

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Policies and Rules Concerning Unauthorized	)	CC Docket No. 94-129
Changes of Consumers' Long Distance Carriers	)	
	)	
Rural LECs	)	
	)	
Petition for Declaratory Ruling Regarding Carrier	)	
Change Verification	)	

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

The National Association of State Utility Consumer Advocates (“NASUCA”)<sup>1</sup> files these brief comments in response to the Public Notice in this docket published in the Federal Register on February 1, 2006.<sup>2</sup> The Federal Communications Commission (“Commission”) has requested comments on the Application for Review (“Application”) filed on July 8, 2005 pursuant to 47 C.F.R. § 1.115 by a group of 38 rural local exchange carriers (“RLECs”).<sup>3</sup> The RLECs seek review of the Declaratory Ruling of the Acting Chief, Consumer & Governmental Affairs Bureau

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<sup>1</sup> NASUCA is a voluntary association of 45 advocate offices in 42 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. See, e.g., Ohio. Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205; Minn. Stat. § 8.33; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

<sup>2</sup> 71 Fed. Reg. 5338 (2006).

<sup>3</sup> The RLECs are identified in Appendix A of Application.

released on June 9, 2005 (“Declaratory Ruling”).<sup>4</sup> The Declaratory Ruling was issued in response to the RLECs’ February 1, 2005 Petition for Declaratory Ruling (hereafter “Petition”).<sup>5</sup>

The Petition requested a ruling that RLECs be allowed to “reject [presubscribed interexchange carrier] PIC change requests from [interexchange carriers] IXCs ... where the name and telephone number on the request do not match the information on the LEC’s records as to the name of the subscriber of record or person authorized by the subscriber to make changes to the account.”<sup>6</sup> The Declaratory Ruling denied the RLECs’ request.<sup>7</sup>

NASUCA submits that the Petition and the Declaratory Ruling represent two competing public interests. The Declaratory Ruling comes down on the side of easy customer choice between carriers; the Petition looks to ensure that the choices made are authorized choices. It should be possible for these consumer interests to coexist.

It is simply not possible, however, to achieve a resolution of this issue based on the record as it now exists. The Declaratory Ruling was issued without the benefit of public comments.<sup>8</sup> In order to effectively assess this question, the Commission should gather information on the following:

- Exactly how the RLECs obtain verification that a PIC change is authorized;
- What the impact of the RLEC actions is on the PIC changes submitted to them;

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<sup>4</sup> DA 05-618.

<sup>5</sup> It is ironic, given the time frames just described, that the Public Notice allows twelve days from the Federal Register publication for comments and only three days for reply comments.

<sup>6</sup> Petition at 3. The RLECs also requested that, if the Commission ruled averse to their request, the Commission issue “a clear and definitive statement that PIC changes must be executed regardless of lack of record indications that the person requesting the change is authorized to make such requests.” Id.

<sup>7</sup> Declaratory Ruling, ¶ 1.

<sup>8</sup> See Application at 2. Numerous equally significant issues pass through the Commission under the notice and comment process.

- How many PIC changes are actually rejected by the RLECs because of the apparent lack of authority for the change;
- In how many of the rejected changes was the rejection correct, that is, there was no authority for the change; and how many of the rejected changes were erroneous, that is, authority for the change **did** exist;

and so on.<sup>9</sup> With that kind of record, the Commission can determine where the public interest lies.

At the very least, the Commission should consider giving the specific RLECs who filed the Petition a waiver from the Commission rules that were supposedly enforced by the Declaratory Ruling. By doing so, we will be able to assess whether the RLECs' process maintains the proper balance of the public interest.

That being said, NASUCA notes that the RLECs make reasonable arguments about the law of agency and how it applies to PIC changes.<sup>10</sup> The Declaratory Ruling said that, under the Commission's rules, "executing carriers may not make an independent determination with respect to the ability of a person to authorize a carrier change."<sup>11</sup> Put another way, the Declaratory Ruling held that carriers are required to slam consumers, when the person initiating the slam asserts authority. NASUCA would not support such a result. As noted above, however, there is an insufficient record to determine whether, in fact, "the anti-competitive effects of re-verification outweighed the potential benefits."<sup>12</sup>

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<sup>9</sup> The Commission should request from the West Virginia Public Service Commission ("WVPSC") the record that was developed in the WVPSC proceeding. See Declaratory Ruling, ¶ 11.

<sup>10</sup> Application at 4-5.

<sup>11</sup> Declaratory Ruling, ¶ 9.

<sup>12</sup> Id., ¶ 6.

The Commission should reopen this proceeding and ask for full public comment<sup>13</sup> on whether the RLECs' procedures violate the Commission's rules, and, if they do, whether the rules should be changed to provide the consumer protections that it appears the RLECs provide.

Respectfully submitted,

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<sup>13</sup> Not constrained by the logistical and procedural trappings of an Application for Review.