

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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

**WorldCom's Reply Comments To Oppositions To Petitions For Reconsideration**

WorldCom, Inc. (WorldCom) respectfully submits these comments in reply to the initial comments filed in response to the Petitions for Reconsideration and Clarification of the Commission's *Reconsideration Order*.<sup>1</sup>

As WorldCom stated in its petition, the goal of the anti-slamming liability rules should be to discourage slamming in the first instance and to establish procedures that allow those harmed by a slam to seek restitution in a manner that is both fair and expedient.<sup>2</sup> The modifications WorldCom seeks are intended to realize these objectives.

First, the purpose of WorldCom's proposed modification to require carriers to refer the subscriber alleging a slam to the alleged unauthorized carrier is to promote an

<sup>1</sup> *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, First Order On Reconsideration, CC Docket No. 94-129 (rel. May 3, 2000)(Reconsideration Order).*

<sup>2</sup> See WorldCom Petition For Reconsideration, p. 4.

expedient and efficient resolution of the disputed charges. As Verizon and the United States Telecom Association (USTA) stated, a local exchange carrier (LEC) that is contacted by a consumer with a slamming allegation should, if directed by that consumer, change the consumer back to his preferred carrier.<sup>3</sup> An authorized carrier contacted should also take steps to have the customer appropriately switched and placed in his desired plan. But neither of these parties can provide the customer final resolution with regard to the disputed charges.

Only the alleged unauthorized carrier has knowledge of whether the authorization to switch the customer was properly verified. Thus the alleged unauthorized carrier is the only one to determine whether to “fully satisfy”<sup>4</sup> the customer or to notify the customer that they will be subject to rebilling if they fail to file a complaint or receive an adverse ruling upon adjudication of the complaint.<sup>5</sup> Moreover, other carriers could only provide the consumer with the temporary relief provided for by the rules,<sup>6</sup> i.e. removal of unpaid charges for first 30 days of allegedly unauthorized service pending resolution, to the extent they are capable and specifically authorized by the alleged unauthorized carrier.

Contrary to USTA’s comments, WorldCom’s petition never suggested that the customer solely be referred to the alleged unauthorized carrier.<sup>7</sup> As repeatedly stated in WorldCom’s petition, the customer would also be advised that he or she may file a

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<sup>3</sup> See Verizon’s Opposition, p. 5; USTA’s Opposition, p. 5.

<sup>4</sup> “Fully satisfy” refers to the situation where an allegedly unauthorized carrier chooses to not challenge an allegation of a slam and provides the subscriber alleging that a slam occurred all the relief he is entitled to had he prevailed on the complaint. See *Reconsideration Order*, para. 33.

<sup>5</sup> See *Id.*, Appendix A, §§ 64.1160(c) and (f).

<sup>6</sup> See *Id.*, Appendix A, § 64.1160(b).

<sup>7</sup> See USTA’s Opposition, p. 4. Moreover, USTA’s concern that the complaint would go unreported is unfounded since under a subsequent Commission Order in this docket, that is also not in effect yet, the facilities-based LEC has an obligation to report the complaint. See *Third Report and Order and Second Order on Reconsideration*, CC Docket No. 94-129, Appendix A, § 64.1180(b)(4) and (5) (rel. Aug. 15, 2000).

complaint with the state agency, or this Commission if a state agency has not chosen to implement the rules. Customers would also be advised of their rights concerning absolution. Thus, under WorldCom's modification, when a customer contacts a carrier other than the alleged unauthorized carrier, that carrier would be required to inform the customer that he or she should contact and seek resolution from the alleged unauthorized carrier. The contacted carriers should also provide the customer with information on how to contact the alleged unauthorized carrier if that carrier has provided contact information for this purpose. At the same time, the contacted carrier would inform the customer of the appropriate government agency to seek redress if necessary, and notify the subscriber of his or her rights concerning absolution.

In addition to efficiency and expediency, the integrity of the process must be ensured. WorldCom agrees with AT&T and Verizon that interexchange carriers cannot *lawfully* be held liable for an unauthorized conversion that results from mistakes made by the executing carrier or in cases where the interexchange carrier never submitted a preferred carrier (PC) change request to the LEC, i.e., "LEC connects," under the current rules.<sup>8</sup> As WorldCom stated in its petition, under federal statute and Commission rules, a non-executing carrier could only be guilty of, and liable for, a slam if it *submitted* a PC change.<sup>9</sup> Thus the agency adjudicating the slamming complaint is obligated to investigate and require evidence of how the PC change was initiated and if it was properly executed. WorldCom petitioned that the procedural rule be clarified to specifically state that evidence of an actual submission of the disputed PC change be

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<sup>8</sup> See AT&T Comments, p. 3; Verizon's Opposition, p. 2. However, USTA is incorrect in stating that it is a matter between carriers. See USTA's Opposition, pp 2-3. Carriers can seek compensation from executing carriers for losses due to mistakes or delays on the part of the executing carrier, but so can consumers.

introduced before adjudication of a slamming complaint against a non-executing carrier can proceed. It is critical that the fact-finding process be properly conducted so that the finding is consistent with the law. Although the law may be certain, it is beneficial to ensure that those tasked with enforcing it have clear direction and understanding of the law.

