

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) CC Docket No. 94-129
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

SUPPLEMENT TO PETITION FOR RECONSIDERATION

The rural incumbent local exchange carriers listed in Attachment A (Rural ILECs),¹ by their attorney, hereby submit this Supplement to their Petition for Reconsideration, filed May 19, 2003 in the captioned proceeding.² The Petition asks the Commission to rescind the new verification requirement contained in paragraph 91 of the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Order).³ This Supplement updates the Petition to:

¹ In the Rural ILECs' Petition for Reconsideration, Fremont Telcom was inadvertently identified as FreTel Communications LLC, which is an affiliate of Fremont Telcom. Attachment A herein contains the correct identification of that company.

² A Motion for Leave to File Supplement to Petition for Reconsideration is being filed on this date, pursuant to Section 1.429 of the Commission's Rules.

³ Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of

(a) address the Clarification Order⁴ which was released after the Petition was filed; (b) address issues raised in other petitions that were withdrawn after the release of the Clarification Order; and (c) incorporate the information collection burdens provided in the Comments on Information Collections that the Rural ILECs filed recently.

I. BACKGROUND

In their Petition, the Rural ILECs ask the Commission to eliminate the verification requirement as it would require local exchange carriers (LECs) to verify inbound carrier change requests where the customer asks to switch to either:

(a) the interexchange carrier (IXC) affiliate of the LEC; or
(b) a non-affiliated IXC. The Rural ILECs showed that:

- the verification requirement places an undue burden on small LECs that currently do not verify inbound carrier change requests;

Consumers' Long Distance Carriers, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, para. 91 (rel. Mar. 18, 2003) [hereinafter Order].

⁴ 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, Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order].

- the verification requirement could create a competitive disadvantage for the IXC affiliates of small LECs; and
- there is no justification for requiring small LECs to verify inbound carrier change requests.

The Rural ILECs' arguments concerning the foregoing issues are supplemented below.

II. SCOPE OF THE VERIFICATION REQUIREMENT

In the Clarification Order, the Commission stated that the verification requirement applies only to carrier change requests where the customer wants to change to the LEC's IXC affiliate.⁵ The verification requirement does not apply when the customer wants to change to an IXC that is not affiliated with the LEC. The Rural ILECs therefore modify their Petition to apply specifically to the LEC's processing of inbound carrier change requests where the customer wants to change to the LEC's IXC affiliate, because the issue of verifying requests to change to non-affiliated LECs is moot.

⁵ Clarification Order para. 5. Most of the Rural ILECs do not have any competitive local exchange carriers providing service in their areas. Thus, the carrier change requests at issue are primarily requests to change IXCs, not to change from one LEC to another LEC.

III. BURDEN ON SMALL ILECS

In their Petition, the Rural ILECs noted that small ILECs likely would use letters of agency (LOAs) to verify inbound carrier change requests, and that a small ILEC may need to process hundreds or thousands of LOAs each year.⁶ After the filing of the Petition, the Rural ILECs filed Comments on Information Collections. Those Comments are enclosed as Attachment B. In the Comments, the Rural ILECs show that the cost for them to comply with the verification requirement would be approximately \$122,000 per year.⁷ The Rural ILECs also showed that the cost of compliance for all ILECs with IXC affiliates, other than the Bell Companies, could well exceed \$5 million (assuming the ILECs would use LOAs for verification).⁸ And although it is difficult to estimate the cost of compliance for the Bell Companies, the Rural ILECs showed that it may be on the order of \$100 million.⁹ The Rural ILECs therefore supplement their Petition to include the burden estimates contained in their Comments on Information Collections.

⁶ Rural ILECs Petition at 6.

⁷ Rural ILECs Comments on Information Collections at 14.

⁸ Id.

⁹ Id.

The Commission did not consider the burden of compliance when it adopted the verification requirement. Surely, annual burdens of \$5 million for small ILECs and perhaps \$100 million for the Bell Companies compel the Commission to provide justification commensurate with those costs.

