

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 EMERGENCY REQUEST FOR PARTIAL STAY**

The rural incumbent local exchange carriers listed in Attachment A (Rural ILECs),<sup>1</sup> by their attorney and pursuant to Sections 1.41 and 1.44 of the Commission's Rules, hereby submit this Supplement to their Emergency Request for Partial Stay, filed May 22, 2003 in the captioned proceeding (Stay Request).<sup>2</sup> In their Stay Request, the Rural ILECs request the Commission to stay only the requirement for local exchange carriers (LECs) to verify inbound carrier change requests - as set forth in paragraph 91 of the Third Order on Reconsideration and Second Further Notice of Proposed

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<sup>1</sup> 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.

<sup>2</sup> A Motion for Leave to File Supplement to Emergency Request for Partial Stay is also being filed on this date.

Rulemaking (Order)<sup>3</sup> - pending the Commission's decision on the Rural ILECs' Petition for Reconsideration. This Supplement updates the Stay Request to: (a) address the Clarification Order<sup>4</sup> which was released after the Petition was filed; (b) incorporate issues raised in other petitions that were withdrawn after the release of the Clarification Order;<sup>5</sup> (c)

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<sup>3</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, 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].

<sup>4</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, CC Docket No. 94-129, Order, FCC 03-116 (rel. May 23, 2003) [hereinafter Clarification Order].

<sup>5</sup> Sprint and the United States Telecom Association (USTA) filed petitions for reconsideration and/or clarification in which they opposed any new verification for changes to non-affiliated IXCs. Their oppositions were rendered moot by the Clarification Order. Sprint and USTA recently filed requests to withdraw their petitions. 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. However, many of their legal arguments still apply to the requirement to verify changes to affiliated IXCs.

point out the information collection burdens provided in the Comments on Information Collections that the Rural ILECs filed recently; and (d) address issues raised in the Rural ILECs' Supplement to Petition for Reconsideration filed on this date.<sup>6</sup>

#### **I. SCOPE OF THE VERIFICATION REQUIREMENT**

As a threshold issue, the Rural ILECs hereby supplement their Stay Request to narrow the scope of the verification requirement at issue. In their Petition for Reconsideration, the Rural ILECs requested reconsideration of the verification requirement even if it were to apply to situations: (a) where the customer wants to change to the LEC's IXC affiliate; and (b) where the customer wants to change to an IXC that is not affiliated with the LEC.<sup>7</sup> In the Clarification Order, the Commission stated that the verification requirement applies only in the former case; that is, paragraph 91 of the Order

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<sup>6</sup> The Rural ILECs filed a corresponding Motion for Leave to File Supplement to Petition for Reconsideration. For simplicity herein, this Supplement assumes that the Commission will grant leave to supplement the Rural ILECs' Petition.

<sup>7</sup> 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.

applies only to the LEC's processing of inbound carrier change requests where the customer wants to change to the LEC's IXC affiliate.<sup>8</sup> Thus, the Rural ILECs' opposition to the verification of changes to non-affiliated IXCs is now moot. The Rural ILECs therefore supplemented their Petition, and hereby supplement their Stay Request, to apply only to the verification of inbound carrier change requests where customers want to change to the LECs' IXC affiliates.

**II. THERE IS GOOD CAUSE TO GRANT THE STAY PURSUANT TO SECTION 1.429(k) OF THE COMMISSION'S RULES**

In the Stay Request, the Rural ILECs showed that there is good cause to stay the verification requirement for two reasons: (a) because the scope of the verification requirement was not clear; and (b) so that LECs do not incur compliance costs while the possibility exists that the Commission would later eliminate all or part of the verification requirement. After the Stay Request was filed, the Commission released the Clarification Order which clarified the scope of the verification requirement. Nevertheless, good cause continues to exist to grant a stay so that LECs do not incur compliance

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<sup>8</sup> Clarification Order para. 5.

costs while the petitions are pending, just as the Commission granted a stay on similar grounds in other proceedings.<sup>9</sup>

**III.        A STAY ALSO IS JUSTIFIED UNDER THE VIRGINIA  
PETROLEUM JOBBERS ASSOCIATION FOUR-PART TEST**

In the Stay Request, the Rural ILECs showed that the their Request also satisfies the four-part test in Virginia Petroleum Jobbers Association.<sup>10</sup> Under that test, the Commission will grant a stay if: (a) there is a substantial likelihood that the petitioner will succeed on the merits; (b) that the petitioner will suffer irreparable injury if the stay is not granted; (c) the injury will outweigh the harm to adverse parties; and (d) the stay is in the public interest.

