

**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)	

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

The National Association of State Utility Consumer Advocates (“NASUCA”)¹ files these brief reply comments in response to others’ comments filed pursuant to the Public Notice in this docket.² Only five comments were filed: by NASUCA, the Iowa Utilities Board (“IUB”), AT&T Inc. (“AT&T”), Sprint Nextel Corporation (“Sprint”) and Verizon.³

The Federal Communications Commission (“Commission”) had requested comments on the Application for Review (“Application”) filed by a group of 38 rural local exchange carriers

¹ 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.

² 71 Fed. Reg. 5338 (2006).

³ AT&T’s comments were explicitly filed “on behalf of its interexchange carrier affiliates” (AT&T Comments at 1), whereas Verizon filed on behalf of “the entities formerly affiliated with MCI, Inc.” and a list of local exchange carriers. Sprint does not specify which of its subsidiaries’ concerns are supported by the comments.

(“RLECs”).⁴ The RLECs sought review of the Declaratory Ruling of the Acting Chief, Consumer & Governmental Affairs Bureau (“Declaratory Ruling”) released on June 9, 2005.⁵ The Declaratory Ruling was issued in response to the RLECs’ February 1, 2005 Petition for Declaratory Ruling (“Petition”).

The Petition requested a ruling that RLECs be allowed to “reject [presubscribed interexchange carrier] PIC change requests from [interexchange carriers] IXC’s ... 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.”⁶ The Declaratory Ruling denied the RLECs’ request.⁷

The IUB effectively supports the RLECs’ application,⁸ stating that, under Iowa’s rules, the IUB “has taken the position that if a name or number on a request does not match that on the account and a switch occurs without the authorization of the named person, the submitting carrier is in violation of Iowa’s rules against slamming (in the absence of mitigating factors).”⁹ The IUB

requests that the FCC affirm that its rules do not prohibit the practice of executing LECs rejecting requests from carriers to change a subscriber’s [presubscribed interexchange carrier] where the name or telephone number on the request does not match that of the subscriber of record or any person authorized by the subscriber to make changes to the account.¹⁰

As indicated in NASUCA’s initial comments, NASUCA shares the IUB’s concerns over slamming.

⁴ The RLECs were identified in Appendix A of the Application.

⁵ DA 05-618.

⁶ Petition at 3.

⁷ Declaratory Ruling, ¶ 1.

⁸ The IUB’s comments do not make that support explicit, however.

⁹ IUB Comments at 2.

¹⁰ Id.

AT&T, Sprint and Verizon oppose the RLECs' application.¹¹ Verizon argues that the RLECs' position that agency law would not allow the practice sanctioned by the Commission's rules is "irrelevant ... because the carrier change request submitted to an executing carrier *has already been verified*."¹² That is not true: The Commission's rules *do not* require any sort of confirmation from the subscriber of record that the person initiating the PIC change is authorized to make the change. Instead, the rules require, at most, that the person initiating the change confirm that he or she is authorized to make the change.¹³ These are two very different things.¹⁴

This is also where AT&T's and Verizon's arguments on agency fall apart. AT&T says that "[s]ubscribers can, consistent with agency law and the Commission's rules, authorize third parties to act on their behalf for the purpose of making a carrier change...."¹⁵ NASUCA agrees. But AT&T adds the proviso that subscribers "can do so without informing the executing LEC."¹⁶ NASUCA would agree in principle, but would reiterate that this actually requires the executing LEC to accept *any* representation of agency as valid. What the RLECs are requesting is that they not be required to take that last step.

Verizon takes the agency argument even farther, saying that "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."¹⁷ Verizon's assertion requires one

¹¹ Between them, of course, AT&T and Verizon are the largest local and interexchange carriers in the U.S. It is not entirely clear, therefore, whether the opposition stems from the IXCs' desire to avoid having their PIC change orders rejected, or the LECs' desire not to have to take the verification steps taken by the RLECs.

¹² Verizon Comments at 3 (emphasis in original).

¹³ See 47 C.F.R. § 64.1120(c)(iii), cited by Verizon (at 4) and AT&T (at 4).

¹⁴ 47 C.F.R. § 64.1100(h) defines "subscriber" to include one who is authorized to make changes to the account, but does not specify how that authorization is to be communicated to the carrier.

¹⁵ AT&T Comments at 3.

¹⁶ *Id.*

¹⁷ Verizon Comments at 4.

to assume, of course, that the initial assertion of agency -- by the person submitting the initial carrier change request -- was valid. Again, neither the Commission's rules nor AT&T's or Verizon's arguments provide any support for that presumption.

Neither AT&T nor Verizon's comments diminish NASUCA's concern that it is simply not possible to achieve a resolution of this issue based on the record as it now exists.¹⁸ Sprint argues that "[s]lamming ... constitutes only a small fraction of the total number of PIC changes that occur every year...."¹⁹ Sprint misses the question that is relevant here: What fraction of the PIC changes made by persons other than the subscriber of record represents slamming? The record does not contain either piece of information.²⁰ NASUCA again recommends that the Commission open this issue for full public comment.

There is also the issue raised by Verizon, which says that "[c]onsideration 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...."²¹ This depends, however, on accepting the notion that the relief requested by the RLECs would require adoption of *new* rules, rather than interpretation of the current rules.²² Again, the paucity of the record here prevents a definitive resolution of that issue.²³

¹⁸ NASUCA Comments at 2-3.

¹⁹ Sprint Comments at 2.

²⁰ Sprint says that it is incumbent on those questioning the Declaratory Ruling to offer "hard data to support their allegation of increased slamming complaints, before and after the ... Declaratory Ruling." *Id.* at 3. That would certainly be helpful information.

²¹ Verizon Comments at 6.

²² NASUCA had also suggested that the Commission transform the RLECs' request for a declaratory ruling into a request for waiver, so that experience could be gathered about the impact of the RLECs' practices.

²³ Sprint asserts that PIC freezes present fewer "infirmities" than the RLECs' actions. Sprint Comments at 4. This may be true, but the record is inadequate to verify it.

Sprint asserts that “[t]he public interest here is prompt and easy implementation of consumer wishes, not to provide some sort of regulatory relief for IXCs.”²⁴ NASUCA submits that the public interest here also lies in assurance that PIC change orders are made by persons authorized by the subscriber of record. The question here is what level of assurance represents “undue re-verification or other interference from the executing carrier.”²⁵

As recommended by NASUCA, the Commission should reopen this proceeding and ask for full public comment 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. The public comment should include information on the practical impact of the actions being taken by the RLECs.

Respectfully submitted,

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²⁴ Id. at 2.

²⁵ Id. at 3.