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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
) CC Docket No. 97-181
Defining Primary Lines)

**REPLY COMMENTS OF SOUTHWESTERN BELL TELEPHONE COMPANY,
PACIFIC BELL, AND NEVADA BELL**

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (collectively, the "SBC LECs") submit these Reply Comments to the comments filed on September 25, 1997, in response to the Notice of Proposed Rulemaking, FCC 97-316 ("NPRM"). By filing these Reply Comments, none of the SBC LECs or any affiliate waives, prejudices, or otherwise adversely affects any appeal or other recourse from any Commission proceeding, including the Access Charge Reform Order.¹

The Definition of Primary Line Should Be Made with Reference to Customer Account Information Used for Billing

There is strong support among commenting parties that the definition of primary residential lines should be linked to the initial line associated with a customer account at a specific service address. The majority of price cap local exchange carriers ("LECs") confirmed that their billing systems are designed to most easily implement the SBC LEC proposed definition of

¹ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, and 95-72, First Report and Order, FCC 97-158 (released May 8, 1997) ("Access Charge Reform Order").

primary line. For the reasons provided in the SBC LECs' initial Comments, the Commission should adopt that proposed definition and identify primary lines accordingly.

Self-Certification Has Been Shown To Be Unnecessary and Inappropriate

A diverse representation of parties point out the pitfalls of requiring customer self-certification, and the record plainly demonstrates that the need for customer self-certification can be eliminated by adoption of an appropriate definition of "primary line."

In contrast, there is absolutely no record supporting the conclusion that customer self-certification is necessary for price cap LECs to charge an appropriate subscriber line charge ("SLC") or presubscribed interexchange carrier charge ("PICC"), or that self-certification would be administratively easy, inexpensive, or even understandable to either customers or the price cap LEC personnel charged with implementing the Commission's two-tiered structure. A naked assertion that mandatory self-certification would "not [be] administratively burdensome" does not a record make, especially when made by a competitor that would not have to administer such a system. MCI Comments, p. 3. Competing carriers have an obvious incentive to convince regulators to saddle incumbent LECs with unnecessary responsibilities and added costs that the competing carriers do not have to bear. Even when the price cap LECs are permitted cost recovery, incurring unnecessary costs just makes price cap LECs less competitive and exacerbates the number and size of the regulator-created competitive advantages that carriers like MCI already enjoy. When viewed with MCI's proposal that would permit competitors access to that

information² and its proposed "strict/no fault liability" approach to erroneous billing and primary line disputes (which include not only monetary penalties but third party audits paid for by the price cap LEC), the strategy of increasing price cap LEC's administrative and cost burdens is transparent.

Another party advocating self-certification, the People of the State of California and the Public Utilities Commission of the State of California ("CPUC"), relies on the fact that it has already required the identification of primary lines for California intrastate universal service purposes. As stated in the SBC LECs Comments at page 2, this proceeding involves only how a price cap LEC implements the mandated rate structure and charges its own customers. The charges billed by a price cap LEC to a customer cannot be dictated by the presence or absence of services another carrier might provide to that same customer. For example, the single residential line provided by a price cap LEC to a particular subscriber is the "primary line" regardless of the fact that another facilities-based carrier might provide multiple residential lines to that same customer. In contrast, the CPUC definition and implementation of "primary line" was for purposes of providing universal service high-cost support limited to a single residential line. The universal service considerations that may apply for that purpose are simply not present here.

Nevertheless, the experience with self-certification used in the CPUC's Universal Lifeline Telephone Service ("ULTS") program is instructive on the mechanics and costs of a relatively simple customer self-certification process. That experience unquestionably demonstrates that the

² See pp. 5, 6, 9, and 10 herein, and the discussion of customer proprietary network information and 47 U.S.C. § 222.

process is inherently expensive and complex, requiring multiple customer contacts and tracking of initial and subsequent mailings. To begin, the expense of annually notifying existing Pacific Bell non-ULTS residential customers about the California program is approximately \$.08/customer, or \$600,000 per year for a bill insert. Pacific Bell also incurs an annual \$18 million expense associated with Pacific Bell-initiated customer service contacts to make subscribers aware of and explain the ULTS program. Additional expense is further incurred in answering questions of subscribers who call Pacific Bell about ULTS. The cost of sending and receiving self-certification forms and reminders is about \$1.5 million annually, a figure that does not include the cost of storing the returned forms. An additional \$900,000 is also spent every year for the annual re-certification of existing ULTS customers. Pacific Bell's experience is not unique -- GTE also has experienced significant expenses with self-certification in California. *See CPUC Comments, Attachment A, pp. 3, 4* (acknowledging GTE's claim that "the annual self-certification process for the ULTS has been costly to the program and administratively burdensome to its company.").

