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JUL 10 1999
COMMUNICATIONS DIVISION

July 6, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Portals II
445 Twelfth Street, S.W.
TW-A325
Washington, D.C., 20554

Re: *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*

Dear Ms. Salas:

Enclosed for filing are the original and four (4) copies of Qwest Communications Corporation's Reply Comments on Petitions for Reconsideration and Petitions for Clarification filed in the above-referenced proceeding.

Please acknowledge receipt of this filing by date-stamping the enclosed copy included for this purpose. If you have any questions regarding this filing, please contact me at (703) 363-3131.

Sincerely,

Teresa K. Gaugler
Federal Regulatory Attorney

cc: ITS, Inc.

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

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)

JUL 17 1999
CC Docket No. 94-129

REPLY COMMENTS OF QWEST COMMUNICATIONS CORPORATION

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July 6, 1999

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Long Distance Carriers)	

INTRODUCTION

Qwest Communications Corporation (“Qwest”) hereby submits its reply comments on the Petitions for Reconsideration and Petitions for Clarification of the Federal Communication Commission’s (“FCC’s” or “Commission’s”) *Second Report and Order* in the above-referenced proceeding.¹

Qwest urges the Commission to reject SBC’s request that carrier change orders submitted more than 30 days after they were authorized be deemed invalid. Furthermore, the Commission should clarify that LECs that have unilaterally implemented processes to reject orders they deem outdated are in violation of the Commission’s rules regarding the duties of executing carriers.

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, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking* (rel. Dec. 23, 1998) (“*Second Report and Order*”).

The issue of outdated change orders was not addressed in the Notice of Proposed Rulemaking; therefore, the Commission cannot make such a determination based on a bald assertion by SBC that 30 days is an appropriate time frame for carriers to submit change orders. In fact, Qwest agrees with Cable and Wireless USA that 30 days may be insufficient, especially when orders are rejected because of a preferred carrier freeze (“PC freeze”) and must be resubmitted.

DISCUSSION

Qwest opposes SBC’s request that carrier change orders submitted more than 30 days after they were authorized be deemed invalid and rejected by executing carriers.² Several SBC-affiliated LECs have unilaterally instituted new editing into their carrier change processes and now reject any orders submitted 45 days after they were authorized.³ Qwest submits that in taking such action, these LECs are violating the Commission’s rules regarding the strict duties of executing carriers to “prompt[ly] execut[e], without any unreasonable delay, [] changes that have been verified by a submitting carrier.”⁴ Executing LECs are not permitted to independently verify change

² SBC Petition at 13.

³ Effective November 13, 1998, Southwestern Bell Telephone Company (SWBT), a subsidiary of SBC, began rejecting change orders received more than 45 days after they had been authorized. Furthermore, as of that date SWBT began treating such letters of agency (LOAs) that had already been processed as invalid when investigating slamming complaints. (SWBT Notification Number EA98-028, “Southwestern Bell Telephone Company—Revision of Authorization Date,” dated October 12, 1998.) Effective June 8, 1999, Pacific Bell, also a subsidiary of SBC, began rejecting change orders older than 45 days. (Pacific Bell Notification Number EA99-030, “Pacific Bell Implementation of IntraLATA Presubscription, dated May 5, 1999.)

⁴ 47 C.F.R. § 64.1100(a)(2).

orders submitted by other carriers or to impose additional requirements on those carriers.⁵ Their responsibility is to execute change orders that have been verified in accordance with the Commission's rules. The Commission's rules do not specify whether (or when) a change order may be deemed outdated; therefore, the Commission should clarify that LECs that have unilaterally instituted rejection processes for change orders they deem to be outdated are in violation of Section 64.1100(a)(2) by failing to promptly execute these orders.

In adopting Section 64.1100(a)(2), the Commission reasoned that executing carriers may act anticompetitively if permitted to verify change orders submitted by other carriers. Specifically, "executing carriers would have both the incentive and ability to delay or deny carrier changes, using verification as an excuse, in order to benefit themselves or their affiliates."⁶ It is clear that SBC seeks to do just that. It has the incentive to protect its own intraLATA customer base by refusing to execute change orders from competing carriers when intraLATA dialing parity becomes available. SBC points to the large numbers of change orders that competing carriers have obtained for intraLATA service, apparently attempting to justify its assertion that the time frame for submitting these orders should be limited. However, SBC's motive is transparent—it realizes that competition for intraLATA services is approaching and it requests approval from the Commission to reject those orders it deems invalid so that it may protect its own customer base. Qwest urges the Commission to reject this request.

⁵ 47 C.F.R. § 64.1100(a)(2); *Second Report and Order* ¶ 98.

⁶ *Second Report and Order* ¶ 98.

Should the Commission decide to establish a time limit whereby change orders would be deemed outdated and therefore invalid, it must initiate a rulemaking proceeding to comply with Section 553(b) of the Administrative Procedure Act (APA). The Notice of Proposed Rulemaking in this proceeding did not discuss establishing such a rule, though the APA requires the Commission to publish notice of such a proposal in the Federal Register to allow for public comment before adopting the proposal.⁷ SBC posits its request as one for clarification; however, since this rule was not previously addressed by the Commission in this proceeding, the Commission would violate the APA if it adopted such a requirement under the guise of clarifying its rules. Furthermore, any time limitation that is established should allow appropriate time for carriers to process and submit orders to the executing LEC, but the Commission has not received adequate comment in this limited forum on what that time frame should be. The Commission should not rely on the bald assertion by SBC that 30 days is sufficient without fully exploring the issue.

Qwest agrees with Cable and Wireless USA (C&W USA) that a 30-day time limit may not allow adequate time for processing of all change orders because the carrier and its agents who solicit carrier change orders must process each order before submitting it to the executing LEC.⁸ Curiously, SBC has advocated a 30-day limitation in its petition when its LEC subsidiaries have implemented a 45-day rejection period in practice. SBC

⁷ 5 U.S.C. § 553(b).

⁸ This process is often not automated and relies on the postal service where paper LOAs have been obtained. For example, when a marketing agent solicits change orders on

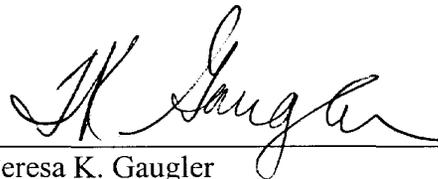
presents no evidence in its petition, however, that a 30-day period is an appropriate or sufficient time frame for carriers to submit change orders. Furthermore, Qwest agrees with C&W USA that this time frame does not account for processing orders that are initially rejected because the customer has a PC freeze on the account and are later resubmitted.

CONCLUSION

For the reasons stated above, the Commission should reject SBC's request to establish a 30-day time limit on the validity of carrier change orders. Moreover, the Commission should clarify that LECs that have unilaterally instituted processes to reject orders they deem to be outdated are in violation of the Commission's rules requiring executing carriers to promptly execute changes that have been verified by the submitting carrier.

Respectfully submitted,

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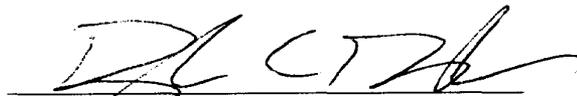
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July 6, 1999

behalf of a carrier, that agent must internally process the order and then forward it to the carrier, who in turn, must input and process the order before submitting it to the LEC.

CERTIFICATE OF SERVICE

I, Douglas C. Nelson, hereby certify that on this sixth day of July, 1999, a copy of the foregoing Reply Comments of Qwest Communications Corp. was served on the parties listed below via hand delivery (indicated by "**") or first class mail, postage pre-paid.



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