IV. ANTI-COMPETITIVE IMPACT ON THE IXC AFFILIATES

In their Petition, the Rural ILECs explained that if the verification requirement were to apply only to requests to change to the LEC's IXC affiliate, it would have an anti-competitive impact on those IXC affiliates. The LECs could process carrier change requests for non-affiliated ILECs immediately, because no verification would be needed. By comparison, due to their use of LOAs, the LECs would not be able to effectuate changes to their IXC affiliates until perhaps a week or more after the customers call the LECs.¹⁰

In the Clarification Order, the Commission stated that, indeed, the verification requirement applies only to requests to change to the LEC's IXC affiliate.¹¹ Thus, the Rural ILECs' concerns have been realized.

¹⁰ Rural ILECs Petition at 4-8.

¹¹ Clarification Order para. 5.

The Rural ILECs therefore supplement their Petition to point out that the verification requirement will, indeed, have an anti-competitive impact on their IXC affiliates. As exemplified in Scenario 2 in their Petition, a customer calling a Rural ILEC and seeking a quick carrier change could readily decide to switch to a non-affiliated IXC, for which no verification is required, rather than deal with the delay associated with an LOA. Rural ILECs will be facing the clear risk of losing each and every customer who calls the LEC and asks to switch to the LEC's IXC affiliate. As noted in the Petition, the verification requirement is an unnecessary regulatory burden that could thwart the marketing efforts of the affiliated IXCs.¹²

V. LACK OF JUSTIFICATION

The new verification requirement came as a surprise to IXCs and LECs. Sprint and the United States Telecom Association (USTA) addressed this issue in their petitions for reconsideration and/or clarification. Because the Sprint and USTA petitions focused on the verification of requests to change to non-affiliated carriers, the petitions were rendered moot by the Clarification Order. So Sprint and USTA recently

¹² Rural ILECs Petition at 7-8.

filed requests to withdraw their petitions.¹³ Given the likelihood that the Commission will permit Sprint and USTA to withdraw their petitions, the Rural ILECs seek to supplement their Petition with the following three legal issues raised in the Sprint and USTA petitions. These three legal issues still are applicable even though we now know that the verification requirement is limited to customer requests to change to LEC-affiliated IXCs.

First, Sprint and USTA pointed out that the Commission did not give notice that it was considering a change to the verification rules.¹⁴ As noted by Sprint, the D.C. Circuit has held that "new rules that work substantive changes in prior regulations are subject to" the notice and comment procedures of the Administrative Procedure Act (APA).¹⁵ Thus, the

¹³ Sprint Corporation Petition for Reconsideration, Docket No. 94-129, dated May 19, 2003 [hereinafter Sprint Petition], withdrawal requested, Letter from Michael B. Fingerhut, Sprint, to Marlene Dortch, FCC, Docket No. 94-129, dated May 27, 2003; Petition for Clarification Or, in the Alternative, Reconsideration of the United States Telecom Association, Docket No. 94-129, dated May 19, 2003 [hereinafter USTA Petition], withdrawal requested, Motion to Withdraw Petition of the United States Telecom Association, Docket No. 94-129, dated May 29, 2003.

¹⁴ USTA Petition at 2.

¹⁵ Sprint Petition at 3 (citing Sprint v. FCC, 315 F.3d 369, 374 (D.C. Cir. 2003)).

Commission failed to comply with the APA's notice requirement when it changed the verification requirements.

Second, USTA pointed out that the Commission did not modify the text of the verification rules. In particular, the Commission did not change the definition of "submitting carrier."¹⁶ For example, when a LEC directly receives a request to change a customer's IXC, the LEC is not acting as a "submitting carrier." According to Sections 64.1100 to 64.1195 of the Commission's Rules as modified by the Order, the LEC does not need to verify the carrier change request. Also, for inbound carrier change requests, the LEC would not be acting as an "agent," so a "letter of agency," as defined in Sections 64.1120 and 64.1130, would not be appropriate. Thus, the verification rules are not consistent with the verification requirement in paragraph 91 of the Order.

Finally, the Rural ILECs pointed out that the Commission did not provide adequate justification for adopting the new verification requirement. Indeed, the Rural ILECs noted that small ILECs have been permitted to provide interexchange service for years, and there has been no pattern of slamming by these ILECs.¹⁷ Sprint made the same point, stating that

¹⁶ USTA Petition at 4.

¹⁷ Rural ILECs Petition at 8-10.

"many LECs were already providing or planning to provide long distance service at the time the Commission decided that no verification of LEC-installs was necessary."¹⁸ Sprint added: "There is no evidence - and the Commission cites none - that the competitive long-distance market has changed so dramatically as to warrant the imposition of new and costly verification requirements on the LECs."¹⁹ For this reason, the Order is arbitrary and capricious.