In any event, regardless of the merits of customer self-certification, all parties agree that wholesale self-certification is not needed. Even those parties that advocated self-certification recognize that current billing information should be used to at least initially identify primary lines. *See MCI Comments, p. 4* ("In instances where the end user has only one line, and it is provided by the [incumbent LEC], the line can automatically be labeled as the 'primary' line -- no customer self-certification is needed."); *CPUC Comments, p. 5* ("The CPUC does not believe all customers need to participate in the self-certification process at the outset. . . . Relying on existing information can reduce administrative costs."). In fact, all but one of those relatively few parties

either advocating or unopposed to customer self-certification seeks to limit such to a small subset of customers (*i.e.*, present accounts with multiple lines, all new orders).

The FCC Should Treat Any Primary/Non-Primary Line Information Like All Other CPNI

The Commission should conclude that the primary/non-primary line information is customer proprietary network information ("CPNI"), and that rules applicable to any other local exchange CPNI should likewise apply. Primary/non-primary line information is customer account information that relates to the "amount" and "type" of local exchange telecommunications service subscribed to by a customer; therefore, it constitutes CPNI under 47 U.S.C. § 222(f)(1)(A). As such, the information is no less subject to the CPNI restrictions and limitations in 47 U.S.C. § 222 and applicable Commission rules as any other form of CPNI. Accordingly, the SBC LECs echo the comments of those parties that urge the Commission to consistently apply to primary/non-primary line information the CPNI rules that will be promulgated in the pending *Telecommunication Carriers' Use of Customer Proprietary Network Information and Other Customer Information*, CC Docket No. 96-115.

In this regard, the approach suggested by Cox Communications, Inc. ("Cox") is clearly and fatally flawed. Cox starts by asserting that primary line information is "subscriber list information." There is absolutely no basis for that assertion. Subscriber list information is confined, in relevant part, to names, addresses, and telephone numbers of "listed" customers. 47 U.S.C. § 222(f)(3). Such information does not extend to the amount or type of telephone service subscribed to by a customer.

Moreover, a customer's listed name, number, and address are normally expected by the subscriber to be disclosed for the obvious purpose of allowing persons to find the telephone number of the subscriber. Primary/non-primary line information has no similar "directory publishing" use, and there is no basis to presume that a customer has no legitimate expectation of privacy in the number of lines he or she may have, or how he or she designated priority among them. To the contrary, information regarding the number of lines that a customer has (*i.e.*, the amount of service), and the relative priority among them given by the customer (*i.e.*, the type of service), is CPNI which reflects a private and personal telecommunications service choice. Customers -- and Congress -- are becoming increasingly sensitive about the availability of personal information in this electronic age, and the Commission should respect those concerns here.

In sum, there is simply no grounds for treating this primary line information different than any other form of CPNI, or treating it as subscriber listing information. Further, if and when that CPNI is shared with a carrier for billing purposes, the use of that information must be strictly limited in accordance with 47 U.S.C. § 222.

More Time is Needed to Implement a Two-Tiered SLC/PICC Structure

The SBC LECs agree with the other price cap LECs' conclusion that it is not possible to implement a two-tiered SLC and PICC rate structure by the current January 1, 1998, deadline. *See* Bell Atlantic Comments, pp. 8, 9; BellSouth Comments, p. 2; GTE Comments, pp. 15-17; *see also* USTA Comments, pp. 3, 4. No matter what definition of "primary line" the Commission adopts or the method used to implement it, there simply is not enough time to take the actions

that will be necessary to put the structure into place. Depending upon the resolution of the issues being debated in this proceeding, the SBC LECs have estimated that a minimum of six (6) months is needed after the decision in this proceeding is released. The various time estimates provided by the price cap LECs – the parties who would actually have to implement the primary line structure – are consistent with that estimate. Obviously, the more persons involved in implementation (other carriers, customers), the longer that implementation period may become. Thus, even if the decision in this proceeding were to be released tomorrow, the comments unanimously demonstrate that the less than three (3) months left in the year are not sufficient.