Likelihood of Success on the Merits    In the Stay Request, the Rural ILECs gave four reasons why there is substantial likelihood that their Petition will succeed on the merits.

First, the Rural ILECs noted that their Petition demonstrates that the verification requirement would be burdensome. After the Stay Request was filed, the Rural ILECs

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<sup>9</sup> Rural ILECs Stay Request at 5 (citing Billed Party Preference for InterLATA 0+ Calls, Order, 13 FCC Rcd. 12,576 para. 5 (1998)).

<sup>10</sup> Id. at 7-12; Virginia Petroleum Jobbers Association v. FPC., 259 F.2d 921 (D.C. Cir. 1958).

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.<sup>11</sup> Also, the cost of compliance for all ILECs with IXC affiliates, other than the Bell Companies, could be well over \$5 million (assuming the ILECs would use letters of agency (LOAs) for verification).<sup>12</sup>

Second, in the Stay Request, the Rural ILECs stated that if the Commission were to clarify that the verification requirement applies only to requests to change to the ILECs' IXC affiliates, it could have an anti-competitive effect on the small ILECs' IXC affiliates. In the Clarification Order, the Commission stated that, indeed, the verification requirement applies only to requests to change to the ILECs' IXC affiliates.<sup>13</sup> Thus, the Rural ILECs' concerns have been realized.

Third, in the Stay Request, the Rural ILECs pointed out that there is no evidence that customers are being slammed by ILECs that do not verify inbound customer change requests. In

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<sup>11</sup> Rural ILECs Comments on Information Collections at 14.

<sup>12</sup> Id.

<sup>13</sup> Clarification Order para. 5.

its Petition, Sprint made the same argument, and noted that nothing had changed to justify the imposition of a verification requirement.<sup>14</sup>

Finally, in the Stay Request, the Rural ILECs noted that USTA had argued that the Commission had not given notice of its change to the verification requirements, and did not amend its rules to reflect the new verification requirement. Hence, the Order violates the Administrative Procedure Act (APA) and is arbitrary and capricious.

The Rural ILECs have supplemented their Petition to include the above issues.

In sum, the Rural ILECs supplement their Stay Request to show that they are now even more likely to succeed on the merits of their Petition based on: (a) the additional estimates of the compliance burdens, as provided in their Comments on Information Collections; (b) the narrower scope of the verification requirement, as defined in the Clarification Order, which will have an anti-competitive effect on the IXC affiliates of small ILECs; and (c) the additional arguments in the Supplement to their Petition, including Sprint's and USTA's arguments that no justification was provided for the

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<sup>14</sup> Sprint Petition at 3-4.

new verification requirement, that the Commission failed to give notice, and that the Commission did not amend the rules.

Irreparable Harm In the Stay Request, the Rural ILECs gave estimates of the burdens of compliance, and pointed out the anti-competitive impact of the verification requirement if it were to apply only to changes to the ILECs' IXC affiliates. The Rural ILECs have supplemented their Petition to include the burden estimates given in their Comments on Information Collections, and to point out that, due to the Clarification Order, the verification requirement will definitely have an anti-competitive effect on the IXC affiliates of small ILECs. For these reasons, the harm of implementing the verification requirement pending the Commission's decision on reconsideration is even clearer than it was before.

No Injury to Consumers In their Stay Request, the Rural ILECs point out that the Commission has not shown that ILECs have a pattern of slamming customers. The Rural ILECs supplemented their Petition to note that Sprint also made the same observation in its petition.

Public Interest In their Stay Request, the Rural ILECs stated that given the uncertainty over the interpretation of the verification requirement, and the startup and recurring costs of implementing new verification procedures, a stay is

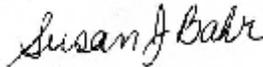
in the public interest. The Clarification Order has removed the referenced uncertainty over the interpretation of the verification requirement. Nevertheless, due to the costs of compliance, a stay still is in the public interest. Based on the Rural ILECs' cost estimates, it appears that compliance would cost about \$10,000 per month for the Rural ILECs, perhaps \$473,000 per month for all ILECS other than the Bell Companies, and perhaps \$8 million per month for the Bell Companies. ILECs could incur these costs each month that the Rural ILECs' Petition is pending, unless a stay is granted.

