

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

<b>In the Matter of</b>	)	
	)	
<b>Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996</b>	)	<b>CC Docket No. 94-129</b>
	)	
<b>Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers</b>	)	

**COMMENTS OF IDT CORPORATION**

**INTRODUCTION**

In accordance with the *Public Notice*<sup>1</sup> published by the Commission on April 24, 2003, IDT Corporation (“IDT”) hereby submits its Initial Comments in the above-mentioned proceeding. It is IDT’s position that any revisions to the existing subscriber carrier change process should be implemented only after a careful analysis demonstrates that increased regulations will place a minimal burden upon carriers while providing consumers with a substantial benefit. As demonstrated below, upon such an analysis, none of the Commission’s proposals pass this test.

Rather, the Commission’s proposals seem to respond to needs that do not exist and propose solutions that only promise to create additional cost and confusion. As a result of recent Commission rulemakings that micromanage the contents of a third party verification of a subscriber carrier change, the Commission and, to a greater extent, the

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<sup>1</sup> *Public Notice, Dates Set for Comments in Slamming Rulemaking, 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 (Rel. April 24, 2003).

state utility commissions that have adopted the Commission's rules, are finding slamming where carriers fail to do the equivalent of "dotting their i's" and "crossing their t's," rather than where carriers actually switch a consumer's service provider without authorization. The Commission's proposed modifications to the existing regime seem designed to either provide additional burdens for service providers or, equally harmful, to confuse the consumer and make the subscriber carrier change process more difficult, time-consuming and costly. For these reasons, without exception, IDT opposes the proposed changes as overly burdensome and not compelled by the record and we recommend that the Commission decline to implement the proposals in their entirety.

## ARGUMENT

### **Whether the third party verifier should state the date in the course of the third party verification.**

IDT does not support this proposal. The Commission raises the concern that, in the absence of including the date, a service provider may rely on a previously received verification to support a subsequent slam.<sup>2</sup> That the Commission speaks of this inappropriate act as theoretical ("Without a clearly articulated date on the verification tapes, the carrier *could* use the former verification tape to defend itself...")<sup>3</sup>, rather than providing proof that this is a practical issue the Commission faces on so much as an occasional basis suggests that its proposal is responding more to a hypothetical problem than an actual problem. IDT does not believe the Commission should be creating all-

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<sup>2</sup> Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; CC Docket No. 94-129; FCC 03-42 (Rel. Mar. 17, 2003) at ¶ 111 (Emphasis added).

<sup>3</sup> *Id.*

encompassing, industry-changing regulations in response to theoretical or even infrequent problems.

Service providers should be free to address this issue on their own. For example, at IDT's direction, the independent third party verification companies that confirm the authorization of IDT's prospective subscribers state the date at the end of the call. Including such information provides IDT the opportunity (although IDT has never actually been called upon to actually use this information) to rebut an allegation that a switch was requested on a different date or that a switch was not made in a timely fashion. Regardless, IDT does not support making such a statement a requirement. If such a statement were required, service providers that currently do not provide such information would have to modify their third party verification scripts at great expense. Such an expense is not compelled by consumer need or benefit. Presumably, consumers know the day they are calling and do not need to be reminded. Providing the date does not offer any additional information regarding the rates or terms of service of the provider, which should be the essential components of a subscriber carrier change authorization. Moreover, requiring the date to be provided would only grant consumers an additional opportunity to be relieved of their obligation to pay for services knowingly requested when a third party verifier neglects to include such information. Ultimately, because requiring service providers to state the date during the course of a third party verification will require expensive and costly modifications to existing procedures while providing absolutely no additional information about the rates or terms of the service requested, the Commission should decline to implement this recommendation.

**Whether the verifier should explicitly state that if the customer has additional questions for the customer service representative after the third party verification has begun, and, if so, the third party verification will be terminated and the customer transferred back to the customer service representative.**

At the end of a successful sale to a prospective consumer and prior to transferring the consumer to the third party verifier, IDT asks the consumer if he has any further questions, thus making as great an effort as possible to ensure that the consumer is transferred to the third party verifier with a full understanding of the service he has agreed to receive. During the course of the third party verification, the consumer is not provided with any information regarding the rates and terms of service that is not revealed during the sale. Requiring the third party verifier to ask the consumer if he has additional questions about the plan (which the third party verifier, in accordance with 47 CFR § 64.1120 (c)(3)(iii), cannot answer) the Commission seems to be mandating that third party verifier cast doubt upon the consumer's choice. Such a directive makes no sense from a legal, commercial or consumer protection perspective. Thus, the Commission should decline to adopt this proposal.

