

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

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FEDERAL COMMUNICATIONS COMMISSION
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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

REPLY COMMENTS OF CABLE AND WIRELESS USA, INC.

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May 3, 1999

No. of Copies rec'd 014
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SUMMARY

Cable & Wireless USA, Inc., submits the attached Reply Comments to the Commission's Further Notice of Proposed Rulemaking. In these Reply Comments, C&W USA argues the clear majority of those parties commenting in this proceeding support the Commission recognizing Letters of Agency signed, delivered, and accepted exclusively through the Internet are valid forms of verification under its rules. The Commission should not place any special conditions or requirements on these LOAs and should recognize the Internet provides equal, if not more, safeguards for consumer protection than the standard forms used today. C&W USA also demonstrates the widespread support for the Commission taking action to establish an identifier for resellers other than the CIC of the underlying carrier.

C&W USA opposed and illustrates the opposition of other interested parties to several other Commission proposals. Additional penalties for slamming, ancillary responsibilities for third party verifiers, the definition of the term "subscriber," the proposed reporting requirement, and the registration proposal were all opposed by C&W USA in its Comments and many other interested parties in this proceeding. These proposals, while well intended, are each flawed and must either be reconsidered and changed or abandoned all together.

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REPLY COMMENTS OF CABLE AND WIRELESS USA, INC.

Cable & Wireless USA, Inc., ("C&W USA") hereby submits Reply Comments in the Federal Communications Commission's ("Commission") proceeding addressing the unauthorized conversion of a consumer's presubscribed carrier.¹ In these Reply Comments, C&W USA illustrates the widespread support in the record for several of the Commission's proposals in the Second R&O and Further Notice, particularly that of Internet LOAs, and points out the opposition to several other proposals, such as the definition of subscriber and additional responsibilities for third party verifiers.

¹ 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, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, released Dec. 23, 1998 (hereinafter "Second R&O and Further Notice").

I. THE RECORD SUPPORTS INTERNET LETTERS OF AGENCY.

In its Comments, C&W USA strongly advocated the Commission reject its tentative conclusion that Internet LOAs are not contemplated under its current rules² and, instead, declare LOAs delivered, signed, and submitted exclusively over the Internet are in the public interest and conform with the Commission's current rules.³ In the alternative, if the Commission concludes that its rules must be amended in order to recognize Internet LOAs submitted electronically are proper means to verifying a carrier change, then C&W USA advocates rule changes that are narrowly tailored, that do not disadvantage electronic commerce, and that do not attempt to designate an exclusive list of verification means. Regardless of whether the Commission interprets its existing rules or changes these rules to make the accommodation, public policy and the public interest strongly support the use of Internet LOAs. Finally, C&W USA requested the Commission recognize that the Internet does not operate within the traditional jurisdictional boundaries, and, therefore, it should preempt conflicting state laws that do not permit carrier changes over the Internet.

Most commenters agreed with C&W USA in stating their support for Internet LOAs,⁴ and many recognized that LOAs submitted over the Internet are compliant with the Commission's current rules.⁵ These commenters noted that the Commission's current rule governing signatures is broad and can be reasonably interpreted to include a letter of agency submitted over the Internet.⁶ Other commenters recognized the multitude of

² Second R&O and Further Notice at 171.

³ See generally, C&W USA at 3-13.

⁴ BellSouth at 3; Qwest at 18; Comptel at 6; RCN at 3; Florida PSC at 5; US West at 23; Excel at 3; MCI at 23; Frontier at 7; CoreCom at 3; GTE at 11; Tel-Save at 4.

⁵ Qwest at 18; Comptel at 6; US West at 23; Tel-Save 4-17.

⁶ US West at 23; Comptel at

benefits associated with Internet LOAs, but noted the Commission may have to amend its rules in order to provide guidance on how an electronic signature can be properly verified.⁷

Opposition to Internet LOAs were few in number and did not provide compelling justification for this opposition. Internet LOAs, according to several commenters, should be rejected by the Commission because users could inadvertently select a carrier change,⁸ computer hackers could slam over large groups of people,⁹ and the signature requirement is not satisfied when submitted electronically.¹⁰

The record clearly demonstrates that each of these arguments against Internet LOAs are not persuasive and should be rejected by the Commission. First, Internet LOAs can be designed in a fashion that conforms with the Commission's current rules, diminishing the chances for an inadvertent carrier change. The LOA screen page can be separated from other screen pages presented to the customer at the carrier's web site, just as inducements provided on paper must be separated, or easily separable, from LOA authorization forms.¹¹ As C&W USA mentioned in its comments, the fact that all required fields must be completed before the LOA is accepted will substantially reduce human error and will actually increase consumer protection against unscrupulous carriers.¹² Internet LOAs provide greater convenience, more information, and no sales

⁷ Ameritech at 15-16; Montana PSC at 3; NASCUA at 12; Florida PSC at 6; Excel at 4; Frontier at 8; CoreCom at 5; Missouri PSC at 3; TRA at 24.