CONCLUSION

In sum, the Rural ILECs supplement their Petition for Reconsideration to:

- narrow the scope of the verification requirement at issue to consist of only those inbound requests to change to an IXC affiliated with the LEC;
- confirm that the verification requirement, as clarified in the Clarification Order, will definitely have an anti-competitive impact on their IXC affiliates;
- point out that the cost of compliance would be about \$122,000 per year for the Rural ILECs, and perhaps \$5

¹⁸ Sprint Petition at 3.

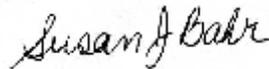
¹⁹ Id. at 3-4.

million for all small ILECs with IXC affiliates and \$100 million for the Bell Companies; and

- show that -- because the Commission did not give notice, did not amend the rules and provided no justification for the verification requirement -- the Order violates the APA and is arbitrary and capricious.

The Rural ILECs reiterate their request for the Commission to eliminate the requirement to verify inbound carrier change requests -- at least as it applies to small ILECs.

Respectfully submitted,
RURAL ILECS LISTED IN ATTACHMENT A



By

Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947

May 30, 2003

ATTACHMENT A

RURAL ILECs

Armour Independent Telephone Company
Big Sandy Telecom, Inc.
Bluestem Telephone Company
Bridgewater-Canistota Telephone Company
C-R Telephone Company
Chautauqua and Erie Telephone Corporation
China Telephone Company
Chouteau Telephone Company
Columbine Telecom Company
Consolidated Telco Inc.
Ellensburg Telephone Company, Inc.
Fremont Telcom Co.
Great Plains Communications, Inc.
GTC, Inc.
Kadoka Telephone Company
Maine Telephone Company
Marianna and Scenery Hill Telephone Company
Nebraska Central Telephone Company
Northeast Nebraska Telephone Company
Northland Telephone Company of Maine, Inc.
Odin Telephone Exchange, Inc.
Peoples Mutual Telephone Company
Sidney Telephone Company
Standish Telephone Company, Inc.
STE/NE Acquisition Corp. d/b/a Northland Telephone Company of
Vermont
Sunflower Telephone Co., Inc.
Taconic Telephone Corp.
The El Paso Telephone Company
The Columbus Grove Telephone Company
The Orwell Telephone Company
Union Telephone Company of Hartford
Yates City Telephone Company
YCOM Networks, Inc.

ATTACHMENT B

COMMENTS ON INFORMATION COLLECTIONS

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) CC Docket No. 94-129
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

COMMENTS ON INFORMATION COLLECTIONS

Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947

Attorney for the Rural ILECs Listed in
Attachment A

May 28, 2003

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	ii
COMMENTS ON INFORMATION COLLECTIONS	1
I. BACKGROUND	2
A. Slamming Orders	2
B. Rural ILECs	4
C. Proceedings at the FCC	7
II. INFORMATION COLLECTIONS	9
A. The <u>Order</u> Should Be Rejected by OMB Solely Because the Commission's Submission to OMB Does Not Address the Verification Requirement	9
B. The Burden Estimates Do Not Reflect the New Verification Requirement	10
C. The Submission Does Not Comply with the Certifications Required in 5 C.F.R. § 1320.9	16
1. The Verification Requirement Is Not Necessary for the Proper Performance of Commission Functions	17
2. The Commission Did Not Reduce to the Extent Practicable the Burden on Small ILECs	18
3. The Commission Did Not Inform the ILECs of the Average Burden of Collection Pursuant to 5 C.F.R. § 1320.8(b)(3)	19
CONCLUSION	20
ATTACHMENT A	

SUMMARY

The rural incumbent local exchange carriers listed in Attachment A (Rural ILECs) submit these comments concerning the information collections adopted in the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Order), and the subsequent Clarification Order, in the captioned proceeding. In particular, the Rural ILECs demonstrate that the requirement for local exchange carriers (LECs) to verify inbound carrier change requests is a new, unnecessary regulatory burden for small LECs that currently do not verify inbound carrier change requests. The Commission did not specifically mention the new verification requirement in its Submission to OMB. And even if, for the sake of argument, the Commission implicitly included the new verification requirement in its burden estimates, those estimates are much less than the actual burden of the verification requirement on LECs. For these reasons, the Commission's Submission to OMB does not comply with 5 C.F.R. § 1320.9.

