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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF SPRINT CORPORATION

Sprint Corporation ("Sprint") hereby respectfully submits its reply to the comments filed on the Commission's *Further Notice of Proposed Rule Making*, FCC 97-248 released July 15, 1997 (*Further Notice*) in the above-captioned proceeding.

I. ADMINISTRATION OF THE PRIMARY CARRIER CHANGE PROCESS MUST BE ASSIGNED TO A NEUTRAL THIRD PARTY.

The comments filed by the RBOCs and GTE do little to advance the Commission's understanding of the root causes of slamming or to assist the Commission in developing a regulatory program designed to effectively address those causes. Instead, these carriers seek to have the Commission implement rules that (1) would enable them to continue to make mistakes in executing changes in subscribers' preferred carriers ("PCs") without liability and (2) would enable them and other incumbent local exchange carriers ("ILECs") to continue to exploit their "gatekeeper" control of the PC change order process to harm competition. Their arguments here provide additional support for Sprint's position that if the Commission is to reduce the incidence

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of slamming, it must assign responsibility for administering the entire PC change order process to a neutral third party.

As Sprint explained in its Comments (at 11-20), mistakes by ILECs in the order entry process account for a sizable portion of slamming problem. Yet, many of ILECs submitting comments refuse to acknowledge that they may be responsible for any unauthorized changes in subscribers' PCs. Some do not even discuss the myriad of sources for slamming, let alone that they are contributing to the problem. Others fault competition generally and interexchange carriers ("IXCs") in particular for the entire slamming problem. *See, e.g.,* Ameritech at 3 ("the entry of multiple competitors in the long-distance marketplace" led to slamming) and at 5 (slamming complaints have "skyrocketed" with the advent of "intraLATA toll dialing parity" and the ability of interexchange carriers to exploit customer confusion over intraLATA and interLATA toll services to change a customer's intraLATA provider without authorization); SNET at 3 (IXCs "are using ingenious schemes to change the consumers' preferred carrier without the customers' knowledge or consent"). Even those ILECs that concede the fact that they may slam customers argue that the unauthorized conversions are inadvertent or the result of ordinary negligence and thus they should not have to bear any liability under Section 258 for such slamming. *See, e.g.,* US West at 48-49 (executing carriers, *i.e.,* ILECs, "should have no liability for errors in PC change orders absent gross negligence"); GTE at 7 ("Commission's proposed definition and treatment of 'executing carrier' would unreasonably – and contrary to well-established precedent – expose LECs to substantial liability for honest mistakes in processing PC-change requests").

Plainly, slamming will not be effectively reduced if the carriers that exercise gatekeeper control over the PC change order process either refuse to acknowledge that their mistakes in

executing carrier change orders contribute to the problem; maintain that unaffiliated IXCs are to blame for the entire slamming problem; or, insist that they should bear no financial liability for slamming caused by their own errors. Such carriers simply have no economic or competitive incentive to devote the necessary resources toward ensuring that the order entry process is as mistake-free as possible.[1] On the contrary, the status quo provides them with the ability to exploit the slamming issue to disparage the reputations of their rivals and position themselves as the only carriers that are interested in eliminating the slamming scourge.

In its Comments (at 16-20), Sprint detailed a number of instances in which certain ILECs were abusing their gatekeeper responsibilities to harm competition. The comments of the RBOCs here provide further evidence that they seek to exploit the slamming problem to erect barriers to competition in their regions. For example, Ameritech argues that the Commission should rely upon the ILECs to identify "repeat or habitual slammers" (Comments at 11) by having them file "quarterly reports showing the number of PC change orders submitted by each carrier [*i.e.*, IXC or CLEC] and the number disputed by end users." *Id.* at 12.[2] Of course, such information would

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[1]As Sprint explained in its Comments (at 14), the RBOCs, GTE, Cincinnati Bell and SNET have not modified their order entry processes in a way which allows them to distinguish between a facilities-based carrier and its switchless reseller customers in the end users' records. As a result, these ILECs will incorrectly inform an end user whose PC is a switchless reseller that his PC is such reseller's underlying facilities-based carrier. The customer will then assume that he was slammed by the underlying carrier.

