

RECEIVED

APR 26 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20544

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 )

CC Docket No. 94-129  
FCC 98-334

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF CONSUMER FEDERATION OF AMERICA  
ON JOINT PETITION FOR WAIVER

Based upon the Commission's own order,<sup>1</sup> which invited industry participants to offer alternatives that addressed shortcomings the Commission acknowledged in its pending liability rules,<sup>2</sup> and the comments offered in response to the proposed alternative,<sup>3</sup> one thing is clear.

The Commission must stay the implementation of the liability rules and begin working on a third party administrator (TPA) approach that will provide a simple, comprehensive response to slamming in the competitive local and long distance telecommunications marketplace.

The Commission would do a grave disservice to the public if it implemented its flawed approach and then was forced to change that approach in the near future as a third

<sup>1</sup> "Second Report and Order and Further Notice of Proposed Rulemaking," 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, CC Docket No. 94-129, FCC 98-334, December 23, 1998.

<sup>2</sup> *Ibid.*, paras. 55-57

<sup>3</sup> "Joint Petition for Waiver," 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, CC Docket No. 94-129, FCC 98-334.

No. of Copies rec'd 074  
List A B C D E

party alternative crystallizes and as a mechanism for dealing with local service slamming is developed. To impose a rule that all parties are seeking to significantly modify would be foolish to say the least. The public would be much better served by delaying the pending liability rule and implementing one permanent solution to slamming in all telecommunications markets in the near future.

### **FLAWS IN THE COMMISSION PROPOSAL**

The Commission's proposal is fatally flawed. In inviting the proposal of alternatives, the Commission implicitly recognized that its proposed rules failed to provide

- a single point of contact,
- rapid resolution of complaints, and
- independent verification procedures.

Even commenters who oppose the waiver and the specific proposal offered in the petition for Waiver recognize that there is much work to be done before an effective liability rule can be put in place.<sup>4</sup> Opponents of the specific proposal accept a variety of shortcomings in the FCC's rule as it stands.<sup>5</sup>

- They accept the general proposition that a third party administrator is a superior approach (USTA, p. 2; Ameritech, p. 2).
- They accept the need for an adjudicative body to dispose of claims (USTA, p. 2; Ameritech, p. 2).

---

<sup>4</sup> The LECs acknowledge that they have begun working on a TPA of their own (USTA, p. 2) and some accept recognize the need for a delay in implementation of the Commissions proposed rule (W S West, p. 2).

<sup>5</sup> All references are to comments offered in response to the petition for waiver cited above.

- They recognize that a streamlined process for calculating refunds (e.g. proxy billing) is preferable (SBC, p. 3).
- They urge the creation of a true clearing house for information and monies (USTA, p. 2; Ameritech, p. 2),

These opponents, uniformly Local Exchange Carriers (LECs), prefer that the FCC rule be implemented in its flawed form for a simple reason – it affords them a huge competitive advantage in the emerging telecommunications marketplace.

The most fundamental flaw in the liability rule stems from the fact that parties with a direct interest in the disputes are likely to be serving as judge and jury. There is also a severe competitive problem with allowing the local exchange companies (LEC) to take advantage of their role as billing agent in process. As the LECs become parties to disputes over slamming complaints about both local and long distance service, this problem will be compounded.

There is no better way to grasp the fact that the LECs are seeking to gain and preserve an unfair competitive advantage through the preservation of current handling of slamming complaints than to consider U S West's comments. U S West wants to be guaranteed the position of delivering the good news to customers (that they do not have to pay a disputed bill) but never put in a position of delivering the bad news (that the complaint is rejected and the bill must be paid).

On the one hand, U S West insists that it has the right to credit its "own customers" (p. 5) on the spot, arguing that this "accommodates customers in an exceedingly customer-friendly manner." If the contact is perceived to be positive, it wants to preserve it.

