

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

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In the Matter of )  
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Implementation of the Subscriber Carrier )  
Selection Changes Provisions of the )  
Telecommunications Act of 1996 )  
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Policies and Rules Concerning )  
Unauthorized Changes of Consumers )  
Long Distance Carriers )  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

CC Docket No. 94-129

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PETITION FOR RECONSIDERATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, hereby respectfully requests that the Commission reconsider in one respect its *First Order on Reconsideration* (FCC 00-135) released May 3, 2000 (*First Reconsideration Order*) in the above-captioned docket. Specifically, Sprint asks that the Commission reconsider its apparent decision to classify as an IXC slam any unauthorized change in a subscriber's preferred carrier (PC) that occurs because of mistakes by a LEC in initiating a PC selection change and informing the IXC through the Customer Account Record Exchange (CARE) or some other process that it had gained a customer. Under such circumstances, the IXC cannot be considered an "unauthorized carrier." The IXC would not have submitted the change and does not have any obligation to verify such "LEC-installs." *See* 47 U.S.C. §64.1100(d). In support of its request here, Sprint states as follows.

IXCs, of course, do not -- and cannot -- perform the physical changes in the switch that are necessary to convert customers to their services. Rather it is the responsibility of the LEC in its role as an executing carrier to "effect[] a request that a subscriber's telecommunications

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carrier be changed." 47 C.F.R. §64.1100(b). LECs receive such requests either from the IXCs acting on behalf of their customers or directly from customers who call the LECs' business offices to request a change in IXCs or to select an IXC for the first time. Unfortunately, LECs do not always properly execute such orders and their errors result in unauthorized changes.<sup>1</sup> For example, so far this year, approximately 9 percent of the slamming complaints received and researched by Sprint's long distance subsidiary, Sprint Communications Company L.P. ("Sprint LD"), were from customers Sprint LD had gained because of LEC-initiated notifications through CARE or some other process, rather than because of any assertion on the part of Sprint LD that it had been chosen by the end user.

The Commission appears to recognize that actions by the LECs may, in some instances, cause unauthorized carrier changes and they may be held liable as a result. *See Second Report and Order*, 14 FCC Rcd 1508, 1567 (1998). But any liability on the part of LECs is to the IXCs (the IXCs may seek damages from the LECs because of the mistakes) and not to the end users. Liability to the end users in such cases is imposed on the IXCs that provided service even though such IXCs had taken absolutely no action on their own to subscribe these end users to their services.

Obviously it makes little sense as a policy matter to hold IXCs liable not only for their own mistakes but for the mistakes of the LECs. Penalizing the carrier that made the mistake is necessary to provide an incentive to minimize such mistakes regardless of whether the mistakes

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<sup>1</sup> In its comments filed in response to the *Further Notice* in this proceeding, 12 FCC Rcd 10674 (1997), Sprint explained the myriad of ways that such errors could occur. These include the failure of the LEC to correctly record the change in the LEC's billing or subscription records; the failure of the LEC to properly enter the change information in its switches; and the failure of the LEC to inform the correct IXC through CARE or some other process that it gained a customer. *See* Sprint's Comments filed September 15, 1997 at 11-13.

were deliberate or as a result of carelessness (as appears to be the case with most, if not all, LEC-installs). Penalizing the carrier that did not commit the mistake provides exactly the opposite incentive and leads to adverse results especially in light of the fact LECs and IXCs are competitors in the intraLATA market and increasingly in the interLATA market. By enabling the LECs to foist off liability for their mistakes onto the IXCs enables the LECs to increase the IXCs' costs and to damage the IXCs' reputation in the marketplace.<sup>2</sup>

Moreover, the IXC is forced into a situation where it cannot defend itself in complaint proceedings before the government agency hearing the slammed customer's complaint. Under §64.1150(d) of the Commission's Rules as adopted in the *First Reconsideration Order*, the only way an alleged unauthorized carrier can defend itself against an slamming complaint is to provide the relevant government agency within a specified time

.... a copy of any valid proof of verification of the carrier change. This proof of verification must contain clear and convincing evidence of a valid authorized carrier change as that term is defined in §§64.1150-1160 of this part. The relevant governmental agency will determine whether an unauthorized change, as defined by § 64.1100(e) of this part, has occurred using such proof and any evidence supplied by the subscriber. Failure by the carrier to respond or provide proof of verification will be presumed to be clear and convincing evidence of a violation.