[2]Ameritech's suggestion here is similar to the approach that US West had announced it would propose to the Commission. As Sprint has already explained in its Comments, US West's approach would do nothing to reduce the incidence of slamming since it did not address the root causes of the problem. The approach would, however, enable US West to damage the reputations of IXCs by branding them as slammers and to increase its rivals' costs through the imposition of stiffer verification penalties and higher fines. Comments at 17-18. Plainly, an approach that would produce such anti-competitive results is not in the public interest.

be relatively useless in identifying "habitual slammers" since there can be any number of reasons for PC disputes, including "buyer's remorse." *See* Sprint Comments at 3 and 9-10. Nonetheless, Ameritech would have the Commission use such information to assess forfeitures, impose penalties and prohibit those IXCs and CLECs with PC disputes as reported by the ILEC from submitting "PC changes electronically for a specified period of time." Ameritech Comments at 12.[3]

SBC would have the Commission authorize the ILECs to implement what it calls a "three-strikes-and-you're-out" approach. Under it, a carrier that generated PC disputes in excess of the amount deemed acceptable to the ILEC in a given month and that failed to provide what the ILEC would consider to be valid evidence that the customer authorized the change would initially be placed on 6-month probation and required to implement steps to reduce its PC disputes. If the carrier did not reduce its PC disputes to levels below the ILEC-established threshold by the end of the probationary period, it would be required to pay a penalty, perhaps set by the ILEC, to the appropriate regulatory agency for each PC dispute during the probationary period. If the problem persisted again as determined by the ILEC, the offending carrier would be subject to increased penalties and the suspension (either temporary or permanent) of its ability to submit PC changes.

SBC argues that its "three-strikes-and-you're-out" approach would "eliminate slamming." Comments at 9. But its argument here cannot withstand even cursory scrutiny. Its approach would not eliminate slamming caused by ILEC errors in the carrier change process. Certainly, an

[3]Apparently Ameritech would allow the IXCs and CLECs to submit their PC changes on a manual basis as long as they compensated the ILECs "for the increased costs of processing their PC changes on a manual basis." Ameritech Comments at 12-13.

ILEC that converted customers of an IXC to itself without authorization -- and Sprint would note that earlier this month it learned that BellSouth slammed approximately 20 of Sprint LD's (Sprint's long distance subsidiary) intraLATA customers in Kentucky because of what BellSouth insists was an inadvertent mistake -- would not place itself on probation for slamming.[4] Nor would SBC's "three-strikes-and-you're-out" approach eliminate the unauthorized conversions by "fly-by-night" carriers that are in the business of making money through slamming. Such carriers would unlikely remain in business in a particular state long enough to become subject to the "second strike." And, SBC's approach would not eliminate slamming alleged by consumers but actually attributable to other reasons, *e.g.*, buyer's remorse.

In short, the approach being suggested by SBC, Ameritech and US West will not be effective in mitigating the slamming problem. If the Commission is to seriously address slamming problem and at the same time promote the goal of effective competition in all market segments, it must assign responsibility for the administration of the PC change process to a neutral third party.

Bell Atlantic, however, argues that the ILECs should not be required to surrender their gatekeeper responsibilities because there is no "evidence of malfeasance or wrongdoing" by ILECs in processing PC changes. Thus, according to Bell Atlantic, "[m]andating the use of a third party to execute PC changes is a solution in search of a problem." Comments at 8, fn. 12.

Bell Atlantic's argument here simply misunderstands why a neutral third party administrator of the PC change process is necessary. The main reason for a neutral third party a

[4]Sprint is unable to test BellSouth's contention here that the unauthorized conversions were due to an honest mistake because the records and information necessary to conduct an investigation reside with the gatekeeper, BellSouth.

dministrator is not to detect "malfeasance or wrongdoing" on the part of the ILECs, although such administrator is more likely to expose and seek to correct any improprieties it discovers than the perpetrators themselves. Rather, a neutral third party administrator will have the incentive produced by the competitive bidding process and the need to reduce costs to ensure that the PC change process is as error-free and efficient as possible. A neutral third party administrator could also be called upon to investigate the sources of a slamming problem and suggest competitively neutral ways to help mitigate the problem. In contrast, the ILECs have little incentive to devote resources toward ensuring that inadvertent mistakes in the carrier change process are minimized since, as gatekeepers, they can hide their mistakes by attributing all allegedly unauthorized conversions to slamming by IXCs or CLECs. Indeed, as their comments herein establish, the RBOCs, GTE and SNET are more interested in having the IXCs and CLECs blamed for the entire slamming problem, and punished accordingly, than in advancing the Commission's understanding of the slamming problem.

Of equal importance, a neutral third party administrator will eliminate the ability of the ILECs to exploit their gatekeeper control and game the PC change process in ways that would enhance their competitive position in the market. *See* Sprint's Comments at 18-20; MCI's Comments at 25. In sum, a third party administrator will help "ensure equal treatment of all carriers and avoid any appearance of impropriety or anti-competitive conduct." *Telephone Number Portability*, 11 FCC Rcd 8352, 8400 ¶92 (1996).[5]

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[5]Although BellSouth claims that assigning responsibility for the PC change process to a third party administrator would be impractical and costly, Comments at 16, it does not provide any support for its claims here. But accepting *arguendo,* the notion that a use of a third party administrator would be expensive, there are a number of ways to reduce such costs. For instance,

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II. CUSTOMERS WHO MAY HAVE BEEN SLAMMED SHOULD NOT BE ABSOLVED OF THE DUTY TO PAY FOR THE CHARGES INCURRED WHILE ASSIGNED TO UNAUTHORIZED CARRIERS.