The Rural ILECs therefore request the OMB to decline to approve the verification requirement.

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) CC Docket No. 94-129
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers)

COMMENTS ON INFORMATION COLLECTIONS

The rural incumbent local exchange carriers listed in Attachment A (Rural ILECs), by their attorney, hereby submit these comments concerning the information collections adopted in the Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking¹ (Order) and the subsequent Clarification Order² in the captioned proceeding. In particular, the Rural ILECs demonstrate below that the

¹ 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, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42 (rel. Mar. 18, 2003) [hereinafter Order].

² 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, Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order].

requirement for local exchange carriers (LECs) to verify inbound carrier change requests³ is a new, unnecessary regulatory burden for small ILECs that currently do not verify inbound carrier change requests. And this burden far exceeds the Commission's burden estimates as submitted to OMB.

I. BACKGROUND

A. Slamming Orders

In 1998, the Commission released the Second Report and Order in which it declined to require verification of carrier changes that result from a customer contacting a LEC directly (aka "inbound carrier change requests").⁴ Such "carrier changes" include customers calling the LEC and asking the LEC to change their long distance company, aka "interexchange carrier" (IXC).⁵

Thus, suppose a customer were to call a LEC named "LocalTelco." Under the provisions of the Second Report and Order, LocalTelco can change the customer's IXC without, for

³ Order para. 91.

⁴ See id.

⁵ Most of the Rural ILECs do not have any CLECs providing service in their areas. Thus, the carrier change requests at issue are primarily requests to change IXCs, not to change from one LEC to another LEC.

example, using third-party verification (where the customer may be transferred to an independent party who confirms the change request and verifies the identity of the customer) or a written letter of agency (LOA) (which confirms the change request). This is true regardless of whether the IXC in question is affiliated with LocalTelco. In other words, no verification is required for inbound requests to a LEC from a customer who wants to change IXCs.

In the Order, the Commission modified this rule. In paragraph 91, the Commission said that it would now "require verification of carrier change requests that occur when a customer initiates a call to a LEC."⁶

This new verification requirement came as a surprise to LECs and IXCs. Verizon, BellSouth, SBC and Qwest met with Commission staff, and requested the Commission to clarify that the requirement to verify inbound carrier change requests did not apply when, for example, a customer wants to change to a non-affiliated IXC.⁷ The Commission agreed, and released the Clarification Order. There, the Commission explained that

⁶ Id.

⁷ Ex Parte Letter from Marie Breslin, Verizon, Mary Henze, BellSouth, Mike Alarcon, SBC, and Kathy Krause, Qwest, to Marlene Dortch, FCC, Docket No. 94-129, dated May 2, 2003 [hereinafter Bell Company Ex Parte Letter].

paragraph 91 of the Order does not apply when, for example, a customer wants to change to an IXC that is not affiliated with the LEC.⁸

In other words, suppose LocalTelco has an affiliate that is an IXC. If a customer were to call LocalTelco and ask to switch to LocalTelco's IXC affiliate, then pursuant to the Order, LocalTelco would need to use one of the Commission's verification procedures, such as third-party verification or a written LOA, to verify that customer's IXC selection. (This requirement was not affected by the Clarification Order.) But if the same customer were to call LocalTelco and ask to switch to a non-affiliated IXC, LocalTelco could make the change without using any Commission-sanctioned verification procedure. (The Clarification Order confirms that no verification is required in the latter situation.)

B. Rural ILECs

The Rural ILECs are small incumbent local exchange carriers (ILECs) serving rural areas in Colorado, Florida, Idaho, Illinois, Kansas, Maine, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Vermont, Virginia and Washington. Almost all of the Rural ILECs have IXC

⁸ Clarification Order para. 5.

affiliates. Most of the Rural ILECs that have IXC affiliates do not verify inbound carrier change requests when customers want to change to the affiliated IXC.

None of the Rural ILECs and their IXC affiliates uses third-party verification. When they do verification in accordance with the Commission's Rules, the small ILECs and IXCs use written LOAs.