Furthermore, WorldCom disputes Verizon's statement that elimination of the rule requiring immediate removal of charges<sup>10</sup> will "put some of the money back into slamming."<sup>11</sup> Under WorldCom's modification, the unauthorized carrier would be liable if found guilty of a slam by the adjudicating agency. The modification will encourage carriers to settle a legitimate claim prior to a complaint being filed. Thus, it will not increase the number of complaints filed with the commissions. Elimination of the rule, however, will deter consumer fraud, e.g., consumers making false allegations of slams because they have heard carriers may have a hard time rebilling them.

Finally, as WorldCom previously noted, the goal of the anti-slamming rules is to deter carriers from slamming in the first place. The financial liability for unauthorized conversions should provide carriers sufficient motivation to eliminate intentional slams and to implement company policies and procedures to reduce inadvertent slams. WorldCom agrees with the Commission that carriers that are found guilty of a slam by a neutral adjudicating agency must provide for compensation of both the authorized carrier and the consumer. Regarding the amount of this liability, WorldCom agrees with SBC that the statutory language is explicit with respect to how to calculate an unauthorized

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<sup>9</sup> See WorldCom Petition, p. 8, *citing to* 47 U.S.C. § 258; *Section 258 Order*, para. 54; and 47 C.F.R. § 64.1140(a).

<sup>10</sup> See Reconsideration Order, Appendix A, § 64.1160(b).

<sup>11</sup> See Verizon's Opposition, p. 6.

carrier's liability to an authorized carrier. However, that language makes clear that such liability is equal to 100% of the amount of paid charges, not 150%.<sup>12</sup> This amount accomplishes Congress's dual purpose as explained by the legislative history. A liability of an equal amount provides sufficient compensation to the authorized carrier to reimburse its customer for any excess payment for services, or a proxy for that amount, while also compensating the authorized carrier for its foregone revenue.<sup>13</sup> Foregone revenue is not the amount paid by the customer to the unauthorized carrier, but rather the amount the authorized carrier would have received from the customer but for the slam.

Liability for an amount equal to that paid by the customer, as the statute mandates, not only "takes the profit out of slamming" it takes all the revenue as well. This provides sufficient deterrence while not complicating the rules with different liability schemes that yield different results based on the actions of the consumer. Furthermore, it follows the mandate of the statute.

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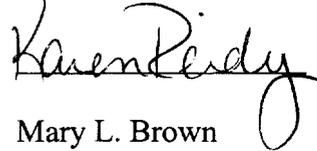
<sup>12</sup> 47 U.S.C. § 258(b) [" . . . shall be liable to the carrier previously selected by the subscriber in an amount **equal to all charges paid by such subscriber . . .**" (*emphasis added*).]

<sup>13</sup> See The Conference Report on Section 258, Joint Explanatory Statement at 115. For example, if the subscriber paid the unauthorized carrier \$20 for service for which he or she would only have been charged \$10 by the authorized carrier, a liability of \$20 compensates the authorized carrier for its payment to its customer for the additional \$10 while also retaining the \$10 as compensation for foregone revenue.

In conclusion, for the foregoing reasons, the Commission should grant WorldCom's petition in its entirety.

Respectfully submitted,

WorldCom, Inc.

A handwritten signature in cursive script that reads "Karen Reidy". The signature is written in black ink and is positioned above the typed name.

Mary L. Brown  
Karen Reidy  
1801 Pennsylvania Ave., NW  
Washington, DC 20006  
(202) 887-2380

Its Attorneys

October 17, 2000

## Certificate of Service

I, Vivian Lee, do hereby certify that copies of the foregoing Reply Comments to Oppositions to Petitions for Reconsideration of WorldCom, Inc. were sent, on this 17th day of October, 2000, via first-class mail, postage pre-paid, to the following:

Dorothy Attwood, Chief\*  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Michelle K. Walters\*  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Sheryl Todd\*  
Accounting Policy Division  
Common Carrier Bureau  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

International Transcription\*  
1231 20th Street, NW  
Washington, DC 20037

James M. Smith  
Marcy A. Greene  
Excel Telecommunications, Inc.  
1133 Connecticut Avenue, NW  
Suite 750  
Washington, DC 20036

Katherine A. Rolph  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW  
Suite 300  
Washington, DC 20007

Mark C. Rosenblum  
Peter H. Jacoby  
AT&T Corp  
Room 1134L2  
295 North Maple Avenue  
Basking Ridge, NJ 07920

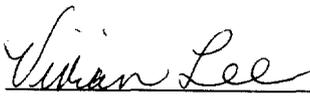
Leon M. Kestenbaum  
Jay C. Keithley  
Michael B. Fingerhut  
Sprint Corporation  
401 9th Street, NW, Suite 400  
Washington, DC 20004

Lawrence e. Sarjeant  
Julie E. Rones  
Linda L. Kent  
Keith Twonsend  
John W. Hunter  
USTA  
1401 H Street, NW, Suite 600  
Washington, DC 20005

John M. Goodman  
Verizon  
1300 I Street, NW  
Washington, DC 20005

Hope Thurrott  
Roger K. Toppins  
Paul Mancini  
SBC Communicaitons Inc.  
1401 I Street, NW, 11th Floor  
Washington, DC 20005

\*HAND DELIVERED

  
Vivian Lee