In sum, based on the Clarification Order, the issues raised in the Sprint and USTA petitions, and the Rural ILECs' Comments on Information Collections, the Rural ILECs hereby supplement their Stay Request to: (a) show that the Rural ILECs are even more likely to succeed on the merits of their Petition; (b) provide more specific information concerning the cost of compliance while the Rural ILECs' Petition is pending; and (c) to reiterate their statement, as supported by Sprint's Petition, that there is no evidence of harm to consumers resulting from the ILECs' current verification procedures. The Stay Request continues to satisfy the four-part test of Virginia Petroleum Jobbers Association.

**CONCLUSION**

For the foregoing reasons, the Rural ILECs supplement their Stay Request to point out that based on the Clarification Order, the issues raised in the Sprint and USTA petitions, and the Rural ILECs' Comments on Information Collections, there is good cause to grant a stay pursuant to Section 1.429 of the Commission's Rules and the four-part test of Virginia Petroleum Jobbers Association. The Rural ILECs therefore reiterate their request to stay the new verification requirement in paragraph 91 of the Order pending the Commission's decision on the petitions for reconsideration, as discussed further in their Stay Request.

Respectfully submitted,  
**RURAL ILECs LISTED IN ATTACHMENT A**



By

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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**

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**COMMENTS ON INFORMATION COLLECTIONS**

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May 28, 2003

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## 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.

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)  
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 Rulemaking<sup>1</sup> (Order) and the subsequent Clarification Order<sup>2</sup> in the captioned proceeding. In particular, the Rural ILECs demonstrate below that the

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<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, 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].

<sup>2</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, 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 requests<sup>3</sup> 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").<sup>4</sup> Such "carrier changes" include customers calling the LEC and asking the LEC to change their long distance company, aka "interexchange carrier" (IXC).<sup>5</sup>

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

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<sup>3</sup> Order para. 91.

<sup>4</sup> See id.

<sup>5</sup> 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."<sup>6</sup>

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.<sup>7</sup> The Commission agreed, and released the Clarification Order. There, the Commission explained that

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<sup>6</sup> Id.

<sup>7</sup> 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.<sup>8</sup>

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

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<sup>8</sup> 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.<sup>9</sup> 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

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<sup>9</sup> 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.<sup>10</sup> All of the petitioners opposed any requirement for

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<sup>10</sup> 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.<sup>11</sup> 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.

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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.

<sup>11</sup> 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.<sup>12</sup> 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.<sup>13</sup> However, the verification requirement set forth in paragraph 91 of the

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<sup>12</sup> 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).

<sup>13</sup> 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.<sup>14</sup>

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.

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<sup>14</sup> 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:

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

These burden estimates are the same as the estimates approved by OMB in 2001<sup>16</sup> - 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

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<sup>15</sup> 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.

<sup>16</sup> 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 ILECs<sup>17</sup> have IXC affiliates.<sup>18</sup> 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):

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

<sup>18</sup> 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 <sup>19</sup>	Estimated Total Annual Burden in Hours	Cost (at \$48.91 per hour) <sup>20</sup>
<b>Rural ILECs with IXC Affiliates</b>	30	280,000	2500	\$122,275
<b>Independent ILECs with IXC Affiliates</b>	At least 500	Over 13,000,000	Approx. 116,071 <sup>21</sup>	\$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'

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<sup>19</sup> 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](http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/Monitor/mrs01-3.zip) (providing loop counts by study area).

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

<sup>21</sup> 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,<sup>22</sup> presumably for changes to non-affiliated IXCs.
- Verizon processes about 14 million requests to change to non-affiliated IXCs each year.<sup>23</sup>

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.

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<sup>22</sup> USTA Petition at 2.

<sup>23</sup> 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;<sup>24</sup>
- 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;<sup>25</sup> and
- informs potential respondents of the information

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<sup>24</sup> 5 C.F.R. § 1320.9(a).

<sup>25</sup> 5 C.F.R. § 1320.9(c).

called for under § 1320.8(b)(3)<sup>26</sup>

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."<sup>27</sup> 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

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<sup>26</sup> 5 C.F.R. § 1320.9(g).

<sup>27</sup> Order para. 91.

carrier change requests,<sup>28</sup> only mentioned that Bell Companies now are becoming competitors of traditional IXCs.<sup>29</sup> 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.<sup>30</sup>

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

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<sup>28</sup> Id.

<sup>29</sup> 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.

<sup>30</sup> 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.<sup>31</sup> 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.<sup>32</sup> 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

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<sup>31</sup> 5 C.F.R. § 1320.9(c)(3),

<sup>32</sup> 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**

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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**

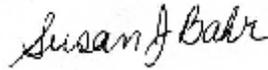
I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 30th day of May 2003, I have sent a copy of the foregoing to the following email addresses:

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