

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

**AT&T OPPOSITION TO RURAL ILECS’
PETITION FOR RECONSIDERATION**

Pursuant to Sections 1.4(b)(1) and 1.429(f) of the Commission’s Rules, 47 C.F.R. §§ 1.4(b)(1) and 1.429(f), AT&T Corp. (“AT&T”), hereby opposes the petition for reconsideration filed by the Rural Incumbent Local Exchange Carriers (“Rural ILECs Reconsideration Petition”)¹ in the above-captioned proceeding and which was filed in

¹ FCC Public Notice Report No. 2616, rel. July 7, 2003, 68 Fed Reg. 41577 (July 14, 2003). In addition, on July 17, 2003 the Rural ILECs and D&E Communications filed an *ex parte* presentation in further support of the Rural ILECs Reconsideration Petition. AT&T’s submission responds to and opposes both filings.

In the same Public Notice, the Commission also requested interested parties to submit opposing comments to WorldCom’s (d/b/a “MCI”) Petition for Reconsideration. AT&T does not oppose MCI’s petition requesting the Commission to clarify that any monies that are reimbursed to a consumer by a carrier for charges that the consumer has paid to an unauthorized carrier should be set-off against the amount the unauthorized

(Footnote continued on next page)

response to the Commission's *Third Reconsideration Order* in this docket regarding unauthorized changes in subscribers' selections of a preferred carrier, commonly referred to as "slamming."² The Rural ILECs seek an exemption from all verification requirements for inbound carrier change requests where the new carrier is either a Rural ILEC or a long distance affiliate of the Rural ILEC.³ The petition claims that this obligation places an undue burden on small incumbent local exchange carriers and creates a competitive disadvantage for the small LEC's IXC affiliate.⁴

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carrier is required to disgorge to the authorized carrier. AT&T believes that MCI correctly points out that imposition of this requirement would be duplicative and would have the unintended result of a consumer receiving what amounts to a double recovery for an unauthorized carrier change. In AT&T's view, MCI is merely requesting the Commission to explicitly state what is already implicit in its existing liability rules.

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, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, released March 17, 2003 ("*Third Order on Reconsideration*"). A summary of the *Third Order on Reconsideration* was published in the Federal Register on April 18, 2003. See 68 Fed. Reg. 19152 & 19176; *correction* 68 Fed. Reg. 25313 (May 12, 2003).

³ The Commission subsequently released an Order clarifying the *Third Order on Reconsideration* that verification by a LEC is required only when the carrier change involves the LEC or an affiliate of the LEC and exempting in-bound customer requests to change long distance carriers, made directly to a LEC where the LEC or its long distance affiliate is not the subject of the long distance carrier change. *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, released May 23, 2003 ("*Clarifying Order*"), 2003 WL 21203290 (FCC). This order effectively rendered moot the other issues raised by the Rural ILECs Reconsideration Petition.

⁴ Rural ILECs Reconsideration Petition dated May 19, 2003, at 1-2.

As shown below, the Rural ILECs' Reconsideration Petition must be denied because it undermines the purpose and effectiveness of the Commission's verification rules, *i.e.*, to ensure and provide increased protection to consumers who wish to authorize a carrier change request.

The *Third Reconsideration Order* modified the Commission's previous decision in the *Second Report and Order*⁵ to include in its verification rules those inbound calls that are initiated by a customer who directly contacts a LEC that also offers long distance services through one of its affiliates.⁶ The Commission's decision was based on "changes in the competitive landscape that have come to fruition since the adoption of the *Second Report and Order*" which made modification to its prior decision "necessary in order to deter slamming and [further] the goals of section 258."⁷ As the Commission has stated, "LECs that compete with other carriers for local and long distance services may not be neutral third parties in implementing carrier changes."⁸ Thus, the Commission recognized that the need to protect consumers is paramount where there is the even the remote possibility of self-dealing on the part of *any* LEC who is

⁵ *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, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998 ("*Second Report and Order*"), reported at 14 FCC Rcd.1508.

⁶ *Clarifying Order*, ¶ 5.

⁷ *Id.*; *Third Order on Reconsideration*, ¶ 91.

⁸ *Second Report and Order*, ¶ 12; *Third Reconsideration Order*, ¶ 91.

responsible for making a carrier selection change in favor of its own affiliated long distance carrier.

First, AT&T supports the Commission's decision to require all LECs to verify a carrier change request when the new carrier selection involves a LEC or its long distance affiliate.⁹ Notwithstanding the Commission's clear policy pronouncements on this issue, the Rural ILECs are requesting the Commission to excuse them from this responsibility even though they acknowledge that they "have been providing long distance service directly, or through IXC affiliates, for a long time."¹⁰ The fact that the Rural ILECs compete with other carriers for consumers' local and long distance services, standing alone, is reason enough for them to be subject to the same verification rules as any other LEC that also provides interexchange services.¹¹

Second, the Rural ILECs have failed to demonstrate that any burden imposed on carriers to participate in the verification process outweighs the interest in protecting customers from unauthorized carrier changes. The Rural ILECs Reconsideration Petition argues that small LECs should be excused from verifying their own customer's carrier change request because most small LECs use or intend to use

⁹ The Rural ILECs thus are already exempt from the verification rules where they or their long distance affiliates are not the subject of the long distance carrier change because the Commission subsequently clarified its rules that verification by a LEC is required only when the carrier change involves the LEC or an affiliate of the LEC. *Clarifying Order*, ¶ 5.

¹⁰ Rural ILECs Reconsideration Petition dated May 19, 2003, at 9.

¹¹ See Public Notice Announces Corrected Effective Date Of Rules Adopted In Slamming Third Order on Reconsideration, CC Docket No. 94-129, DA 03-2407, released July 23, 2003.

Letters of Agency (“LOAs”), rather than the third party verification procedure. The use of LOAs, they contend, results in a slower processing time thereby putting them at a competitive disadvantage.¹²

This argument is unfounded because the choice to use LOAs over another verification procedure is clearly left to carriers. The Commission’s rules allow carriers to submit carrier change orders using a variety of methods to obtain the required verification, which includes both written and electronically signed LOAs in addition to third-party verified telemarketing calls. The fact that an LOA may take longer to process is of no consequence as long as the submitting carrier submits a preferred carrier change order based on a properly executed LOA within the time required by the Commission’s rules.¹³

Third, the Rural ILECs argument that by virtue of their close relationship with their customers they are in a unique position to effectively act as a neutral third party so as to make the Commission’s verification procedures superfluous is equally unpersuasive. The Commission has made clear its concern that LECs may not act as neutral third parties in implementing carrier changes, because LECs may improperly change subscribers to its own services. The Rural ILECs present no evidence (nor is there any) that those carriers are any less subject to this serious potential for bias and self-dealing. Thus, the only way to safeguard all consumers is to subject all LECs to the Commission’s verification rules and procedures.

¹² Rural ILECs Reconsideration Petition dated May 19, 2003, at 5-8.

¹³ 47 C.F.R. §§ 64.1120 and 64.1130.

CONCLUSION

For the reasons stated above, AT&T respectfully requests that the Commission deny the relief requested by the Rural ILECs in their Petition for Reconsideration.

Respectfully submitted,

AT&T Corp.

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July 29, 2003

CERTIFICATE OF SERVICE

I, Karen Kotula, hereby certify that on this 29th day of July 2003, a true and correct copy of the foregoing “AT&T Opposition to Rural ILECS Petition for Reconsideration” was served by first-class postage prepaid U.S. mail and via e-mail upon:

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