

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

In the Matter of)
)
Policies and Rules Concerning)
Unauthorized Changes of Consumers')
Long Distance Carriers) CC Docket No. 94-129
)
Application for Review of Declaratory Ruling)
of the Consumer & Governmental Affairs)
Bureau Filed by Rural Local Exchange)
Carriers)

**COMMENTS OF VERIZON¹ ON THE RURAL LECS' APPLICATION FOR
REVIEW OF THE JUNE 9, 2005 DECLARATORY RULING OF THE
CONSUMER & GOVERNMENTAL AFFAIRS BUREAU**

The Commission should affirm the June 9, 2005 Declaratory Ruling of the Consumer & Governmental Affairs Bureau ("Bureau").² Specifically, the Commission should find that the Rural LEC Petitioners' ("Rural LECs") practice of re-verifying carrier change requests from submitting carriers violates the Commission's rules and causes "unreasonable delay" of such requests. *See* 47 C.F.R. § 64.1120(a)(2).

I. INTRODUCTION

In April 2004, Verizon³ filed approximately 60 informal complaints against the Rural LECs for violating the Commission's rules on carrier changes. *Declaratory Ruling* ¶ 3 and n.9. Verizon alleged that the Rural LECs had adopted a practice of conducting

¹ The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A.

² *Declaratory Ruling Concerning LEC Coalition Request Regarding Carrier Change Verification*, 20 FCC Rcd 10599 (2005) ("Declaratory Ruling").

³ The April 2004 filing was made on behalf of what was then MCI. Since then, Verizon and MCI have completed their merger transaction. For purposes of these Comments, we use the name "Verizon" even when describing something that occurred prior to the consummation of the transaction.

“additional verification of carrier changes submitted by [Verizon].” *Id.* ¶ 3. The Rural LECs were rejecting carrier change requests submitted by Verizon when the name of the customer on the carrier change request did not match the name in the Rural LECs’ records. *Id.* The Rural LECs did not contest these facts, arguing instead that Commission rules and agency law entitled them to re-verify these Verizon carrier change requests. *Id.*

On February 1, 2005, the Rural LECs filed a Petition for Declaratory Ruling asking the Commission to approve the Rural LECs’ re-verification practices. *Public Notice*, CC Docket No. 94-129, DA 05-3131, at 1 (rel. Dec. 2, 2005). In the Ruling released on June 9, 2005, the Bureau denied the Rural LECs’ Petition. *Id.*; *Declaratory Ruling* ¶ 12. The Rural LECs filed the instant Application for Review on July 8, 2005 (“Rural LECs Review App.”), arguing that they are obligated by the laws of agency to reject any carrier change requests containing names that do not match those in their records, that the *Declaratory Ruling* ignores the D.C. Circuit’s decision in *AT&T v. FCC*, 323 F.3d 1081 (D.C. Cir. 2003), and that the Commission’s own anti-slamming rules permit the Rural LECs’ re-verification practices. Rural LECs Review App. at 3-8. These arguments lack merit.

II. THE RURAL LECs’ AGENCY ARGUMENT IS NOT RELEVANT AND LACKS MERIT.

The Commission’s rules prohibiting re-verification by executing carriers could not be clearer: “An executing carrier *shall not verify* the submission of a change in the subscriber’s selection of a provider of telecommunications service received from a submitting carrier.” 47 C.F.R. § 64.1120(a)(2) (emphasis added). The Bureau properly found that the Rural LECs’ practice of rejecting carrier change requests from submitting

carriers is prohibited by this rule. *Declaratory Ruling* ¶ 8. The Bureau also stated that executing carriers, including the Rural LECs, may not “make an independent determination regarding whether the person authorizing the switch was an authorized agent of the party identified on the executing carrier’s account.” *Id.*

The Rural LECs do not deny that their practice amounts to verification within the meaning of this Commission rule. *Rural LECs Review App.* at 2. Instead, they argue that the Commission’s rule places them in the position of being criticized by the customer if the alleged carrier change request is in fact a “slam,” or, alternatively, criticized by the submitting carrier for failing to process the carrier change request. *Id.* Fortunately for the Rural LECs, this is a false dichotomy.

This is not an issue of agency law, as the Rural LECs attempt to argue in the first instance. *Rural LECs Review App.* at 4 (stating that “agency law would not permit [the Rural LECs] to assume a third party to be the agent of the subscriber on the claim of the purported agent”). The agency argument is irrelevant and meritless.

It is irrelevant because the carrier change request submitted to an executing carrier *has already been verified*. As the Rural LECs themselves note, it is the submitting carrier that is required to verify the carrier change request using one of the four methods set forth in the Commission’s rules. *See Rural LECs Review App.* at 7 (citing 47 CFR § 64.1120(c)). Such requests are presumptively valid, and the Rural LECs’ only task is to promptly execute them. *Third Slamming Report and Order*, 15 FCC Rcd 15996, ¶ 51 (2000) (stating that Commission rules require “prompt execution of changes verified by a submitting carrier”).

