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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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	)	CC Docket No. 94-129 FCC 98 - 334

MOTION TO ACCEPT LATE-FILED REPLY

SBC Communications Inc. (SBC) respectfully requests permission to file, two days late, the attached Reply to the Comments on the Petitions for Reconsideration in the above-referenced docket.

The attorney for SBC erroneously believed that the due date for the filing was no earlier than July 7, 1999, based upon the date calculated by Telcordia and published on the cover sheet of the Federal Register. The error was discovered on July 7 and the Reply was prepared for filing by 8:15 p.m. on that date, but the only computer available to counsel failed to access the FCC electronic filing system, with an error message that the configuration was faulty. For that reason, this Motion and the attached Reply are being filed as soon thereafter as possible. Since there is no schedule for responsive pleadings to this Reply, no party should be harmed by this document being filed late.

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SBC Communications Inc.
July 8, 1999

SBC apologizes for any inconvenience to the Commission, and respectfully requests that the Commission accept the attached materials one day late.

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July 8, 1999

BEFORE THE
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	)	CC Docket No. 94-129
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	FCC 98-334

REPLY OF SBC COMMUNICATIONS INC.
TO COMMENTS ON PETITIONS FOR RECONSIDERATION

Numerous parties filed Comments on the Petitions for Reconsideration in this docket. SBC Communications Inc. (SBC) replies to the Comments filed by MCI Worldcom, Inc. (MCI), AT&T Corp. (AT&T), Qwest Communications Corporation (Qwest), Sprint Corporation (Sprint) and the Telecommunications Resellers Association (Resellers). This Reply is organized by issue, rather than responding separately to each set of comments.

I. Alleged Difficulty of Implementing the Slamming Rules

Numerous parties describe the slamming rules as too difficult to implement.[1] SBC disagrees with that position. It is true that the rules require significant changes and the preparation of new methods and procedures. However, SBC had procedures in place

[1] *See MCI Worldcom's Comments on Petitions for Reconsideration* (MCI's Comments), pages 2, 5-8; *AT&T Corp. Comments on Reconsideration Petitions* (AT&T Comments) pages 2,5;*Opposition and Comments of Cable and Wireless USA, Inc.*(Cable and Wireless Comments) pages 5-10; *Comments of Qwest Communications Corporation,* (Qwest Comments) pages 7-9; and *Opposition of Sprint Corporation* (Sprint Comments) page 9;

and was in compliance with the Slamming Rules for the brief period of time that the rules were in effect on May 17, before notice of the stay was received. SBC does agree that reconsideration by the Commission on the issue of requiring the authorized carrier to re-bill the charges of the alleged slamming carrier would greatly alleviate a very problematic and burdensome aspect of the rules. It appears that the whole industry is in agreement as to how that one issue should be resolved.[2] The alleged slamming carrier that is exonerated by the determination that no slam occurred should be allowed to re-bill its own charges. In addition, SBC asked for clarification of a number of additional issues. However, the fact that one aspect of the rules should be reconsidered or that some clarification is needed is no justification for invalidating the entire set of rules.

SBC also disagrees with the conclusion of Sprint that SBC's request for clarification of several issues "clearly shows that the Commission's liability scheme is flawed and should be scrapped."[3] None of those issues prevent SBC from complying with the rules. However, clarification would be helpful and would certainly simplify the process. For example, pending clarification, SBC has left its PIC "switchback" option in place and still offers carriers who do not subscribe to that option the opportunity to present evidence of verification in accordance with the rules before charging the second PIC charge to the alleged slamming carrier. The only clarification point in SBC's Petition for Reconsideration and for Clarification that could be argued to present an insurmountable obstacle to implementation of the Commission's slamming rules is the notice problem. MCI raises this issue in footnote 9 of MCI's Comments on page 5 and AT&T raises the same issue on page 6 of AT&T's Comments. MCI specifically notes that "resolving the many issues raised in the petitions for reconsideration filed in the instant proceeding does not warrant a lift of the stay of the Commission's rules."[4]

[2] For example, see MCI Comments, page 7, footnote 12.