There is widespread agreement among the commenting parties that the Commission's conclusion in its 1995 decision in this docket (10 FCC Rcd 9560, 9579 (¶37)) requiring subscribers who claim to have been slammed to pay for the services of the unauthorized carrier which they used, albeit at the rates of their authorized carriers, continues to be valid. That conclusion makes whole subscribers who actually were slammed and prevents wholesale fraud by subscribers claiming to have been slammed in order to obtain free service. *See, e.g.,* Sprint at 27-30; AT&T at 9; MCI at 19; Comptel at 11; Ameritech at 28; BellSouth at 13; US West at 44; California PUC at 10-11; and Texas PUC at 5-6.

The National Association of Attorneys General ("NAAG"), however, continues to advocate the proposition that subscribers who claim to have been slammed should be relieved of the obligation to pay for the services received while assigned to allegedly unauthorized carriers. Comments at 5-8. NAAG's position here is based primarily upon the need to deter the fraudulent activities by slammers.[6] But, as Sprint has explained, a slam may result as much from an

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the competitive bidding process should help to mitigate the costs. Moreover, the costs associated with third party administration of the PC change process would be offset by the fact that carriers would no longer have to pay the ILECs for administering such process. In any case, Sprint strongly believes that whatever the costs, they are clearly outweighed by the benefits to competition that would result from eliminating the ILECs' bottleneck control of the PC change process.

[6]It is difficult to know what to make of NAAG's argument that "[u]nder most state consumer protection laws, consumers are not liable to pay for services or goods which have not been ordered." Comments at 5. A subscriber making a phone call is not receiving "a service which [has] not been ordered." By placing a call, the subscriber is ordering service. Moreover, in cases where the subscriber of a facilities-based carrier is slammed by a reseller of such carrier, his call

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inadvertent mistake as from deliberate fraud. In any case, the best way to deter slamming resulting from fraudulent activities by unscrupulous carriers is to subject the principals of such carriers to criminal prosecution and perhaps imprisonment for their illegal activities. *See* Sprint's Comments at 20-24.

Moreover, NAAG has never come to grips with the fact that the policy it is advocating here to deter fraudulent slamming will itself lead to fraudulent claims of slamming by end users who want to obtain free telephone service. NAAG claims that bogus claims by consumers can be minimized "by setting a specific time period after billing for complaints to be filed." Comments at 6 fn. 7. However, as Sprint has explained (Comments at 29), a customer intent on avoiding payment by claiming that he has been slammed can amass a enormous bill in a matter of days, if not hours. The use of time limits, therefore, would be unhelpful in curbing cheating by consumers.

III. THE COMMISSION SHOULD PREEMPT STATE-IMPOSED VERIFICATION REQUIREMENTS THAT CONFLICT WITH ITS VERIFICATION REGULATIONS.

A number of State legislatures and state regulatory agencies have either adopted or are considering adopting verification requirements to address the problem of slamming in the intrastate market. The verification rules adopted in many of the states appear to mirror or, at least, complement the Commission's own efforts. Unfortunately, some states have imposed

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will still be carried over the network of his chosen carrier. The only difference would be the carrier's name on the bill the subscriber received for such call and possibly the charges assessed. But, the subscriber's economic expectations are met if he is required simply to pay the authorized carrier for the call at the authorized carrier's rates. Plainly, NAAG's reliance upon "state consumer protection laws" here is inapposite.

verification rules that are inconsistent with those promulgated by the Commission. For example, South Dakota requires that carriers obtain written confirmation from customers who subscribe to the carriers' service through a telemarketing campaign. *See* also Comments of AT&T at 36 fn. 51 describing the verification requirements imposed by California.

Plainly, conflicting state regulation upsets the carefully drawn balance reflected in the Commission's own verification rules between the need to control slamming with the need to promote robust competition by making it relatively easy for subscribers to switch their PCs. For this reason, Sprint supports AT&T's request (Comments at 36-39) that the Commission preempt the inconsistent verification regulations being adopted by the various states, including in particular the inconsistent verification regulation adopted by California and South Dakota.[7]

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[7]In addition to its general preemption authority, Section 258(a) gives the Commission the power to specifically preempt inconsistent state verification regulation. Thus Congress has instructed the Commission to prescribe verification procedures for all telecommunications carriers, including carriers providing telephone exchange service and both interstate and intrastate telephone toll services. The role of the states is to "enforc[e] such procedures with respect to intrastate services."

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Reply Comments** of Sprint Corporation was sent by United States first-class mail, postage prepaid, on this the 29th day of September, 1997 to the parties on the attached list.

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