Indeed, we oppose any TPA that would seek to shut down a line of communication that a customer desired to pursue with us and potentially created tension or an adversary aspect to our relationship with that customer (p. 5).

On the other hand, it does not want to be put in the position of delivering the bad news.

But something in the nature of a liability administration process different from the Commission's proposal is clearly necessary. It seems obvious that the authorized carrier – that carrier currently charged under the FCC's rules as being the judge and jury regarding whether a slam did occur and whether certain billings are 'righteous' – should not be put in the position of irritating its former (and now returned) customer by holding against the customer regarding a slamming allegation and rebilling (or arranging for the rebilling of) the putatively 'slamming carriers' charges. That 'function' might be more safely performed by a TPA who can be the point of contact to deal with any (predictable) customer irritation.

So too might the re-rating or recharging of billed amounts associated with charges that extend beyond the 30-day absolution period. A decision that an individual should be rebilled and the amount of rebilling made by an entity other than the allegedly slamming carrier (who the customer is angry at) and the authorized carrier (who wants to maintain a solid ongoing relationship with the customer) has some logic behind it (p. 6).

U S West's interest in designing a system in which is it always seen as the good guy is understandable from a commercial point of view but unacceptable as public policy. The Commission must transfer the entirety of the complaint process to a neutral third party so that none of the commercial interests gains any advantage. The TPA should dispense both good news and bad and the only way it can do so fairly is to have no commercial interest in either outcome.

The LEC interest in remaining the point of first contact is also understandable, since it gives them an advantage in customer relations. That role may have been appropriate for a monopoly service supplier, it is not a proper role for a competitor. The function of point of contact for dispute resolution must be transferred to an independent third party if a level playing field is ever to be created in the telecommunications marketplace.

## **FLAWS IN THE ALTERNATIVE PROPOSED FOR WAIVER**

Unfortunately, just as the Commission's proposed rule is inadequate, so too is the Third Party Administrator (TPA) alternative proposed by the parties seeking waiver.

- The alternative allows voluntary participation.<sup>6</sup>
- It allows multiple liability rules and might exclude some carriers (Ameritech, p. 5).
- The alternative is not comprehensive, failing to address slamming of local services (SBC, p. 11).
- The alternative slows the return of funds to consumers (USTA, p. 3).
- Reconciliation of accounts is unclear (USTA, p. 5; SBC, p. 10).
- The costs are not well defined.<sup>7</sup>

We agree with the opponents of the proposed alternative that its current structure does not ensure independence and fairness (Bell Atlantic, p. 1). The authority of the TPA must be structured differently.<sup>8</sup> However, we take the opposite view from many of the opponents who complain that the proposed TPA requires them to participate and, therefore, is not voluntary in some respects. CFA believes that a consumer protection mechanism must be mandatory, not voluntary, particularly in an industry in which virtually every company, local and long distance, has been charged with hard and soft cramming and slamming in the past decade.

We believe that in order to be effective, the rule must be have a uniform nationwide base and set of principles. The observation by NARUC (p. 2) that some states have adopted stiffer

---

<sup>6</sup> Virtually all opponents of the proposal argue that the system is partially voluntary.

<sup>7</sup> Virtually all commenters make this point.

<sup>8</sup> SBC, p. 6, raises the objection that a voluntary association cannot impose requirements on non-participating members.

penalties is attractive, at first blush, but flawed. Unfortunately, this approach would allow some states to adopt weaker penalties or no penalties at all.<sup>9</sup> It would allow completely different enforcement mechanisms from state to state engendering confusion and conflicts over jurisdictional authority. NARUC's concerns about other forms of consumer abuse, such as misleading advertising cannot be dealt with under the current rule.<sup>10</sup> These concerns do underscore the need for federal and state regulators to work together to devise a simple, consumer-friendly approach to consumer protection.