[3] Sprint Comments, page 9.

[4] MCI Comments, page 4, footnote 8.

However, the court that issued the stay directed the parties to "file motions to govern further proceedings within 30 days of the Commission's disposition of the pending petitions for reconsideration of the Commission's Second Report and Order." It is not clear what action MCI thinks would warrant a lift of the stay. It is very clear, however, that if the Petition for Reconsideration issues are not addressed in some fashion and particularly if the notice problem is not fixed, MCI and its supporters will be able to argue to the court that the rules should not be allowed to go into effect because the Commission has not yet considered and acted on those Petitions.

Qwest complains that the Commission provided no guidelines for making the slamming determination.[5] The Commission did provide very clear guidelines on authorization and verification and it is those guidelines that provide the litmus test for the slamming determination. In most cases, the slamming determination will consist of making a request to the slamming carrier for proof of verification in accordance with those rules. If the slamming carrier fails to provide any such proof, the slamming determination is automatic, with no independent judgment required. Where evidence of verification is produced, the fact finder must compare that evidence to the rules to determine compliance. Some judgment might be required where evidence is produced as to whether particular forms of verification are in full compliance with the rules. However, those situations where there is any real controversy should be resolved by appeals to the Commission. Once the Commission has looked at the more prevalent forms of verification and made some rulings, those rulings will serve as guidelines for the future. It would be impossible for the Commission to create guidelines to cover every possible type of verification form a carrier might choose to use.

[5] Qwest Comments, page 7.

Finally, there will be a very small percentage of cases where the verification on its face appears to comply with the rules, but the customer is very insistent that the change was not authorized. In those few cases, where both sides appear to have legitimate arguments, judgment will be required to weigh the customer's explanation of why the verification evidence is not valid against the carrier's insistence that it is valid. If an industry organization, such as a third party administrator, is exercising that judgment, the natural tendency would be to rule in favor of the carrier, especially if that carrier is a member of the Third Party Administrator arrangement (TPA). If an authorized carrier is exercising that judgment, the natural tendency would be for that carrier to rule in favor of its customer. It is clear that Congress intended the Commission to establish rules that tend to favor customers as opposed to carriers in those few cases where it is necessary to exercise some judgment.

AT&T joins Sprint and Excel, as well as MCI, in arguing that the authorized carrier is, in AT&T's words, "inherently incapable of rendering an impartial determination of the merits of a slamming complaint."[6] On the other hand, those carriers apparently perceive no possibility for bias on the part of an industry funded organization that is managed by a board of industry members the slamming determination as between their member and an end user customer. The slamming controversy is not a dispute between the two competitors, the dispute is between an industry member and an end user customer. Far better for any bias to operate in favor of the end user customer in those few cases where there is room for exercise of any judgment on the part of the entity making the slamming determination, than for any bias to operate in favor of the alleged slamming carrier. Carriers are more likely to have the motivation to appeal in order to resolve the ambiguity for future cases, than are end users. Qwest makes the false argument that the authorized carrier is rewarded for making a determination that a slam

[6] AT&T Comments, page 5.

occurred.[7] However, the customer stays with its chosen carrier, no matter what the outcome is of the slamming determination and there is no other reward to the authorized carrier if no payment has been made to the alleged slamming carrier. There would be additional burden under the rules, if the Commission does not reconsider the requirement that the authorized carrier re-bill the exonerated carrier's charges. Where the customer has paid, there is financial compensation to the authorized carrier in the form of recovery of the amounts paid by the customer to the slamming carrier, but the risk to the carrier of making an erroneous slamming determination in a case where there was credible evidence to the contrary would far outweigh the potential "reward."

II. Billing Practices

SBC did not take the position that the LEC's current billing practices violate the Commission's rules as adopted, as stated by Qwest,[8] but SBC did say that the practice of immediately crediting alleged slamming charges where the customer has already paid the bill appears to be inconsistent with the slamming rules which require the slamming carrier to pay over those funds to the authorized carrier. Where the customer has not paid the bill, that practice is entirely consistent with the slamming rules. Although Qwest also seeks to have the Commission rule that LECs are prohibited from crediting slamming charges for the first thirty days after a slam, neither Qwest, nor any of the other carriers making such request have proposed re-negotiation of the billing agreements to resolve these problems.