⁸ NYSPSC at 8

⁹ Id.

¹⁰ Bell Atlantic at 6.

¹¹ 47 CFR § 64.1160(b).

¹² C&W USA at 8.

pressure on the consumer, further reducing the chance of inadvertent or coerced acceptance.¹³

Second, the Internet provides no unique opportunity for carriers to slam large groups of people. There is currently no documented evidence that highlights the pervasiveness of Internet slamming or how the probability of slamming is increased on the Internet. A carrier can submit a large number of paper LOAs with forged signatures or oral authorizations just as easily as a computer hacker can change the preferred carrier of an equal number of consumers. The bottom line is that the possibility for inadvertent carrier changes is not a sufficient reason to oppose all Internet LOAs but instead points out that the process must include adequate safeguards.

Third, any doubts as to the security of an electronic signature has been thoroughly rebutted on the record. In addition to C&W USA, Comptel, Qwest, Tel-Save, and others provided substantial evidence that electronic signatures are as secure as traditional ink and paper. In fact, when the carrier uses certain verification means, such as a credit card,¹⁴ through a closed user group,¹⁵ or when there is a prior relationship with the carrier,¹⁶ the electronic signature is more secure than the traditional signature on paper and ink. As C&W USA stated in its comments, the Commission should embrace, not restrict, the ability of carriers and their customers to use electronic commerce solutions. These solutions will make it easier and more efficient to conduct transactions and, with appropriate verification procedures in place, will be just as or more reliable as existing methods.

¹³ Tel-Save at 4-7.

¹⁴ Excel at 4.

¹⁵ Tel-Save at 6.

¹⁶ BellSouth at 3.

II. THE COMMISSION MUST ADDRESS THE ISSUE OF RESELLERS AND CICS.

In its comments, C&W USA strongly urged the Commission adopt tools that would facilitate the identification function of resellers by third parties, such as incumbent LECs, where resellers cannot be identified or are misidentified due to their reliance on the underlying carrier's carrier identification code ("CIC").¹⁷ Of the three options proposed in the Second R&O and FNPRM, C&W USA supported the requirement that resellers obtain their own CIC for exclusively identification purposes. Many of the commenters, including C&W USA, urged the Commission to refrain from any action that would mandate resellers obtain their own Feature Group D trunks or migrate from the underlying carrier's network.

Most of the commenters agree something must be done to address this issue, but there is little agreement as to the solution. Option One, requiring resellers to obtain their own CICS, garnered the plurality of support,¹⁸ but most of the support was conditioned on whether the cost would be excessive or if it would result in CIC exhaustion. Others either supported other options or were opposed to any action on this issue.

The Commission must act to establish a system that assists in the identification of resellers when a PC change is in dispute. This system should assign a unique identifier to each carrier that is available to the LEC when it is investigating a PC change dispute yet does not erect prohibitive cost barriers that could effectively preclude resellers from the market. Many commenters focused solely on the issue of whether the resellers name is on the bill received by the consumer, when, in fact, the harmful misidentification is not

¹⁷ C&W USA at 13.

limited to the identification of carriers on customers' bills. The more persuasive problem for underlying carries, such as C&W USA,¹⁹ occurs when the LEC uses the CIC to assist the slammed consumer in its complaint to the regulator. A system instituted exclusively for identification purposes would be a fraction of the fee charged by LECs for a CIC with the FGD access²⁰ and should not exhaust CIC numbers due to the recent expansion from three to four codes.²¹

III. THE COMMISSION SHOULD NOT MANDATE ADDITIONAL PENALTIES FOR SLAMMING.

In its comments, C&W USA strongly urged the Commission to refrain from instituting its proposal to increase the amount of liability for carriers found to have engaged in an unauthorized preferred carrier change.²² C&W USA questioned the Commission's statutory authority to enact such a proposal when Congress specifically directed an amount equal to the charges paid by the subscriber be remitted to the authorized carrier. Further, C&W USA requested the Commission refrain from increasing the liability of an unauthorized PC change since it only recently changed its policy from making the consumer whole to punishing the unauthorized carrier.

Most of the commenters also opposed the Commission's proposal arguing that it was either unnecessary or was based on a liability system that was currently being questioned in other forums.²³ Specifically, Comptel questioned the Commission's

¹⁸ BellSouth at 1; Bell Atlantic at 2; Montana PSC at 2; US West at 6; Sprint at 4; Frontier at 4.

¹⁹ See also, Frontier at 4.

²⁰ See Sprint at 5 (noting that if the cost for CIC assignments are so high, perhaps the Commission should inquire as to the justifications for this cost).