Plainly in the case of LEC-installs, the alleged unauthorized IXC will not have any "proof of verification" let alone "clear and convincing evidence of a valid authorized carrier change."

Indeed, the IXC will have no record of ever having contacted the customer or of ever having

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<sup>2</sup> It may be possible for the IXCs to recoup the monies lost as well as damages because of mistakes of the LECs by filing complaints either before the Commission or perhaps State PUC. But this possibility is of cold comfort. The complaint process engender additional costs for the IXC which it may not be able to recover; there is no assurance that such complaints would be decided expeditiously; and it is problematic as to whether the IXC will be able to recover any money for the damage to its reputation caused by LEC errors in initiating and executing carrier change requests it receives directly from end users.

tried to solicit the customer's business. Its only "transgression" was to accept a LEC's notification either through CARE or some other process informing the IXC that it had gained a customer; begin (consistent with its obligations as a common carrier) to carry the customer's traffic delivered to it by the LEC; and bill the customer for such carriage. Yet, such IXC will be presumed to have clearly and convincingly violated the Commission's verification rules notwithstanding the fact that it did not submit the carrier change and therefore was not required by the Commission's rule to verify such change. Thus, the IXC will be required to forego any opportunity to collect for the services it provided to the customer; it will be obligated to remit to the authorized carrier 150% of any revenues it already collected from such customer; and it will be required to pay the LEC the change charges not only for have the LEC assign the customer to the IXC in the first place but also to have the LEC reassign the customer to the authorized carrier. The IXC may also be subject to additional penalties imposed by the various States.

Further, to penalize IXCs for violations of the Commission's verification rules when such rules by their terms do not apply to IXCs in cases of LEC-initiated carrier changes is of dubious legality. The Commission does cite any authority under the statute for the imposition of such forfeitures. Nor can it. Section 258 of the Communications Act does not give the Commission the requisite authority since that provision deals with submissions and executions of a subscriber's change request. In the case of the LEC-initiated changes, the IXC has neither submitted nor executed the subscriber's change request. Similarly, Section 201(b) is unhelpful since there is nothing in the *First Reconsideration Order* that in any way suggests a Commission finding that IXCs are engaged in an unreasonable practice when they accept LEC-initiated carrier change requests and carry the traffic of the subscribers the LEC has erroneously assigned to the IXCs.

For all of the reasons, the Commission must reconsider and modify its liability rules in order to place responsibility for errors by the LECs in initiating carrier changes which they receive directly from subscribers. The Commission should amend Section 64.1150(d) to allow the alleged unauthorized carrier to produce records that the subscriber was added to its customer base because of instructions it received from the LEC through CARE or other process. In the face of such documentation and in the absence of any convincing evidence from the LEC or subscriber to the contrary, the relevant governmental agency should exonerate the unauthorized carrier and instead require the LEC to provide restitution to the subscriber and authorized carrier as specified in the Rules as well as pay the previously accused but now exonerated carrier for all charges and fees incurred by the subscriber when such subscriber was erroneously assigned to IXC by the LEC but not paid by such subscriber.

In sum, Sprint respectfully requests that the Commission grant its reconsideration request.

Respectfully submitted,

SPRINT CORPORATION



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May 5, 2000

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **PETITION FOR RECONSIDERATION** of Sprint Corporation was sent by hand or by United States first-class mail, postage prepaid, on this the 5<sup>th</sup> day of September, 2000 to the below-listed parties:

  
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September 5, 2000

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