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March 18, 1999

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth St., S.W.
Rm. TW-A325
Washington, D.C. 20554

RECEIVED
MAR 18 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket No. 94-129, In the Matter of 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

Dear Ms. Roman Salas:

Today U S WEST Communications, Inc. filed Comments electronically in CC Docket No. 94-129 in response to the December 23, 1998 Further Notice of Proposed Rulemaking (FCC 98-334). Since U S WEST was unable to file the Attachment electronically, please associate the enclosed hard copy Attachment 1 with these Comments accordingly (see paragraph 25 of the Report and Order of April 6, 1998 in GC Docket No. 97-113, In the Matter of Electronic Filing of Documents in Rulemaking Proceedings (13 FCC Rcd. 11322, 11333)).

An original and four copies are enclosed. Also provided is an extra copy to be stamped and returned to the messenger who has been instructed to wait for it. In addition, U S WEST is serving Kimberly Parker with a copy of this letter, and is providing courtesy copies to the parties indicated in the attached Certificate of Service.

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Ms. Magalie Roman Salas
March 18, 1999
Page Two

Should you have any questions regarding this letter, please contact me at the above number. Thank you for your assistance with this matter.

Sincerely,

Kathryn Marie Krause

Kathryn Marie Krause

(RW)

Enclosures

ATTACHMENT 1

GVNW Inc./Management
Reply Comments CC Docket No. 98-170
December 16, 1998

12-16-98
RK
ORIGINAL COPY
File No.
Proceeding... CC 98-170
Assigned To... Weibel
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Truth-in-Billing)
)
and) CC Docket No. 98-170
)
)
Billing Format)

REPLY COMMENTS OF GVNW INC./MANAGEMENT

GVNW Inc./Management (GVNW) respectfully submits its reply comments in the above-referenced Notice of Proposed Rulemaking (NPRM). GVNW is a management consulting firm, which provides financial and regulatory consulting services to independent telephone companies. Many of GVNW's clients have affiliates who provide interexchange service as switchless resellers. These reply comments focus on issues raised by the NPRM and commenting parties affecting small and rural independent telephone companies and their interexchange carrier affiliates.

Summary

As several commenting parties have pointed out, bill disclosure requirements may only complicate and not ameliorate the unique slamming problems associated with switchless resale. GVNW believes it can provide valuable insight with regard to switchless resale because of its extensive experience in assisting clients in both becoming

and operating as switchless resellers.¹ GVNW believes the slamming and slamming-like problems experienced by customers of switchless resellers (collectively "resale slamming") warrant adoption, by the Commission, of rules prescribing minimum standards for underlying facilities-based carriers (underlying carriers) with respect to operating support systems (OSSs), interfaces, practices and procedures that will lessen the vulnerability of switchless resale customers to resale slamming.

In addition to resale slamming concerns, GVNW wishes to respond to those parties recommending that the Commission adopt prescriptive requirements for non-discriminatory provision of billing and collection (B&C) services to non-affiliates. GVNW believes that incumbent local exchange carriers (ILECs) should not be forced to perform B&C services for all parties. At the very least, ILECs should not have to bill for third parties and services involving unwanted services, unreasonably high charges, and unscrupulous and deceptive practices. Additionally, should the Commission, as some parties have recommended, adopt prescriptive requirements for the non-discriminatory provision of B&C to third parties, the Commission must address financial losses resulting from the provision of B&C experienced by smaller ILECs who do not have the economies of scale that larger ILECs do.

¹ GVNW has assisted over 90 small and rural ILECs in establishing interexchange carrier affiliates. All of these interexchange carrier affiliates rely on switchless resale in order to provide interexchange service. The assistance provided by GVNW has included negotiation and management of numerous contracts with facilities-based carriers on behalf of its clients. These negotiations and management functions have included dealing with issues related to the OSSs, interfaces, practices and procedures associated with switchless resale. Moreover, GVNW has dealt extensively with the resale slamming issue and its causes.