²¹ BellSouth at 1; Sprint at 4.

²² C&W USA at 16.

²³ See Qwest at 4; Comptel at 15; AT&T at 30; SBC at 2; Sprint at 2; Media One at 10; Frontier at 2; GTE at 3; TRA at 19.

statutory authority to institute such a system because liabilities that are more than what the consumer would have been charged for the service would be considered a forfeiture, requiring adjudication under Section 209 of the Act.²⁴ SBC's comments also questioned the Commission's statutory authority to institute these damages when the statute specifically indicates the amount to be remitted.²⁵

Supporters of the Commission's proposal based their arguments on the needs of the consumer, but they ignore the rights of carriers and the Commission's authority under the Communications Act. The Commission has already instituted a system in which consumers and authorized carriers will receive benefits for being involved in a slamming incident, in the form of free service and revenue without cost,²⁶ respectively. Of course, the Commission always has the ability to revisit this issue if it concludes the system enacted in the Second Report & Order has not had the desired effect. Until such a determination is made on the record, the Commission should refrain from expanding these liabilities.

IV. THE COMMISSION SHOULD NOT MANDATE NEW, ANCILLARY RESPONSIBILITIES ON THIRD PARTY VERIFIERS.

In its comments, C&W USA urged the Commission to refrain from micromanaging independent third party verification or placing additional responsibilities on the verifiers.²⁷ Specifically, C&W USA opposes NAAG's proposal to eliminate the three way conference call as a means to verifying a carrier change, supports the use of

²⁴ Comptel at 15.

²⁵ SBC at 4.

²⁶ The New York PSC is not correct in its characterization of this situation. An authorized carrier in the receipt of the proposed damage payments will not simply be recovering its costs. Rather, the carrier will

automated verifiers, and opposes the delegation of new duties to third party verifiers that are ancillary to the verification process.

There was almost universal support for allowing the carrier's representative to remain on the line during the third party verification²⁸ and for the use of automated third party verification.²⁹ Most commenters expressed the view that there is no compelling need to regulate third party verification at this time. Further, the Second Report & Order and FNPRM did not include persuasive evidence, in the form of actual documented harm, demonstrating a need for such a prohibition.

The comments that supported the proposal did not provide the evidence necessary to enact the proposed regulations of third party verification. NASCUA, for example, opposes automated systems because the customer's assent could easily be forged.³⁰ Yet, forgery is a concern with each of the Commission's acceptable verification means, including real time third party verification and signed letters of agency. This chance of forgery does not preclude the use of these other verification means and, unless proven to be more widespread with automated systems, should not in the case of automated third party verification.

receive a windfall because it did not have to pay access charges or incur other usage related costs. See NY PSC at 4.

²⁷ C&W USA at 18.

²⁸ Ameritech at 10; Qwest at 12; Bell Atlantic at 3; SBC at 10; Price Interactive at 11; Sprint at 7; Excel at 7; Media One at 6; Frontier at 6; CoreComm at 5; GTE at 10.

²⁹ Ameritech at 12; BellSouth at 3; Qwest at 14; Comptel at 9; Florida PSC at 4; Sprint at 8; MCI at 22; Missouri PSC at 2; TRA at 21.

³⁰ NASCUA at 10.

V. THE RECORD DOES NOT DEMONSTRATE A NEED TO DEFINE SUBSCRIBER.

In its Comments, C&W USA supported SBC's liberal definition of "subscriber" and urged the Commission to refrain from defining categories of authorized subscribers in homes and businesses.³¹ C&W USA proposed, and agrees with other commenters, that the Commission should rely on common law agency principles in order to determine who can make telecommunications decisions on behalf of a household or business. Although the Commission stated there is a need to regulate this definition and place restrictions on which person can make telecommunications decisions, this need was not supported by any empirical evidence of slamming incidences and was apparently based exclusively on hypothetical scenarios.

The fact that the word "subscriber" is undefined and carriers now receive carrier change permission from persons who simply certify they have such authority was not recognized as a serious problem by many of the commenters.³² Those who did support such a requirement did not propose any reasonable means by which carriers would be able to determine who is the proper person to make such decisions. Reliance upon the name on the bill may be acceptable for those carriers seeking to compete in the local residential market, but no other. Businesses, for example, either have a designated name on the bill or only have the corporate identity listed. Who is the "subscriber" if only the corporation is listed? Who is the "subscriber" if the person on the corporate bill is no longer an employee? Would such a corporation be unable to change carriers because the

³¹ C&W USA at 20.