This is a key difference between the Rural ILECs and many of the larger LECs. Large LECs, such as Verizon, use third-party verification to verify a customer's carrier change request.⁹ In other words, when a Verizon customer calls Verizon to change their long distance service to Verizon's IXC affiliate, the customer service representative could take the order and then transfer the call to someone else who would verify the order. By comparison, in accordance with the Order, when a customer of one of the Rural ILECs calls that LEC and asks to change their long distance service to the LEC's IXC affiliate, the LEC's customer service representative would then take the order, and mail an LOA to the customer; the customer would then need to complete the LOA and mail it

⁹ See Bell Atlantic Communications, Inc., Order, DA 00-2341, 15 FCC Rcd. 20,134 (Enforcement Bur. 2000); Qwest Communications, Inc., Order, 18 FCC Rcd. 1178 (2003); AT&T Corporation, Order, 18 FCC Rcd. 4491 (2003).

back to the LEC before the LEC could process the change request. Thus, a large LEC using third-party verification for changes to its IXC affiliate could make the change almost immediately, but a smaller LEC that uses LOAs for changes to its IXC affiliate would not make the change for perhaps a week or more after the customer calls the LEC.

This difference is exacerbated when viewed from the LEC's perspective as it processes changes to its IXC affiliate and changes to non-affiliated IXCs -- as shown by the following hypothetical conversations between a small LEC's local exchange customer and the small LEC's customer service representative (CSR).

SCENARIO 1

Customer:	"Please change my long distance company to BIG-IXC."
CSR:	"OK. . . . The change will take effect within 24 hours."

SCENARIO 2

Customer: "Please change my long distance company to your long distance affiliate."

CSR: "OK. I would be happy to help you with that. First, I will mail a letter of agency to you. You'll need to review it, sign it, and mail it back to us. After we receive the completed letter of agency, we'll be happy to make the change. So, in about a week, you'll be switched to our long distance affiliate."

Customer: "You've got to be kidding! I want to get rid of my current long distance company right away. Is there any way I can do that?"

CSR: "Well, you could switch to one of the other long distance companies."

C. Proceedings at the FCC

AT&T, WorldCom, Sprint, the United States Telecom Association (USTA) and the Rural ILECs filed petitions for reconsideration of the new verification requirement on May 16, 2003.¹⁰ All of the petitioners opposed any requirement for

¹⁰ AT&T Petition for Partial Reconsideration Or, in the Alternative, Request for Clarification, Docket No. 94-129, dated May 19, 2003 [hereinafter AT&T Petition]; WorldCom Petition for Reconsideration and Clarification, Docket No. 94-129, dated May 19, 2003 (referring to itself as MCI); Sprint Corporation Petition for Reconsideration, Docket No. 94-129, dated May 19, 2003 [hereinafter Sprint Petition]; Petition for

LECs to verify changes to non-affiliated IXCs - an issue that, arguably, was subsequently rendered moot by the Clarification Order.¹¹ The Rural ILECs also opposed the requirement to verify changes to affiliated IXCs. This issue remains pending, and is the focus of these Comments.

Although the Commission could grant the Rural ILECs' petition and eliminate the verification requirement in a future Order, the Rural ILECs want to ensure that the verification requirement never goes into effect. The Rural ILECs filed an Emergency Request for Partial Stay on May 22, 2003 - asking the Commission to stay the verification requirement pending its action on the Rural ILECs' petition for reconsideration. Via these Comments, the Rural ILECs also ask OMB to decline to approve the verification requirement in the Order so that the requirement can not go into effect.

Clarification Or, in the Alternative, Reconsideration of the United States Telecom Association, Docket No. 94-129, dated May 19, 2003 [hereinafter USTA Petition]; Rural ILECs Petition for Reconsideration, Docket No. 94-129, dated May 19, 2003.

¹¹ Sprint has withdrawn its petition because it focused solely on the issue of verification of changes to non-affiliated carriers - and that issue was rendered moot by the Clarification Order. Letter from Michael B. Fingerhut, Sprint, to Marlene Dortch, FCC, Docket No. 94-129, dated May 27, 2003.

II. INFORMATION COLLECTIONS

The verification requirement is an information collection subject to the Paperwork Reduction Act and the implementing regulations.¹² It cannot go into effect unless and until OMB approves the information collection described in the Commission's Paperwork Reduction Act Submission to OMB. As shown below, there are several reasons why OMB should not approve the verification requirement.