1. The Commission Should Take Steps to Ensure that Switchless Resellers are Not Competitively Disadvantaged by Greater Vulnerability to Slamming than Other Interexchange Carriers

The NPRM recognizes the existence of unique slamming problems associated with switchless resale due to the use of the same underlying carrier by multiple resellers.² Unfortunately, prescriptive requirements respecting bill disclosure and format will not solve the problems associated with resale slamming. Viable resale cannot exist if customers of switchless resale are more susceptible to greater levels and more insidious forms of slamming than are customers of interexchange services provided directly by facilities-based carriers. Examples of forms of slamming to which switchless resellers are susceptible include the following: slamming by other resellers using the same underlying carrier; misdirection of the reseller's calls to casual billing by the underlying carrier; provision by underlying carriers of call detail records (CDRs) for billing purposes for both interLATA and intraLATA to one reseller even though the reseller only configured the resale account for either interLATA alone or intraLATA alone. Unfortunately, bill disclosure or format changes cannot ameliorate these problems because by the time a bill is rendered, much of the damage associated with resale slamming has already been done.

As the Commission pointed out in the NPRM, one of the primary goals of the Telecommunication Act of 1996 (1996 Act) is to make available to consumers new services and technologies by promoting the development of competition in all aspects of telecommunications services.³ Even before the 1996 Act, the Commission recognized,

² NPRM at ¶ 23.

³ NPRM at ¶ 1. The Commission cited Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (1996 Act).

with respect to interstate, domestic, interexchange services, "that unlimited resale and sharing are in the public interest."⁴ The Commission has, in its own words, "long-standing policies of prohibiting restrictions on resale and barring restrictive eligibility requirements for interstate, domestic, interexchange services that have the effect of unreasonably discriminating against similarly-situated customers."⁵ As the Commission has pointed out previously, carriers' obligations with respect to resale include obligations under Sections 201 and 202 of the Communications Act.⁶ Thus, under Section 201(b), underlying facilities-based carriers' practices must be just and reasonable.

GVNW recognizes that the instant proceeding is focused on billing format and disclosure. However, the Commission has stated its goal in the Truth-In-Billing proceeding "is to construct, with the help of the states, consumer groups, and the industry, workable solutions to enable consumers to reap the benefits of the competitive telecommunications marketplace while at the same time protecting themselves from unscrupulous competitors."⁷ As billing disclosure and format changes will not remedy the serious resale slamming problems, GVNW recommends that the Commission adopt rules prescribing minimum standards for underlying carriers with respect to OSSs, interfaces, practices and procedures that will lessen the vulnerability of switchless resale customers to

⁴ *Regulatory Practices Concerning Resale and Shared Use of Common Carrier Domestic Switched Network Services*, 88 FCC 2d 167, at 185, (1980) *aff'd sub nom., Southern Pacific Communications Company v. FCC*, 683 F.2d 232 (D.C. Cir. 1982).

⁵ Cite CC Docket No. 96-91 FCC 97-293, ¶75 and upstream cites.

⁶ *Policy and Rules Concerning the Interstate, Interexchange Marketplace and Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket 96-61, Order on Reconsideration, FCC 97-293 (rel. August 20, 1997)

⁷ NPRM at ¶ 6.

slamming which too frequently surface in one form or another⁸ If these additional steps are not taken, GVNW respectfully suggests that the Commission will be treating, through bill disclosure and format requirements, the symptoms rather than the underlying causes of the tarnish on its ongoing competitive initiatives caused by resale slamming.