**Whether the verifier should tell the customer that once the third party verification has been submitted, it cannot be "unsubmitted."**

IDT does not support this proposal. Like the previous proposal, the sole purpose of this proposal seems to create doubt in the consumer's mind as to her decision to switch carriers. Moreover, the practical effect will be that, on occasion, third party verifications will be cancelled at the last possible moment, thus wasting the verifier's time, resulting in a tremendous expense to the service provider. There is no demonstrated need to foster such anxiety or waste time and money. IDT recognizes that, on occasion, a consumer will change his mind shortly – possibly even immediately – after a carrier change has

been made. However, this problem is easily solved, as the consumer can be given a telephone number he can call to see when his switch has been effectuated. Upon calling the telephone number and finding that the switch has been made, the consumer can call a new carrier and switch again to a new carrier of choice. Thus, the problem is easily resolved without the economic harm that would result from implementation of the Commission's proposal. In the absence of a demonstrated need and the presence of more cost-efficient, consumer-friendly alternatives, the Commission should decline to adopt this proposal.

**Whether the verifier must use explicit language clarifying that the customer is undergoing a carrier "change," not an "upgrade" or similar language**

IDT does not support this proposal. The Commission has long avoided requiring specific language in communicating with consumers, in deference to carriers' First Amendment rights. This most recent proposal is contrary to previous practice. IDT is aware that there may be certain carriers that may use particularly amorphous language in an effort to confuse consumers as to the nature of their transaction. However, these carriers represent at most a miniscule percent of all carriers. Moreover, imposing a language requirement infringes on the rights of carriers to use fully descriptive, yet different choices of language. For example, under the proposal, a carrier could not state that a consumer is undergoing a carrier "switch," which is a commonly used industry term that is equally descriptive. Ultimately, there is simply no need to limit the First Amendment rights of carriers to impose a language requirement that not compelled by the facts or reason. As such, the Commission should decline to adopt this proposal.

**Whether the verifier must explicitly get a response after every question or whether it may ask a series of questions and only get one explicit response.**

IDT vigorously opposes this requirement. The Commission’s requirement under 47 CFR Sec. 64.1120(b) that carriers separately ask and receive a separate response to the question of whether they want to switch their local, intraLATA toll and interLATA toll has created a ridiculous scenario where a consumer can go through the verification process, agree to receive multiple services from a provider and then claim to have been slammed simply because the verifier failed slightly to adhere to the language mandated by the Commission. Indeed, the Commission should take this opportunity to revise 47 CFR Sec. 64.1120(b) to permit a service provider to ask the consumer one question regarding a proposed carrier switch for multiple services (*e.g.*, IDT QUESTION: “Do you agree to switch your intraLATA and interLATA toll service to IDT?” CONSUMER ANSWER: “Yes.”). IDT disagrees with the Commission that is necessarily “difficult to ascertain whether a subscriber has fully and knowingly provided an answer to each question posed by a third party verifier if some questions are presented as a group rather than individually.”<sup>4</sup> Indeed, there is nothing difficult about ascertaining the consumer’s response to the above question. Moreover, to expand the Commission’s “one question one answer” requirement beyond existing requirements would be perverse: its sole purpose seems to be to permit consumers to negate their clear intent to switch carriers due solely to an insignificant error on the third party verifier’s part. The Commission should decline to expand this policy and should, in fact, eliminate it when a subscriber orders more than one service at a time.

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<sup>4</sup> Para 113.

**Whether the verifier should explicitly state that an interLATA toll switch encompasses international service as well.**

IDT does not support this proposal. During the course of a sale of interLATA toll service to a consumer, IDT informs the consumer of the international rate plan associated with their service plan. IDT presumes that many other carriers provide similar information at the point of sales as well. IDT might support the Commission's proposal if, in our experience, we found that there was consumer confusion regarding the presubscribed international service carrier, but we have not found this to be the case. IDT's subscribers uniformly understand that if they receive interLATA toll from IDT, they shall also receive international service from IDT. In the absence of any demonstrated need, IDT declines to support the Commission's proposal.

**Whether the verifier should define the terms "interLATA toll" and "intraLATA toll."**

IDT does not support this proposal. IDT concedes that there is occasional consumer confusion when "industry terms" such as inter- and intraLATA toll are used, however it is our experience that consumers who are confused ask for an explanation, which IDT provides. Many consumers either understand the terms or else they do not care to understand: in either case, providing definitions is only likely to provide information that is unwanted or unnecessary, risking further confusion and creating additional costs by extending the length of an individual TPV. Rather than impose definitions, however, IDT does support the Commission providing recommended definitions of the aforementioned terms that, if used by a carrier, would provide a presumption that the consumer was adequately notified of the services offered. Such support is needed because certain state administrative agencies have taken issue with

definitions provided to consumers, including one state that has objected to intraLATA toll as “local toll” service (as distinguished from interLATA toll as “long distance toll” service) because the word “local” appears. If the Commission wants to provide guidance to service providers, it should offer sample definitions that create a presumption of good faith, but it should not mandate the provision of such definitions, as such an approach should be on a consumer-by-consumer basis.

### **CONCLUSION**

For the reasons stated herein, IDT Corporation requests that the Commission decline to adopt any of the proposals in this proceeding and to revise 47 CFR Sec. 64.1120(b) to permit a third party verifier to ask a one question – and for a consumer to only give one answer - regarding a carrier switch for multiple services.

Respectfully submitted,

/s/ Carl Wolf Billek

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Dated: June 2, 2003

## Service List

I hereby certify that on June 2, 2003, a copy of these Comments was delivered by overnight mail to the following:

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