A. The Order Should Be Rejected by OMB Solely Because the Commission's Submission to OMB Does Not Address the Verification Requirement

As a threshold issue, the Commission did not specifically mention the verification requirement in paragraph 91 of the Order as one of the information collections that require OMB approval. The Commission noted that Sections 64.1120, 64.1160, 64.1170 and 64.1180 of the Commission's Rules (as modified by the Order) are subject to OMB review.¹³ However, the verification requirement set forth in paragraph 91 of the

¹² See, e.g., 5 C.F.R. § 1320.3(c) (defining "collection of information" as including any requirement for persons to obtain, maintain or retain information). In addition to obtaining verifications of carrier change requests, a LEC may need to "maintain and preserve" copies of the verifications for two years. See 47 C.F.R. § 64.1120(a)(1).

¹³ Order para. 118.

Order was not incorporated in the text of those changed rule sections. If it had been incorporated in one of the rule sections, it may have been included in Section 64.1120 (concerning verification) or Section 64.1130 (concerning LOAs). But in the Commission's Submission to OMB, its summations of those rule sections do not mention the verification requirement.

Nevertheless, the verification requirement is a new information collection, and as recognized by the Commission, the collection of information contained in the Order is subject to approval by OMB.¹⁴

In sum, because the Commission failed to specifically mention the new verification requirement in its Submission to OMB, OMB should not approve the new verification requirement.

B. The Burden Estimates Do Not Reflect the New Verification Requirement

Nevertheless, assuming for the sake of argument that the Commission intended to implicitly include the verification requirement in the Submission, the Commission did not consider the impact of the verification requirement in its burden estimates.

¹⁴ Id. para. 119.

In the Supporting Statement included in the Paperwork Reduction Act Submission, the Commission provides burden estimates for the four rule sections that were changed in the Order. If we assume, for the sake of argument, that these burdens were meant to include the burdens for complying with the verification requirement, one would have to assume that it is the burden estimates for Sections 64.1120 (verification procedures) and Section 64.1130 (LOAs) which would apply to the verification requirement. However, the burdens given for those two rule sections do not reflect the burden on LECs for complying with the verification requirement, as shown below.

The Commission specifies the burdens for those two rule sections as:

	Section 64.1120	Section 64.1130	Total
Number of Respondents	1772	1850	
Frequency	On occasion. Recordkeeping.	On occasion.	
Annual burden per respondent	2 hours	3 hours	
Total annual burden	3544 hours	5500 hours	9044 hours
Annual cost (hours x \$48.91)¹⁵	\$173,337	\$269,005	\$442,342

These burden estimates are the same as the estimates approved by OMB in 2001¹⁶ - before the Commission's recent adoption of the verification requirement. Thus, because there is no change in the burden estimates, the Commission could not have implicitly included the new verification requirement in those estimates.

The Rural ILECs have estimated the burden of the new verification requirement, and it is much higher than the burden estimate given above. Most of the Rural ILECs that

¹⁵ The individual costs for each section were calculated as: (total annual burden) x \$48.91. The results given in this table differ slightly from the numbers provided in the Commission's Submission to OMB.

¹⁶ In 2001, OMB approved 3544 hours for compliance with Section 64.1120, and 5500 hours for compliance with Section 64.1130, yielding a total of 9044 hours. Public Information Collections Approved by Office of Management and Budget, Notices, 66 Fed. Reg. 50,651 (Oct. 4, 2001).

have IXC affiliates (i.e., 30 ILECs) estimated the work involved in sending an LOA to a customer, processing the LOA when it is returned to the LEC, and maintaining the LOAs. The 30 Rural ILECs, which collectively serve approximately 280,000 lines, estimate the annual burden of compliance with the verification requirement to be approximately 2500 hours, as shown in the table below.

In total, more than 500 small ILECs¹⁷ have IXC affiliates.¹⁸ If, for the sake of argument, we were to extrapolate from the Rural ILECs' data, the burden for all small ILECs would be as follows (assuming that the small ILECs would use LOAs):

¹⁷ Here, the term "small ILECs" is used to refer to all incumbent local exchange carriers other than the Bell Companies.

¹⁸ See 2001 Telecommunications Provider Locator Report, Table 3: Telecommunications Providers Reporting on Form 499-A for 2001, Filings as of Nov. 22, 2002 (rel. Feb. 2003), at <http://www.fcc.gov/wcb/iatd/locator.html>.