2. **The Commission Should Adopt A Rule Prohibiting Identification on ILEC Bills of Customer PICs Until Such Identification Can Accommodate Switchless Resellers**

In the NPRM, the Commission sought comment on whether a rule requiring that ILEC telephone bills identify, among other things, customers' current primary interexchange carriers (PICs) would help combat slamming.⁹ In its comments, GVNW pointed out that for many switchless resellers the carrier identification code (CIC) indicated in the ILEC's switch is that of the underlying carrier.¹⁰ As disclosure of a customer's current PIC would be based on the CIC indicated for that customer in the ILEC's database, ILEC bills for customers of switchless resellers would confusingly indicate the underlying carrier as the customer's PIC. The Commission's Letter of Authority (LOA) policy holds that the PIC is the carrier directly setting the rates for the

⁸ GVNW recognizes that many of the issues raised herein could be addressed through contractual negotiation and amendment involving switchless resellers and their underlying carriers. However, GVNW has found underlying carriers unwilling to include in contracts the types of provisions necessary to address the problems discussed above. Moreover, it is extremely difficult to obtain amendments to existing contracts necessary to remedy these problems. As facilities-based carriers tend to have the upper hand in negotiating issues related to OSSs, interfaces, practices and procedures, it is appropriate for the Commission to prescribe fair and balanced standards applicable to both underlying carriers and resellers.

⁹ NPRM at ¶ 18.

¹⁰ GVNW Comments at 5. Other commenting parties noted the same limitations. See, for example, BellSouth Corporation comments at 7-8.

subscriber,¹¹ which for switchless resale would be the reseller and not the underlying carrier. In its comments, GVNW stated that the Commission should not prescribe disclosure on ILEC bills of PICs if doing so increases instead of decreases confusion.¹² AT&T has expressed a similar concern that "if only a reseller PIC's underlying facilities-based carrier were identified on a bill, its customers would likely be confused."¹³ GVNW agrees with AT&T that the Commission should not consider such a requirement until the underlying data are available.¹⁴

As GVNW mentioned in its comments, some large ILECs already provide data on customer bills indicating the customer's current PIC for either interLATA or intraLATA toll.¹⁵ In its *LOA Order*, the Commission, aware that some ILECs were disclosing PICs on customer bills, recognized that customers "may get confused if after they agree to switch their long distance service, the name of some other IXC appears on their bill."¹⁶ The Commission addressed the problem by stating, "We expect all IXCs that do not have a CIC to explain to their new customers that another IXC's name may appear on the customer's bill."¹⁷ Many of GVNW's switchless resale clients do not believe this is fair

¹¹ *Policies and Rules Concerning Unauthorized Changes of Consumer' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560, FCC 95-225 at ¶ 29. (*LOA Order*).

¹² GVNW Comments at 6.

¹³ AT&T Comments at 6.

¹⁴ Id.

¹⁵ For example, Ameritech identifies both the current interLATA and intraLATA PICs on monthly bills to Illinois customers.

¹⁶ *LOA Order* at ¶ 31.

¹⁷ Id.

with respect to competing on an equal footing with their facilities-based brethren. GVNW agrees with the Telecommunications Resellers Association (TRA) that such PIC disclosure "will not only engender confusion, but undermine the switchless resale carrier's credibility."¹⁸ In any event, GVNW does not believe that such notification would significantly eliminate confusion. Moreover, underlying carriers consistently insist that their contracts with switchless resellers prohibit use of the underlying carrier's name in any way in association with the resellers' offerings.

AT&T indicated in its comments that resellers are not assigned CICs.¹⁹ As the Commission is aware, this is not always the case. For example, in its *Hi-Rim Order*, the Commission dealt with facts involving a switchless reseller who used its own CIC in the provision of switchless resale.²⁰ BellSouth Corporation pointed out in its comments that service providers must purchase a Feature Group D (FGD) trunk as a prerequisite for CIC assignment.²¹ Based on GVNW's experience, many switchless resellers may purchase FGD trunks for one or more exchanges where demand warrants and thereby qualifies for obtaining a CIC assignment. However, the switchless reseller can then employ the CIC in offices where it does not have a dedicated FGD trunk. If a reseller has its own CIC, the

¹⁸ Telecommunications Reseller's Association (TRA) Comments at 8. TRA also noted there, that its resale carrier members "once had to strive mightily to assert an identity apart from their network service providers and value their position as carriers coequal to facilities-based providers."

