without notifying its subscribers)." NPRM at ¶39.

RCN respectfully takes this opportunity to urge the Commissions to confirm that instances in which the underlying carrier is not identified, or is only identified incidentally (*i.e.*, in a sentence on the bill indicating which carrier provides the underlying service), no notice is required to subscribers. Expansion of the proposed rule to require notice to customers in other than the specific circumstances proposed by the Commission would be more likely to confuse subscribers than be of use -- indeed, RCN respectfully submits that providing notice of a change in underlying carrier will

likely result in consumers erroneously believing that they have been slammed or that their service will be changed in some material way.⁴

IV. CUSTOMERS SHOULD NOT BE ALLOWED THE OPTION OF NON-PAYMENT IN THE EVENT OF AN ALLEGED UNAUTHORIZED CARRIER CHANGE

RCN respectfully submits that customers should not be allowed the option of non-payment of charges for outstanding balances in the event of an alleged slam. Although allowing customers the option of non-payment in the event of an alleged slam reduces financial gain to the carrier, the rule would also provide an incentive for consumers to falsely claim that they were slammed. Such fraud will increase significantly the rates for carriers and, as a result, their law-abiding customers. Indeed, even a customer who believes in good faith that he or she has been slammed might, under this proposal, have an incentive to use the carrier's services liberally and then disavow any duty to pay. As the Commission is aware, alleged unauthorized PIC changes occur for many reasons, not all of which are fraudulent (such as misunderstandings among family members or simple data entry input errors). A customer should not be relieved of all responsibility for calls and charges he or she knowingly incurs, simply because a carrier change error may have taken place.

RCN submits that the requirements of Section 258 of the Telecommunications Act of 1996, will result in a rule which mandates that carriers who engage in slamming are barred from keeping

⁴ For example, resellers often use a number of underlying carriers and either discontinues using one, or begins using another in addition to those already used. Additionally, it is common for resellers to move traffic on some routes from one underlying carrier to another for cost or service reasons, but to continue to use the original underlying carrier for other traffic. In these instances, notice, if required, would almost have to be given on a customer-specific basis depending upon where he or she calls. Moreover, many resellers take service from carriers who are themselves resellers, sometimes from yet another reseller. Surely notice should not be required for a change in an underlying carrier several generations removed from the subscriber.

the revenues generated by the slam. RCN favors an approach which deters slamming by requiring that the unauthorized carrier: (i) make the subscriber whole by refunding any amount paid over what would have been charged by the preferred carrier; and (ii) refunding to the preferred carrier all other revenues received from the subscriber. This approach “makes whole” the subscriber, but does not create an incentive for consumers to improperly allege a slam and deters slamming by requiring that all revenues collected by the unauthorized carrier be forfeited.

V. THE COMMISSION IS CORRECT THAT DUPLICATIVE VERIFICATION IS NOT NEEDED AND WOULD BE CONTRARY TO THE PUBLIC INTEREST

RCN supports the Commission’s conclusion that the executing carrier need not duplicate the verification efforts of the submitting carrier. The Commission’s observation regarding costs succinctly provides the rationale for this conclusion: “In fact, requiring independent verification by an executing carrier in all instances could have the effect of *doubling* the transaction costs associated with a subscriber’s selection of a primary carrier.”⁵

Additionally, requiring duplicative verification would open up a Pandora’s box of unaddressed (and unnecessary) issues. For example, in the event that an executing carrier is unable to verify a change order on the first attempt, must numerous attempts be made? And if not, what happens to the order? Is it “returned” to the submitting carrier for “reprocessing,” or simply refused -- in which case the legitimate expectations of the consumer would be thwarted. Perhaps more importantly, in many cases the executing carrier is in direct competition with the submitting carrier. Thus, any rule that requires the executing carrier’s approval before the carrier change takes place will

⁵ NPRM, ¶ 15 (emphasis added).

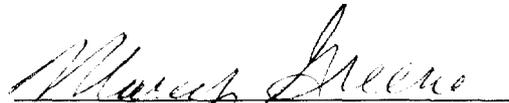
simply provide a fertile battleground for disputes -- leading inevitably to increased costs and delayed execution of customer carrier choices.

CONCLUSION

RCN supports the Commission's efforts to promulgate carrier selection rules that protect consumers and deter carriers from engaging in misleading marketing or unauthorized carrier changes. However, the Commission's rules should not "protect" consumers at the expense of imposing excessive costs not reasonably related to the benefits achieved. For the foregoing reasons, RCN respectfully requests that the Commission act in accordance with the recommendations set forth herein.

Dated: September 15, 1997

Respectfully submitted,



Jean L. Kiddoo

Dana Frix

Marcy Greene

SWIDLER & BERLIN, CHTD.

3000 K Street, NW, Suite 300

Washington, D.C. 20007

(202) 424-7500

Joseph Kahl
RCN TELECOM SERVICES, INC.
105 Carnegie Center
Princeton, N.J. 08540
(609) 734-3827

COUNSEL FOR RCN TELECOM
SERVICES, INC.