	# ILECs	Approx. # Lines ¹⁹	Estimated Total Annual Burden in Hours	Cost (at \$48.91 per hour) ²⁰
Rural ILECs with IXC Affiliates	30	280,000	2500	\$122,275
Independent ILECs with IXC Affiliates	At least 500	Over 13,000,000	Approx. 116,071 ²¹	\$5,677,033

As shown above, the cost of implementing the verification requirement could readily be well over \$5 million - and this is just the cost for implementation by the small ILECs.

It is difficult to estimate the compliance burden for the large ILECs (i.e., Verizon, SBC, BellSouth and Qwest), especially because the large ILECs likely would use third-party verification rather than LOAs. However, some sense of the burden of verifying requests to change to the large ILECs'

¹⁹ For Rural ILECs, the "# lines" is the number of access lines. For "all independent ILECs with IXC affiliates," the "# lines" is a rough estimate of the loop counts used for universal service purposes for the approximately 500 ILECs identified as having IXC affiliates. See October 2001 Monitoring Report, Table 3.27, High-Cost Loop Fund, 1999 Study Areas, at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-3.zip (providing loop counts by study area).

²⁰ The Commission used the hourly rate of \$48.91 in its Submission to OMB.

²¹ Calculated as follows: (Rural ILECs annual burden) x (# lines for all independent ILECs) / (# lines for Rural ILECs).

affiliated IXCs may be gleaned from the large ILECs' estimates of the burden of verifying requests to change to non-affiliated IXCs. Their estimates are as follows.

- USTA stated that it would cost well over \$100 million annually to verify change requests,²² presumably for changes to non-affiliated IXCs.
- Verizon processes about 14 million requests to change to non-affiliated IXCs each year.²³

Thus, if the burden of verifying change requests to the large ILECs' IXC affiliates is similar in magnitude to the burden of verifying change requests to non-affiliated IXCs, the requirement to verify requests to change to the ILECs' IXC affiliates could readily cost over \$100 million annually. While it is true that the large ILECs already perform such verification, the existing Commission Rules do not require them to do so.

In sum, the actual burden of the verification requirement is approximately \$5 million for small ILECs, and perhaps on the order of \$100 million for large ILECs. These burdens far exceed the burdens presented by the Commission in its Submission to OMB.

²² USTA Petition at 2.

²³ Bell Company Ex Parte Letter at 2.

**C. The Submission Does Not Comply with the
Certifications Required in 5 C.F.R. § 1320.9**

Pursuant to the regulations implementing the Paperwork Reduction Act, the Commission must certify that the verification requirement satisfies the ten standards contained in 5 C.F.R. § 1320.9. But the Commission failed to show that it has met at least three of those standards. The Commission did not show that the information collection:

- is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;²⁴
- reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:
 - (1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;
 - (2) the clarification, consolidation, or simplification of compliance and reporting requirements; or
 - (3) an exemption from coverage of the collection of information, or any part thereof;²⁵ and
- informs potential respondents of the information

²⁴ 5 C.F.R. § 1320.9(a).

²⁵ 5 C.F.R. § 1320.9(c).

called for under § 1320.8(b)(3)²⁶

These three standards are discussed in order below.

1. The Verification Requirement Is Not Necessary for the Proper Performance of Commission Functions

In the Order, the Commission gave only one reason for reversing the position it took in the 1998 Second Report and Order. The Commission said: "[M]any LECs have become (or plan to become) long distance service providers."²⁷ But that reason does not apply to the small LECs which have been permitted to provide long distance service for many years. Indeed, some of the Rural ILECs have been providing long distance service through IXC affiliates for a long time. Nothing has changed since the Commission's release of the 1998 Second Report and Order to warrant a change in the Commission's rules with regard to the processing of inbound carrier change requests by small LECs.

In addition, there is no evidence that small LECs have a pattern of slamming customers when they process inbound carrier change requests. Sprint and WorldCom, which were cited by the Commission in the discussion about inbound

²⁶ 5 C.F.R. § 1320.9(g).

