

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 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

**REPLY OF THE  
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION  
TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

The National Telephone Cooperative Association (NTCA) hereby submits a reply to oppositions filed in response to NTCA's Petition for Reconsideration (PFR) in the above-captioned docket.<sup>1</sup> In its PFR, NTCA respectfully requested that the FCC reconsider that portion of its order which prohibits executing carriers from verifying preferred carrier changes. The Telecommunications Resellers Association, Qwest Communications Corporation (Qwest), Cable

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<sup>1</sup> NTCA is a national trade association representing more than 500 small and rural independent local exchange carriers providing service throughout rural America.

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and Wireless USA, Inc (C&W), Sprint Corporation (Sprint), and AT&T Corp. (AT&T) all filed comments opposing NTCA's petition for reconsideration of this issue.<sup>2</sup> None of their arguments are persuasive, nor do the arguments provide sufficient justification for prohibiting executing carrier verification.

NTCA requested that the FCC reconsider executing carrier verification arguing that the prohibition is an erroneous reading of the letter and purpose of the Section 222 of the Act and is contrary to the public interest.

The oppositions generally espouse the same rationale the FCC did in its determination that executing carrier verification should be prohibited. The Telecommunications Resellers Association (TRA), for example, argues that executing carrier verification is unnecessary.<sup>3</sup> TRA states that independent third party verification requirements produce the same benefits. Unfortunately, that is not the case. As TRA recognizes, regulatory mandates do not always translate into preferred conduct. There are literally thousands of confirmed incidents of slamming. Even with the new rules, the problem of slamming continues.<sup>4</sup> Executing carrier

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<sup>2</sup> MCI WorldCom, Inc. also filed comments opposing executing carrier verification, but did not reference NTCA's Petition for Reconsideration. MCI Worldcom, Inc. referred only to the PFR filed by the Rural LECs.

<sup>3</sup> Comments of the Telecommunications Resellers Association on Petitions for Reconsideration, p. 11.

<sup>4</sup> NTCA recently received a letter from a carrier complaining that a telemarketer was calling its subscribers claiming to be the carrier's employee. The telemarketer was telling the subscribers that they had to change their long-distance carrier. The carrier learned about the fraud because several of the subscribers called it to confirm. The subscribers who called were informed that they did not have to change long-distance carriers. Unfortunately, under the new rules, the carrier was unable to call its other subscribers for whom it received change orders and confirm that the subscribers wanted to change carriers. It was forced to process the carrier

verification is an attempt by the small and rural carriers to protect the interests of their subscribers.

The concern about potential anti-competitive conduct by executing carriers who verify must be considered in context of an industry which, despite its claims, has found building market share by slamming to be profitable and has convinced the FCC to put its profits ahead of the legitimate interests of consumers not to be defrauded of their choice.<sup>5</sup> The IXCs should not be heard to worry about anti-competitive behavior by others where their slamming practices deny the opportunity for true competition to exist. There are literally thousands of confirmed incidences where a consumer has been slammed, even though regulations and penalties exist to combat the problem. While the commenters state that executing carriers “could” use the consumer’s information anti-competitively, not one commenter points to a single instance where an executing carrier has actually used the information anti-competitively. The fact that no executing carrier has been accused of acting anti-competitively while verifying a carrier change request speaks volumes. There were no regulations or guidelines about how executing carriers were to use change request information and yet the small and rural carriers acted appropriately. Slamming is a continuing problem. Anti-competitive conduct by executing carriers that verify is not. The Commission could certainly alleviate any anti-competitive concerns by enacting appropriate guidelines for executing carrier verification. Sprint makes the surprising and entirely

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changes, knowing that in all likelihood, its subscribers were faced with deceptive marketing practices and were slammed. See Attachment A.

<sup>5</sup> Qwest, C&W, Sprint, MCI, AT&T and TRA all cite potential anti-competitive conduct by executing LECs as the primary reason for opposing executing carrier verification.

unfounded accusation that NTCA's suggestion that executing carrier verification rules could contain explicit marketing prohibition constitutes an admission that such marketing has occurred. NTCA's comment was nothing of the sort; to the contrary, by pointing out that its members' verification activities were competitively neutral, NTCA merely recognized that the Commission's concern regarding the possibility of such action could be reduced by making it clear to all that such action is prohibited. Such guidelines would be far less intrusive, and far more effective in combating the problem of slamming than is prohibiting executing carrier verification. In fact, NTCA believes that sufficient marketing safeguards already exist in the CPNI rules.