MCI alleges that its TPA "suspension" model benefits consumers.[9] It would be surprising if consumers and consumer advocate groups agree that it is in the customer's best interests for alleged slamming carriers to hold their money for six to seven weeks

[7] Qwest Comments, page 10.

[8] Qwest Comments, page 10.

[9] MCI Comments, page 6.

after the customer has been slammed. MCI also has the audacity to argue that such change in LEC billing practices is "a significant and material benefit that makes funding and supporting the TPA possible from a business perspective."[10] While it is certainly true that any such unilateral change in the LEC billing practice would have a significant and material benefit for the IXCs, that significant and material benefit would come directly out of the pockets of the LECs that would be left holding the bag on charges billed, but suspended, for six or seven weeks. The cost of the cash flow problem that is created by slamming carriers should be borne by the carriers creating the slamming problem; that is far more likely to be the alleged slamming carriers than it is to be the ILECs acting as billing agents who have not even been accused of any wrongdoing. MCI also argues that LEC billing contracts are contracts of adhesion,[11] despite the fact that in many areas, the only billing being sent to the LECs is casual billing, not PICed billing. It is ludicrous to continue to argue "contract of adhesion" when a carrier has not only the option, but a current practice, of issuing its own bills.

III. PIC Change and PIC Freeze Issues

MCI and AT&T argue that ILECs should simultaneously lift freezes and take PIC change orders on the three way calls described in paragraph 129 of the Slamming Order as calls that ILECs are required to make available "to lift a freeze." Despite MCI's accusations,[12] all of the SBC companies have made such calls available since April 27, 1999 when the verification and PIC freeze rules went into effect. However, SBC companies will not accept PIC change orders on those calls. MCI describes an example where MCI Worldcom verifies a customer change order, it is rejected due to a PIC freeze and then the carrier tries to lift the freeze and change the PIC on a three-way call.[13]

[10] Id.

[11] MCI Comments, page 8.

[12] MCI Comments, page 12.

[13] Id. at page 13.

AT&T analogizes to the situation where the customer calls the ILEC directly to change its PIC.[14] In fact, there is very little likelihood that a carrier would ever go to the expense of verifying a PIC change, if the carrier could just submit the changes on three way calls to the ILEC. There would be no record of the carrier's involvement in that PIC change, since it would be unnecessary for the carrier to submit a paper or electronic carrier change. Where there is no record of the carrier's involvement, there is no risk of slamming liability, even after the liability rules are in effect. The only carrier that would be at risk in that situation, if the customer alleged a slam, is the executing carrier because there would be no record of any other carrier's involvement in the slam. The carrier change would, for all intents and purposes, be indistinguishable from other changes where the customer called the executing carrier and requested the change. Such change would dramatically reduce the cost of verification for interexchange carriers (to zero), but would even more dramatically increase the cost and potential liability to ILECs of the three way calls. The volume of three way calls would skyrocket and the holding time on those calls would also be increased. There is simply no justification for such modification of the three way calls for lifting PIC freezes to include PIC changes.

MCI also argues that PIC changes should be reduced to cost, based upon MCI's "belief" that PIC change charges are well above cost.[15] MCI does not argue that the TPA it proposes should operate on a "cost" basis; it recommends that the TPA proposal be put out for bid and a vendor selection made on the basis of the response to the bids. No vendor is going to made a bid based on just recovering its cost, nor should MCI expect ILECs to accept work assigned by MCI with compensation limited to cost. MCI then argues that "a neutrally-administered third party PIC process should result in cost-based rates, since the vendor will have every incentive to submit a bid based on cost and provide service in an efficient manner." No matter how "efficient" a TPA is, it cannot

[14] AT&T Comments, page 9, footnote 11.