²⁷ Order para. 91.

carrier change requests,²⁸ only mentioned that Bell Companies now are becoming competitors of traditional IXCs.²⁹ Sprint and WorldCom did not allege that LECs, and especially small LECs, have acted anti-competitively in their processing of carrier change requests. Indeed, although the Commission recently has released numerous orders resolving slamming complaints, a quick review shows that none of the corresponding complaints was filed against a small ILEC.³⁰

In sum, many small ILECs have been in the IXC marketplace for a while, and consumers have not been harmed by their processing of inbound carrier change requests. The Commission therefore has not shown that anything has changed to necessitate the verification requirement.

2. The Commission Did Not Reduce to the Extent Practicable the Burden on Small ILECs

When the Commission adopted the new verification requirement, the Commission did not address the burden of that

²⁸ Id.

²⁹ Sprint Petition for Reconsideration, Docket No. 94-129, at 3 n.3, dated Apr. 2, 2001; WorldCom Petition for Reconsideration and Clarification, Docket No. 94-129, at 1, dated Apr. 2, 2001.

³⁰ Search of last 200 slamming complaint orders in LEXIS, FCC File, on May 18, 2003.

requirement on any LECs, let alone small LECs. So the Commission certainly did not reduce the burden on small LECs.

As suggested by the rules implementing the Paperwork Reduction Act, the Commission could have reduced the burden by exempting small ILECs.³¹ Thus, even if the Commission were to retain the verification requirement as it applies to larger LECs, such as the Bell Companies, the Commission should exempt small LECs.

3. The Commission Did Not Inform the ILECs of the Average Burden of Collection Pursuant to 5 C.F.R. § 1320.8(b)(3)

The rules implementing the Paperwork Reduction Act require the Commission to inform the ILECs of the average burden of the collection.³² The Commission did not do so. First, the Commission did not give notice that it was contemplating a change in the verification rules as it considered the petitions for reconsideration which were the basis for the Order. So there was no "proposed information collection" and no corresponding burden estimate. Then, as discussed above, the Commission did not give a burden estimate

³¹ 5 C.F.R. § 1320.9(c)(3),

³² 5 C.F.R. § 1320.8(b)(3)(iii), as referenced in 5 C.F.R. § 1320.9(g).

in the Order. Finally, the Commission did not give a burden estimate in the Submission to OMB. Thus, the Commission did not comply with 5 C.F.R. § 1320.9(g) and 5 C.F.R. § 1320.8(b)(3)(iii).

In sum, the Commission adopted a verification requirement that is not necessary, and for which it did not provide burden estimates. Thus, the Commission's Submission to OMB does not comply with 5 C.F.R. § 1320.9.

CONCLUSION

For the foregoing reasons, OMB should reject the verification requirement as contained in paragraph 91 of the Order, and clarified in the Clarification Order - at least as it applies to small ILECs.

Respectfully submitted,
RURAL ILECs LISTED IN ATTACHMENT A

By *Susan J. Bahr*
Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089
Phone: (301) 258-8947

May 28, 2003

ATTACHMENT A

RURAL ILECS

Armour Independent Telephone Company
Big Sandy Telecom, Inc.
Bluestem Telephone Company
Bridgewater-Canistota Telephone Company
C-R Telephone Company
Chautauqua and Erie Telephone Corporation
China Telephone Company
Chouteau Telephone Company
Columbine Telecom Company
Consolidated Telco Inc.
Ellensburg Telephone Company, Inc.
Fretel Communications, LLC
Great Plains Communications, Inc.
GTC, Inc.
Kadoka Telephone Company
Maine Telephone Company
Marianna and Scenery Hill Telephone Company
Nebraska Central Telephone Company
Northeast Nebraska Telephone Company
Northland Telephone Company of Maine, Inc.
Odin Telephone Exchange, Inc.
Peoples Mutual Telephone Company
Sidney Telephone Company
Standish Telephone Company, Inc.
STE/NE Acquisition Corp. d/b/a Northland Telephone Company of
Vermont
Sunflower Telephone Co., Inc.
Taconic Telephone Corp.
The El Paso Telephone Company
The Columbus Grove Telephone Company
The Orwell Telephone Company
Union Telephone Company of Hartford
Yates City Telephone Company
YCOM Networks, Inc.

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 30th day of May 2003, I have sent a copy of the foregoing to the following email addresses:

Karen Reidy, MCI
karen.reidy@mci.com

Martha Marcus, AT&T
marthamarcus@att.com

Margaret Egler, FCC
megler@fcc.gov

Nancy Stevens, FCC
NSTEVENS@fcc.gov



Susan J. Bahr