Furthermore, as various parties have explained, no price cap LEC can be reasonably expected to institute a two-tiered SLC/PICC structure until the Commission releases its decision. Adoption by a price cap LEC of its own definitions and implementation methods would undoubtedly result in two customer-affecting and -confusing changes; increased expenses, both internal (double administrative training and methods, billing system changes, customer service representative confusion) and external (customer and carrier notifications), and multiple disputes with resellers and interexchange carriers. Indeed, in light of MCI's comments and its "strict liability" approach, a price cap LEC could count on a dispute with MCI (whether acting as an interexchange carrier, a local service reseller, or both) based upon any decision that the price cap LEC might make that is different than what MCI has suggested or what the Commission ultimately adopts.

To the extent that the Commission does not modify the implementation timetable on reconsideration of the Access Charge Reform Order (assuming it does not eliminate the two-

tiered structure altogether), the Commission must be willing to entertain requests to waive the January 1, 1998, deadline.

The Commission Should Not Dictate Communications Between a Price Cap LEC and its Customers

The SBC LECs agree with those parties that the Commission should not attempt to dictate the content of communications with customers, or when, how, and how often that communication must occur. As various parties have pointed out, such a requirement would be a substantial departure from previous Commission decisions. There has not been a reasonable and sufficient explanation on the proposed change in Commission direction and, the SBC LECs submit, no basis for a change exists here. Moreover, the various problems and issues raised by the parties opposing adoption of any mandatory text or script are real, cannot be ignored, and would result in costs that would need to be recovered. Pacific Bell, for example, must provide customer notification in English and Spanish, and provide an "800" number for access to Asian translations.

If the Commission nevertheless adopts a mandated customer communication, text similar to that suggested by the Rural Telephone Coalition ("RTC") is much more preferable than the one contained in the NPRM or proposed by MCI. The RTC proposal provides the customer with more relevant information presented in a straightforward manner, along with appropriate contact numbers, the combination of which has will help minimize customer questions and the additional administrative costs that the price cap LECs will have to incur. In contrast, the other proposals might leave the customer with the erroneous impression that the SLC structure is based upon a

voluntary decision made by the serving price cap LEC. Commission rules which dictate that an price cap LEC recover its costs in a specified manner *or not at all* cannot be squared with the impression left by the proposed use of "The Federal Communications Commission allows"

To the extent that customers are upset, confused, or otherwise wish to speak with someone about the structure, the "cost causer" should be fielding those calls.

Finally, the position of MCI is interesting. As the Commission will recall, MCI asserted its first amendment rights in addressing the prohibition on the use of the term "surcharge" associated with the recovery of federal universal service contributions. See MCI's "Petition for Reconsideration and Clarification," pp. 11, 12, filed on July 17, 1997, in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45. Here, where MCI would not be subject to the proposed requirement, MCI is not at all troubled by any first amendment implications and is instead urging the Commission to mandate communication of government-approved content. The suggestion of mandatory language is no less a first amendment issue than the Commission prohibition against the use of a single word. The price cap LECs have the constitution right of free speech, including the rights to communicate truthfully with its customers and to be free from government interference with that speech (including by mandated communication). The Commission should thus decline to adopt any dictated and mandated communication.

Line-Level Information Should Not Be Required to Be Provided to Other Carriers

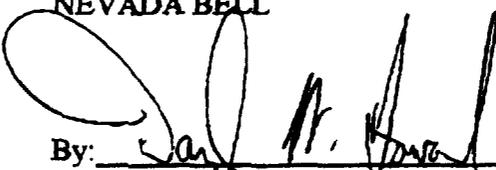
The SBC LECs are opposed to providing carriers with line-level detail for each billed telephone number, including all other telephone numbers associated with the billed telephone number as has been suggested. MCI Comments, p. 10; Sprint Comments, p. 9. For example,

Sprint claims that line-level bill detail must be conveyed so that interexchange carriers ("IXCs") can verify PICC billings. Providing such detailed billing every month would be onerous and costly for price cap LECs. Some level of detail will be necessary to settle disputes, but aggregation to the NPA-NXX level on an as-needed basis is sufficient. If the provisioning of customer-by-customer detail is mandated, however, price cap LECs must be able to recover the additional costs of providing the information from the carrier receiving it.