We also take the opposite view from those who complain that a TPA approach would "would require significant change in customer behavior" (Cincinnati, p. 2; see also U S West, p. 3; SBC, p. 7). The introduction of competition into the local exchange market and the entry of local exchange carriers into the long distance market require an even more significant change in consumer behavior. This change in market structure renders it impossible to allow LECs to continue to handle and dispose of disputes over slamming, be they in the long distance or local market.

We agree with those commenters who worry that refunds to consumers would be slowed under the proposed alternative (USTA, p. 3; SBC, p. 6). Their concern for the consumer is revealed to be less than genuine, however, when they complain that an order from the TPA that

---

<sup>9</sup> A national TPA could administer the harsher penalties adopted by a state, but should be required to impose at least the minimum penalty imposed by the FCC.

<sup>10</sup> The statutory authority under which the liability rule is being developed defines a precise form of abuse to be addressed. Because the abuse is well-defined, very rapid resolution can be implemented. NARUC's complaint that the TPA does not deal with misleading advertising ("soft slamming") must be dealt with in other ways. Claims of misleading advertising are very different and require different forms of evidence and different adjudicative procedures. The TPA can certainly be helpful in this regard, providing a uniform point of contact, ascertaining whether the issue is a hard slam or a soft slam, and perhaps making a "hot transfer" to an agency to deal with such complaints.

could provide immediate relief is unlawful (SBC, p. 6; USTA, p. 4). They appear to be less worried about the speed of relief than who get credit for providing it. Under Commission authority, the TPA would have the power to provide exactly the same form of immediate restitution to customers as LECs now claim to have.

### **PRINCIPLES FOR A PERMANENT SLAMMING LIABILITY RULE**

Thus, this critique of both the FCC's original proposal and the alternative put forward as the basis for a waiver leads to the identification of principles for a liability rule that will provide consumer protection without undermining competition. The rule must have the following characteristics.

- Mandatory
- Comprehensive (local and long distance)
- Uniform national process
- Single point of contact
- Independent verification process in which ultimate decisions are made by an entity with no commercial interest in the dispute
- Potential to link verification to dispute resolution
- Simple and comprehensible rebate structure

The third party administrator must be neutral, credible and have the authority necessary to resolve slamming complaints. Therefore, we believe that the Commission must take direct responsibility for the administrator and the system must be mandatory. Consumer protection cannot be left to the voluntary choices of the industry, particularly when the individual companies will be party to the disputes. The FCC must act as the consumer protection agency in

this regard and that means taking full responsibility. Participation in the complaint resolution process must be mandatory.<sup>11</sup>

It is folly to adopt a rule that deals with long distance slamming, when local competition is the primary goal of the Act. The Commission must implement a structure that applies to both local and long distance service disputes.

It is critical to have a single, uniform process for handling complaints with a single point of contact. As the packages sold to consumers become more and more complex disputes will become more complex involving different parties and services sold in different jurisdictions. Only a single point of contact will be able to reduce consumer confusion and bring order to the complaint handling process. The single point of contact can refer other disputes to appropriate regulatory agencies. Under the authority driving the liability rule, the FCC cannot address all consumer complaints or abuses.

If the Commission develops an effective TPA to implement its liability rule, a natural extension would be for the TPA to also play a major role in order verification. Effective third party verification will dramatically reduce complaints.

Preserving the current approach of contacting one of the parties to the dispute or an agent of one of the parties is simply not an option, if the Commission intends to create a neutral liability rule. Implementing either the rule as proposed or the alternative through waiver would not be in the public interest. Imposing a flawed rule that will likely be replaced by another in the

---

<sup>11</sup> SBC, p. 5., is correct in pointing out that “there can be no single point of contact, however, unless the TPA is mandatory for all carriers.” It is incorrect (p. 8) in claiming that the promulgation of a mandatory liability rule under the Act is an “unreasonable and unlawful interference with contracts.”

near future would only create greater confusion and frustration on for the public. We urge the Commission to stay the rule and develop a comprehensive alternative.