³² Qwest at 22; AT&T at 49; Sprint at 10; MCI at 24; Frontier at 8; TRA at 22.

designated “subscriber” is no longer their agent, and, if carriers are changed, would the new carrier be exposing itself to slamming liability? C&W USA does not believe this is an issue that justifies Commission supervision at this time, nor does C&W USA believe the Commission has an adequate proposal on which to base any definition. Moreover, if regulatory supervision is ever proven necessary in this area, then the Commission should propose rules that are reasonable for all parties and do not place certain carriers at an unfair advantage.

VI. THE PROPOSED REPORTING REQUIREMENT WOULD NOT YIELD THE INFORMATION THE COMMISSION SEEKS.

C&W USA opposed the Commission’s proposal requiring carriers to submit reports on the number of complaints regarding unauthorized carrier changes.³³ Most other competitive, long distance carriers also submitted Comments opposing this measure,³⁴ predominately due to the concern that they will produce inaccurate and misleading information. As previously discussed,³⁵ carriers that provide service to switchless resellers often initially receive slamming complaints in which the reseller is ultimately deemed liable for the unauthorized switch.³⁶ If such informal complaints were included in the proposed reports, an underlying carrier, such as C&W USA, could be inaccurately characterized as having engaged in a pattern of anticompetitive behavior.

³³ C&W USA at 22

³⁴ Qwest at 23; Bell Atlantic at 7; Comptel at 16; RCN at 6; AT&T at 43; SBC at 15; Sprint at 11; Excel at 7; Media One at 15; TRA at 26.

³⁵ See Section II., supra, p 5.

³⁶ See Qwest at 23.

Proponents of this measure do not adequately justify their position. Regardless of the frequency of these reports,³⁷ the accuracy of such information will be questionable. In any event, it is not likely that the carriers the Commission is seeking to punish or exclude from the industry would file the “early warning” information. The type of carriers that the Commission is seeking to police would either provide misleading information or would refuse to file all together.³⁸ The Commission has the necessary information in its Scorecard and the complaints filed by consumers. The focus should be on how this information is being used in its investigation and punishment of carriers that engage in slamming.

VII. THE COMMISSION CAN TRACK CARRIERS WITHOUT THE NEED OF A NEW, CUMBERSOME REPORTING REQUIREMENT.

The Commission’s goal of removing, or precluding entry to, fraudulent carriers in the interstate telecommunications market is supported by C&W USA, but the onerous registration requirement as proposed in the Second Report & Order and FNPRM is not the most efficient means to achieve this goal.³⁹ This registration requirement would be duplicative since carriers must presently file TRS reports with this information⁴⁰ and must designate an agent in the District of Columbia.⁴¹ The information for a simple registration is presently in the Commission’s possession; the compilation and use of the information should rest with the Commission.

Other proposals included in the registration requirement, such as the financial surety authentication and duty on other carriers, were strongly opposed by C&W USA in

³⁷ Montana PSC at 3 (supporting a monthly reporting requirement).

³⁸ AT&T at 44.

³⁹ C&W USA at 23

⁴⁰ Bell Atlantic at 8.

its comments and by several other interested parties.⁴² Underlying carriers that cannot confirm whether a reseller has properly registered will be in a dilemma since they are under an obligation to serve all carriers in a nondiscriminatory manner and any refusal for service could expose them to liability.⁴³ Likewise, TRA, the commenter most familiar with this issue, stated a financial qualification requirement could potentially constitute a significant barrier to participation by smaller carriers.⁴⁴ The Commission should not begin certifying financial acceptability of new entrants; it does not have an objective standard nor the resources adequate to make such determinations.

VIII. THE COMMISSION SHOULD NOT ADDRESS THE ISSUE OF BUNDLING IN THIS PROCEEDING.

C&W USA is concerned that some commenters have raised an issue suggesting that the Commission may prohibit nondominant, domestic interexchange carriers from bundling InterLATA and IntraLATA services. The Commission's requirement that these services receive separate authorizations and be explained to the consumer⁴⁵ is understandable with the advent of competition in the IntraLATA market. However, any prohibition on bundling of these services, even with separate authorization and notification, is unjustified, and, at a minimum, is outside the scope of this proceeding.

⁴¹ Comptel at 16.

⁴² Qwest at 25; Bell Atlantic at 9; Comptel at 16; TRA at 14.

⁴³ AT&T at 48.

⁴⁴ TRA at 14.

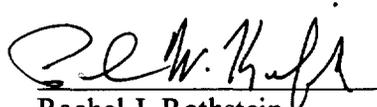
⁴⁵ Second R&O and Further Notice at 82.

XI. CONCLUSION

C&W USA hereby submits these Reply Comments to the Commission's Second R&O and Further Notice. C&W USA agrees with the clear majority of commenters that the Commission must embrace electronic commerce and permit Internet LOAs. However, other proposals, such as the definition of subscriber, additional penalties, and new duties on third party verifiers, were strongly opposed by a majority of commenters and the Commission should refrain from acting on them.

Respectfully submitted,

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