

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

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 MAY 28 2003
 FCC - MAILROOM

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)
 _____)

PETITION FOR RECONSIDERATION

Sprint Corporation ("Sprint"), pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, hereby respectfully requests that the Commission reconsider, in one respect, its *Third Order on Reconsideration*, FCC 03-42 released March 17, 2003 (*Third Reconsideration Order*) in the above-captioned docket. Specifically, Sprint asks that the Commission reconsider its decision "to require verification of [all] carrier change requests that occur when a customer initiates a call to a LEC."¹ *Third Reconsideration Order* at ¶91. The Commission's decision to change its rules and expand the verification responsibilities of LECs was without notice in violation of Section 553(b) of the Administrative Procedure Act (APA) and is otherwise unjustified. In support, Sprint states as follows.

Currently, the LEC must verify preferred carrier (PC) changes of customers who are switching to the LEC from another LEC for local and local toll services. A LEC also verifies the PC choices of customers who call the LEC to change their current IXC carrier to the IXC

¹ Carrier change requests initiated by the LEC at the request of the an end user calling the LEC directly are commonly referred to as "LEC-installs."

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affiliate of the LEC. However, when a customer calls the LEC business office to request a change to a carrier other than the LEC's affiliate, the LEC is not obligated under current Commission rules to verify the change. In its *Second Report and Order* in this proceeding (14 FCC Red 1508, 1565 (¶93)), the Commission concluded that "in situations in which a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer's choice would not need to be verified by ... the LEC" because "the LEC ... is [not] the submitting carrier." The LEC remains the executing carrier and as such its duties are to correctly make the requested change without unreasonable delay. *Id.* at 1565 (¶93) and 1570 (¶98).²

No party sought reconsideration of the Commission finding that LECs need not verify PC change requests by subscribers calling the LEC directly.³ Rather, the Commission appears to have decided to require verification of all LEC-installs on its own motion. Thus, the Commission found "it necessary to modify our decision to exclude from our verification rules those in-bound calls that initiated by a customer by directly contacting the LEC" because "many LECs have become (or plan to become) long distance service providers" and "may not be neutral third parties in implementing carrier charges." *Third Reconsideration Order* at ¶91. There are two problems with the Commission's decision here.

² Similarly the Commission found that executing carriers need not re-verify PC changes by submitting carriers. It determined that such duplicative verifications are expensive, unnecessary and would give the executing carrier to ability to delay or deny a submitting carrier's change request in order to benefit itself or its affiliate. *Second Report and Order* at 1567-68 (¶¶ 98-99). The Commission reaffirmed its findings in this regard in the *Third Reconsideration Order* (¶¶ 5-25).

³ The petitions of the Rural LECS and the National Telephone Cooperative Association (NCTA) asked only that Commission revisit its decision not to give the LECs the authority to re-verify PC changes submitted by other carriers before they execute such changes. *Third Reconsideration Order* at ¶¶ 3 and 10.

First, the Commission failed to give any notice that it was contemplating a substantive modification in the verification responsibilities of LECs in contravention of the notice requirement of the Section 553(b) of the APA. *See Sprint v. FCC*, 315 F.3d 369, 374 (D.C. Cir. 2003) (“...new rules that work substantive changes in prior regulations are subject the APA’s [notice and comment] procedures”). Thus, Sprint and other carriers were deprived of the opportunity to present any arguments as to whether costs of the rule modification -- and Sprint has determined that it would at least \$1 million in costs to implement the necessary modifications to its systems so as to permit the verification of all LEC-installs and at least \$1 million in on-going expenses to verify all LEC-installs -- outweigh the alleged benefits of the rule modification. *Id.* at 377 (carriers are prejudiced if denied the opportunity to present “information demonstrating shortcomings and burdens [of the rule modification] that the Commission had not adequately considered”).

The second problem with the Commission’s imposition of new verification requirements on the LECs lies with the justification advanced by the Commission to support such requirements. The Commission bases the rule change on what it perceives to be increased LEC-entry into the long distance market. But the fact is that 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. Indeed, the Commission’s refusal to adopt a requirement that LECs re-verify the PC changes submitted to them by IXCs was based, in part, on the Commission concern that because many LECs had already entered or were planning to enter the long distance market, they could use the re-verification process in an anti-competitive manner to the benefit of their long distance affiliates. *Second Report and Order* at 1567 (¶99). 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.

In short, the Commission should rescind the requirement that the LECs verify all PC change requests by end users calling the LECs directly if it institute such change. Sprint respectfully submits that no modifications in the LECs' current verification responsibilities as set forth above are necessary.

Respectfully submitted,

SPRINT CORPORATION

A handwritten signature in black ink, appearing to read "Michael B. Fingerhut", is written over a horizontal line. The signature is stylized with a large loop at the end.

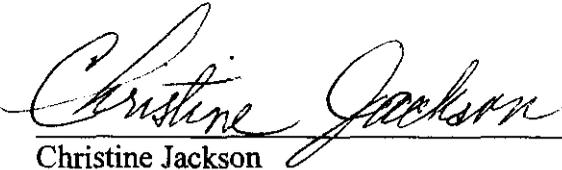
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May 19, 2003

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **PETITION FOR RECONSIDERATION** of Sprint Corporation was sent by electronic mail and by U. S. first-class mail, postage prepaid, on this the 19th day of May, 2003 to the below-listed parties.


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