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May 16, 2002

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Re: **LCR Telecommunications, LLC**
Case No. TA-2002-412

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Reply to Company's Response**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "M. F. Dandino".

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the matter of the Application of LCR) Telecommunications, L.L.C. for a certificate) of service authority to provide) interexchange telecommunications services) and to classify such services and the) company as competitive.)	Case No. TA-2002-412
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**OFFICE OF THE PUBLIC COUNSEL'S
REPLY TO COMPANY'S RESPONSE**

COMES NOW the Office of the Public Counsel (Public Counsel) and states as its
reply to the Applicant's Response:

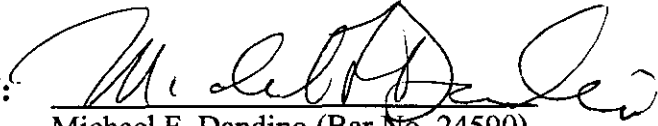
1. Public Counsel believes that it is in the public interest to investigate this Applicant and believes that this interest is best served by proceeding with the prehearing and, if needed, an evidentiary hearing as required under Section 392.450 RSMo. 2000.
2. Public Counsel has become aware of an FCC order finding that LCR Telecommunications, LLC violated the FCC's rules regarding slamming. (IC No. 101-S52104, March 1, 2002). A copy of the order is attached as Exhibit A.
3. Given the very similarly named companies (LCR Telecommunications, LCC, Least Cost Routing, Ltd. And Least Cost Routing, Inc.) and the regulatory problems of companies called "Least Cost Routing," the wise course for the Commission to assure itself that it is granting authority to provide services to a carrier that will benefit and not harm the public.

WHEREFORE, Public Counsel renews its request for an evidentiary hearing under Section 392.450, RSMo.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY:



Michael F. Dandino (Bar No. 24590)
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed or hand delivered this 16th day of May, 2002 to the attorneys of record listed:

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, Missouri 65102

Lance J.M. Steinhart, Esq.
Attorney at Law
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Duluth, GA 30097

Judith A. Rau, Esq.
Rau & Rau
119 E. Mill Street
Waterloo, IL 24856



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

In the Matter of)
)
LCR Telecommunications, LLC) IC No. 01-S52104
)
Complaint Regarding)
Unauthorized Change of)
Subscriber's Telecommunications Carrier)

ORDER

Adopted: February 27, 2002

Released: March 1, 2002

By the Chief, Consumer Information Network Division, Consumer Information Bureau:

1. In this Order, we consider the complaint filed by Complainant¹ alleging that LCR Telecommunications, LLC (LCR) changed Complainant's telecommunications service provider without obtaining authorization and verification from Complainant in violation of the Commission's rules.² We conclude that LCR's³ actions did result in an unauthorized change in Complainant's telecommunications service provider and we grant Complainant's complaint.

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).⁴ Section 258 prohibits the practice of

¹ Informal Complaint No. IC-01-S52104, filed April 9, 2001.

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ Pursuant to the complaint, Alliance Group Services, Inc. was served the above-referenced complaint on May 24, 2001. In its response dated July 16, 2001, Alliance states that it is a wholesale provider of long distance services. Its customer, LCR Telecommunications, LLC is the reseller providing service to the complainant. We received a response on October 1, 2001 from LCR Telecommunications, LLC.

⁴ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *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 Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); *reconsideration pending*. Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 (continued....)

"slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁵ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁶ Pursuant to Section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁹ Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹⁰

4. We received Complainant's complaint on April 9, 2001 alleging that Complainant's intraLATA toll and long distance services had been changed from AT&T Corporation to LCR without Complainant's authorization. Pursuant to Sections 1.719 and

(Continued from previous page) _____

FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

⁵ 47 U.S.C. § 258(a).

⁶ See 47 C.F.R. § 64.1120.

⁷ 47 U.S.C. § 258(a).

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1170.

64.1150 of our rules,¹¹ we notified LCR of the complaint and LCR responded on October 1, 2001.¹² LCR failed to submit the proper proof of authorization as required by our rules,¹³ such as a verification tape or letter of agency. We find that LCR has failed to produce clear and convincing evidence that Complainant authorized a carrier change.¹⁴ Therefore, we find that LCR's actions resulted in an unauthorized change in Complainant's intraLATA toll and long distance service provider and we discuss LCR's liability below.¹⁵

5. LCR has removed all charges incurred for service provided to Complainant for the first thirty days after the alleged unauthorized change in accordance with the Commission's liability rules.¹⁶ We have determined that Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and that neither AT&T Corporation nor LCR Telecommunications, LLC may pursue any collection against Complainant for those charges.¹⁷

6. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the complaint filed against LCR Telecommunications, LLC IS GRANTED.

7. IT IS FURTHER ORDERED that, pursuant to Section 64.1170(d) of the Commission's rules, 47 C.F.R. § 64.1170(d), Complainant is entitled to absolution for the charges incurred during the first thirty days after the unauthorized change occurred and neither AT&T Corporation nor LCR Telecommunications, LLC may pursue any collection against Complainant for those charges.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹² LCR Telecommunications, LLC Response to Informal Complaint No. IC-01-S52104, filed October 1, 2001.

¹³ See 47 C.F.R. § 64.1120.

¹⁴ See 47 C.F.R. § 64.1150(d).

¹⁵ If Complainant is unsatisfied with the resolution of this complaint, Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules, 47 C.F.R. § 1.721. Such filing will be deemed to relate back to the filing date of Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to Complainant. See 47 C.F.R. § 1.719.

¹⁶ See 47 C.F.R. § 64.1160(b).

¹⁷ See 47 C.F.R. § 64.1160(d).

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Jack L. Forsythe, Chief
Consumer Information Network Division
Consumer Information Bureau