Moreover, the Commission cannot lose sight that MCI, Sprint, and other IXCs (or their affiliates) are or will be competing against the price cap LEC for the same local service customers. Requiring such line-level detail would provide actual and potential competitors with extremely sensitive competitive customer-specific information. Such information would be very valuable, especially inasmuch as new entrants are expected to attempt to win over hesitant potential customers by first providing additional, "non-primary" lines. If this detailed information is provided, the use restrictions and limitations imposed on such CPNI by 47 U.S.C. § 222 and applicable Commission rules must be strictly enforced against those carriers receiving the information. Otherwise, the information could be used to implement that strategy and begin targeting a price cap LEC's end-user customers with multiple lines.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY
PACIFIC BELL
NEVADA BELL

By: 

Robert M. Lynch
Durward D. Dupre
Darryl W. Howard

One Bell Center, Room 3520
St. Louis, Missouri 63101
(314) 235-2513

Nancy C. Woolf

140 New Montgomery Street, Room 1523
San Francisco, California 94105
(415) 542-7657

Their Attorneys

October 9, 1997

CERTIFICATE OF SERVICE

I, Katie M. Turner, hereby certify that the foregoing, "REPLY OF SOUTHWESTERN BELL TELEPHONE COMPANY" in CC Docket No.97-181 has been filed this 9th day of October, 1997 to the Parties of Record.

A handwritten signature in black ink, appearing to read "Katie M. Turner", written over a horizontal line.

Katie M. Turner

October 9, 1997

SHERYL TODD (3 COPIES)
FEDERAL COMMUNICATIONS COMMISSION
ACCOUNTING AND AUDITS DIVISION
UNIVERSAL SERVICE BRANCH
2100 M STREET NW ROOM 8611
WASHINGTON DC 20554

ITS
1231 20TH STREET NW
WASHINGTON DC 20036

RICHARD MCKENNA HQE03J36
GTE SERVICE CORPORATION
PO BOX 152092
IRVING TEXAS 75015-2092

GAIL POLIVY
1850 M STREET NW
SUITE 1200
WASHINGTON DC 20036

MARY McDERMOTT
LINDA KENT
KEITH TOWNSEND
RANCE HANEY
UNITED STATES TELEPHONE ASSOCIATION
1401 H STREET NW
SUITE 600
WASHINGTON DC 20005

WERNER K HARTENBERGER
JG HARRINGTON
LAURA H PHILLIPS
ATTORNEYS FOR COX COMMUNICATIONS INC
DOW LOHNES & ALBERTSON PLLC
1200 NEW HAMPSHIRE AVENUE NW
SUITE 800
WASHINGTON DC 20036

PETER ARTH JR
LIONEL B WILSON
JANICE GRAU
ATTORNEYS FOR THE PEOPLE OF THE STATE
OF CALIFORNIA AND THE PUC OF THE
STATE OF CALIFORNIA
505 VAN NESS AVENUE
SAN FRANCISCO CA 94102

US WEST INC
RICHARD A KARRE
1020 19TH STREET NW
SUITE 700
WASHINGTON DC 20036

MCI TELECOMMUNICATIONS CORP
BRADLEY STILLMAN
DON SUSSMAN
ALAN BUZACOTT
1801 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20006

NEW YORK STATE TELECOMMUNICATIONS
ASSOCIATION INC
100 STATE STREET ROOM 650
ALBANY NEW YORK 12207

STEPHEN G KRASKIN
THOMAS J MOORMAN
KRASKIN & LESSE LLP
2120 L STREET NW
SUITE 520
WASHINGTON DC 20037

BELLSOUTH CORPORATION
BELLSOUTH TELECOMMUNICATIONS INC
M ROBERT SUTHERLAND
RICHARD M SBARATTA
1155 PEACHTREE STREET NE
SUITE 1700
ATLANTA GEORGIA 3030-3610

MARGOT SMILEY HUMPHREY
KOTEN & NAFTALIN LLP
1150 CONNECTICUT AVENUE NW
SUITE 1000
WASHINGTON DC 20036

DAVID COSSON
NTCA
2626 PENNSYLVANIA AVENUE NW
WASHINGTON DC 20037

LISA M ZAINA
STEVE PASTORKOVICH
OPASTCO
21 DUPONT CIRCLE NW
SUITE 700
WASHINGTON DC 20036

MICHAEL S PABIAN
COUNSEL FOR AMERITECH
ROOM 4B82
2000 WEST AMERITECH CENTER DRIVE
HOFFMAN ESTATES, IL 60196-1025

LEON M KESTENBAUM
JAY C KEITHLEY
H RICHARD JUHNKE
1850 M STREET NW
WASHINGTON DC 20036

EDWARD SHAKIN
ATTORNEY FOR THE BELL ATLANTIC
TELEPHONE COMPANIES
1320 NORTH COURT HOUSE ROAD
EIGHTH FLOOR
ARLINGTON VA 22201