No opposition directly addressed NTCA's arguments regarding Section 222(b) other than to say they agreed with the Commission. Specifically, no opponent stated a theory as to why information regarding a principal received from a purported agent cannot be communicated to the principal. The Commission's conclusion that Section 222 (b) of the Communications Act requires a LEC receiving a change order to execute it without consulting the subscriber is an erroneous reading of both the letter and purpose of the statute, and is contrary to the public interest. Executing carriers that verify are not using information for a purpose different from that for which the purported change was requested. They are merely confirming the end user's information with the end user. NTCA agrees that executing carriers should not be permitted to use carrier proprietary network information for marketing purposes.<sup>6</sup> LECs are obligated to keep confidential one interexchange carrier's presubscribed customers from other interexchange

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<sup>6</sup> Comments of MCI, p. 15.

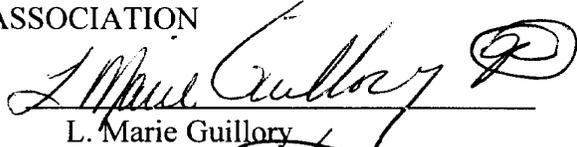
carriers. The executing carrier, however, is not required to keep information about the end user's supposed choice of interexchange carrier from the end user. The information is not proprietary as to the end user.

Slamming has been, and despite the FCC's best efforts, continues to be a tremendous problem for consumers. The FCC should resist the pressure of the large interexchange carriers and permit the small and rural LECs to help protect their subscribers. Executing carrier verification was the one tool proven to be effective against slamming. The Commission should reverse its conclusion regarding executing carrier verification and rescind Section 64.1100(a)(2) of its rules.

Respectfully submitted,

NATIONAL TELEPHONE COOPERATIVE  
ASSOCIATION

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L. Marie Guillory

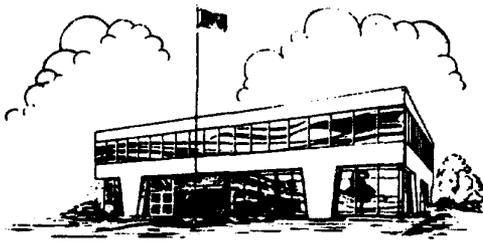
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July 6, 1999



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May 24, 1999

NTCA  
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To Whom It May Concern:

We have been receiving phone calls from our customers for the past couple of weeks asking us if we had anyone working for our company by the name of Brian Johnson. Mr. Johnson is telling our customers that he works for the Millington Telephone Company and that they have to sign up for a program called Advantage One.

We filed an Email Complaint Form with the FCC on 5/13/99 after we had received over 12 of these complaints within a couple of days. Since then we have been sending the Email Forms each time we get a complaint about this man.

Mr. Johnson is telling the customers that he is calling from our company and at one point told the customer that he was calling from our office in Munford, Tennessee. He also tells them that he can consolidate all their bills if they change to Advantage One. The number he gave as a call back # is 1-800-469-5173, extension 7901. We have tried to call this number, but it is always busy.

On Friday, 5/21/99, we started getting faxes from MCI Worldcom to change Carriers on the customers that had called us about Brian Johnson and we know for a fact that these customers did not want to change their carriers. Now we have to change all of these customers knowing that they do not want to change because of the new law that says we cannot call our customers and we must make the change when we receive it from the carrier.

We charge to change carriers and these people are not going to be very happy to get charged for something they called us about and didn't want.

Yours truly,

  
Vivian Dobbins  
Supervisor

VAD/

CERTIFICATE OF SERVICE

I, Gail C. Malloy, certify that a copy of the foregoing Reply to Oppositions to Petition for Reconsideration of the National Telephone Cooperative Association in CC Docket No. 94-129, FCC 98-334 was served on this 6th day of July 1999 by first-class, U.S. Mail, postage prepaid, to the following persons on the attached list:



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