[15] MCI Comments, page 23-24.

physically change the PIC that resides on a facility-based LEC's switch; only the facility based LEC can make that change. So anything the TPA does in regard to the PIC change is in addition to the LEC working the change order. Involving a TPA in the PIC change process would increase, rather than decrease, the actual cost of making the PIC change.

Cable and Wireless opposes SBC's request for a time limit on LOAs, arguing inexplicably that if a carrier submitted a carrier change request that was rejected because there was a freeze on the line, the 30 day period would be exceeded before the carrier could recontact the customer and resubmit the order. Since freezes can now be lifted within a 24 to 48 hour period and most carrier change orders for residence and single line business service are worked within 24 to 48 hours of receipt, that argument is unconvincing. It would seem to be in the best interests of the carriers to submit customer change orders in close proximity to the time the customer authorized the change, so as to minimize the risk that the customer will have forgotten the change and make a slamming complaint. Such stale orders cause problems for the executing LEC because the targeted customers may receive multiple LOA checks or other incentives to change their service within the same timeframe. If a customer signs one such check and two months later receives another such LOA/check, signs it and then sees that it has been changed to the first carrier who submitted its change request 45 days after the customer signed the check, the customer genuinely believe it has been slammed. Thirty days is sufficient time for carriers to forward carrier change charges to the executing carrier, including the time necessary to lift a freeze and resubmit the change, if necessary.

MCI argues that an executing carrier should be prohibited from using information gained from the CARE system for marketing purposes. SBC companies must send the CARE transaction information to its retail side of the house, just as it sends the CARE transaction to interexchange carriers. All carriers must be able to determine when they have lost a customer in order to stop billing that customer for services. The same type of information is made available to CLECs via a "Disconnect Report." In both cases, the

disconnect designation indicates whether the disconnect was because of a change of carrier or a disconnect for other reasons.

SBC's retail operations do not have access to the information on a "real-time" basis; they are provided access to the very same information at the very same time that it becomes available to other carriers. Neither the CARE transaction, nor the CLEC Disconnect Report identifies the carrier involved in the change, but only that the change transferred the customer to another carrier. The same information is routinely made available to all carriers that resell SBC services when the carrier loses a customer to a competitor in order that the carrier will know when to cease billing connection fees and any other fees to its customer. While that information, which must be provided to carriers so that they will know who their customers are (and conversely which customers are no longer their customers) necessarily bears some relationship to the carrier change request, it is not the carrier change request information. It does not disclose the details on the carrier change request and is not transmitted to the carriers (or SBC retail operations) until the change has already been completed. The ruling sought by MCI would single out executing carriers and deny to those executing carriers the ability to use standard industry information for any marketing purpose, when that very same information is available to all other carriers and is routinely used by all other carriers for marketing purposes. Such request is patently unreasonable.

The Commission's ruling in Paragraphs 106 and 107 of the Slamming Order that the information submitted on the carrier change order is 222(b) information was reasonably limited to information that an ILEC obtains only because it is providing a wholesale service to the carrier submitting the carrier change order. The information that goes to the retail side of the house on the CARE transaction or via the CLEC disconnect report is information that the retail side of the house receives only because it was the provider of retail services to the end user customer. It is the same information submitted to any other provider of retail services to that particular customer by SBC's wholesale

operations. Thus, it is not correctly characterized as 222(b) information and there should be no more restrictions on the use of that retail billing information than is placed on other carriers' use of that same retail billing information.

AT&T proposed that the slamming rules apply to the initial selection of carriers by customers, in the same manner as for a change of carriers. Such requirement would unnecessarily add cost to fix a problem that does not exist. No one has demonstrated any problem with the selection of carriers by customers when they call a local exchange carrier for new service. AT&T's proposal should be rejected.

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July 8, 1999

Certificate of Service

I, Katie Turner, hereby certify that the foregoing "Reply of SBC Communications Inc. to Comments on Petitions for Reconsideration" in CC Docket No. 94-129 has been served on July 8, 1999 to the Parties of Record.

Katie Turner

July 8, 1999

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