The Rural LECs' agency argument is also meritless. They contend that they are obligated to determine if the customer identified in a carrier change request is an authorized agent of the purported principal, who is the customer listed in their records. Rural LECs Review App. at 4. Not so. Because a carrier change request has already been verified, the submitting carrier has already confirmed that the customer is authorized to make that change. As a matter of law and fact, that customer has the apparent authority to request the carrier change, and additional verification is unnecessary. See 47 C.F.R. § 64.1120(c)(3)(iii) ("All third party verification methods shall elicit, at a minimum . . . confirmation that the person on the call is authorized to make the carrier change. . . ."). Further, in submitting the carrier change request, the submitting carrier is now acting as the agent of the customer, and the Rural LECs may not interfere with that principal-agent relationship.

The Commission's rule that executing carriers must promptly honor carrier requests advances customer choice by removing a potential obstacle to a carrier change – the former carrier itself. As the Commission stated, "executing carriers . . . have both the incentive and ability to delay or deny carrier changes." *Second Report and Order*, 14 FCC Red 1508, ¶ 99 (1998). Precisely because of this incentive, executing carriers are prohibited from inquiring into questions such as agency. The Rural LECs' practice of re-verifying carrier change requests is contrary to the Commission's rules and must be stopped.

III. THE DECLARATORY RULING IS CONSISTENT WITH THE D.C. CIRCUIT'S DECISION IN *AT&T V. FCC*.

Contrary to the Rural LECs' contention, the *Declaratory Ruling* is also consistent with the decision in *AT&T v. FCC*. See Rural LECs Review App. at 5-6. In that case, the

D.C. Circuit ruled that the Commission could not require the submitting carrier to obtain actual authorization from the subscriber. 323 F.3d at 1086-87. An actual-authorization requirement, the court noted, amounts to a strict liability standard, but section 258 of the Act itself contains no such standard. *Id.* at 1086. The court found that the Commission could require the submitting carrier to comply with only the verification requirements set forth in 47 C.F.R. § 64.1120(c). *Id.*

The Rural LECs find it “surprising” that the Bureau did not discuss *AT&T v. FCC* in the *Declaratory Ruling*. Rural LECs Review App. at 6. But that case exclusively concerned the obligations of submitting, not executing carriers. It is simply not relevant to the issue of whether executing carriers may re-verify carrier change requests from submitting carriers. Indeed, if anything, the case confirms that the submitting carrier alone bears the responsibility of verifying a carrier change request and that the submitting carrier is entitled to rely on the apparent authority of the customer in submitting that request. 323 F.3d at 1086 (stating that “telecommunications carriers seeking new customers via telemarketing have little choice but to depend on the veracity of the person answering the phone.”). In short, the *AT&T v. FCC* decision is consistent with the Bureau’s finding in the *Declaratory Ruling* that the executing carrier may not re-verify a carrier change request.

IV. RE-VERIFICATION OF CARRIER CHANGE REQUESTS VIOLATES THE COMMISSION’S ANTI-SLAMMING RULES.

The Rural LECs also argue that their practice of re-verification does not violate the Commission’s verification rules because it “involve[s] no interaction with the subscriber and no testing of any kind as to whether the subscriber wants to make a PIC change.” Rural LECs Review App. at 7. This contention is not credible and misses the

point. As a matter of law and Commission rule, the executing carrier simply *may not verify a carrier change request*. 47 C.F.R. § 64.1120(a)(2). And the regulations setting forth the proper verification methods do not apply to executing carriers – they apply to submitting carriers only. *See id.* § 64.1120(c) (stating that “[n]o telecommunications carrier shall *submit* a preferred carrier change order unless and until the order has been confirmed in accordance with one of the following procedures”). Whether the re-verification methods that Rural LECs use fall within or without section 64.1120(c) of the Commission’s rules is irrelevant. The Rural LECs, as executing carriers, may not use *any* method of verification. *Id.* § 1120(a)(2) (stating that “[a]n executing carrier *shall not verify* the submission of a change in a subscriber’s selection of a provider of telecommunications service received from a submitting carrier”).

The Rural LECs also urge the Commission to adopt a rule that would require actual authority from the subscriber or would permit the Rural LECs to reject carrier changes when they cannot confirm from their own records that the customer is authorized by the subscriber. Rural LECs Review App. at 8. The Commission should reject this request. Consideration of any new anti-slamming rules is not appropriate in an application for review and should be considered, if at all, in a new rulemaking docket, not in this review proceeding.

V. CONCLUSION

For the foregoing reasons, the Commission should reject the Rural LECs' Application for Review and affirm the Bureau's June 9, 2005 Ruling in all respects.

Respectfully submitted,

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THE VERIZON TELEPHONE COMPANIES

For the purposes of this filing, the Verizon telephone companies are the entities formerly affiliated with MCI, Inc.¹ and the following local exchange carriers affiliated with Verizon Communications Inc.:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

¹ On Jan. 6, 2006, MCI, Inc. merged into MCI, LLC, a wholly owned subsidiary of Verizon Communications Inc. Those MCI business units and certain other Verizon business units that serve enterprise and government customers now call themselves Verizon Business; those MCI business units serving consumer residential and small business customers continue to operate using the name MCI.