¹⁹ AT&T Comments at 5. AT&T's statement that resellers are not assigned CICs may be reflective of its own switchless resale platforms which have historically required resellers to use an AT&T CIC.

²⁰ *Hi-Rim Communications, Incorporated v. MCI Telecommunications*, Memorandum Opinion and Order, File No. E-96-14, DA 98-600 (rel. March 30, 1998) (*Hi-Rim Order*).

²¹ BellSouth Corporation Comments at 8. BellSouth also stated that the CIC Ad Hoc Working Group to the North American Numbering Council (NANC) and many industry members, including BellSouth, support elimination of the requirement that a service provider purchase a Feature Group D

underlying carrier, on behalf of the reseller, can direct LECs in areas served by the reseller to route calls PICd to the reseller's CIC to the underlying carrier's FGD trunks. The reseller's CIC is added to the LECs' databases together with the reseller's name. The industry commonly refers to this practice as "CIC-Redirect." Use of CIC-Redirect would allow the LEC to indicate on bills that the end user customer's current PIC is the reseller.

Unfortunately, universal use by switchless resellers of CIC-Redirect is not economically feasible. As noted by Frontier, many resellers choose to use the underlying carrier's CIC to avoid the high cost of opening CICs in all end offices nationwide.²² Moreover, outside of CIC-Redirect, current OSSs and interfaces of switchless resellers, underlying carriers and ILECs do not support any additional notation in ILEC OSSs to indicate that the customer's PIC is a reseller.²³

In a competitive environment, it is not completely sound that switchless resellers be forced to disclose to their customers that an underlying carrier is involved in the provision of interexchange service. Depending on numerous factors such as jurisdictional pricing, service quality, etc., the underlying carrier could be different by jurisdiction and could change over time through use by the switchless reseller of least cost routing.

(FGD) trunk as prerequisite for CIC assignment.

²² Frontier Comments at 3. Frontier stated that the cost to open a CIC in all end offices nationwide is "on the order of \$500,000-\$750,000." GVNW's analysis of the cost to open a CIC in all end offices nationwide is somewhat lower, \$350,000 to \$400,000, still insurmountably high for many small resellers undertaking nationwide marketing. However, many resellers focus on specific regions and thus could deploy their own CIC in their market areas for less.

²³ Even if ILECs could expand database fields to include additional data indicating, in addition to the underlying carrier's CIC, identification of the reseller, no interface currently exists whereby the reseller and/or underlying carrier could supply such data to the ILEC. In the *LOA Order*, the Commission urged LECs to develop a coding system to assign and maintain pseudo-CICs for non-facility-based IXCs but deferred a full examination of the issue to another proceeding. *LOA Order* at ¶ 31.

Moreover, use of the underlying carrier's name in association with resale offerings is contractually forbidden by underlying carriers through use-of-name restrictions. Moreover, customers whose PICs are switchless resellers should not be subjected to unnecessary confusion brought about because of indication on their ILEC bill that the underlying carrier is their PIC. To avoid such unfairness and confusion, the Commission should adopt a rule prohibiting identification on ILEC bills of customer PICs until such identification can universally accommodate identification of switchless resellers as PICs.

3. **The Commission Should Adopt Rules Prescribing Verification Procedures and Standards for Addition and Deletion of Customers from the ANI Databases of Underlying Carriers**

Underlying carriers providing wholesale long distance services to resellers rely on ANI databases to match calls over their networks to the end user customer's PIC. The term ANI represents, in this sense, the originating end user customer's ten-digit line number.²⁴ Signaling associated with long distance calls does not universally include the CIC associated with direct dialed (1+) calls routed to a facilities-based carrier's network. However, such signaling always includes the ANI of the originating access line. As a consequence of this historic limitation, underlying carriers have developed resale OSS platforms to "key" off of the ANI in identifying and assigning ownership of CDRs for calls over their networks. Thus, even with CIC-Redirect, the only way the facilities based

²⁴ ANI is an acronym for Automatic Number Identification. ANI is the ten-digit originating telephone number for a call automatically identified through in-band or out-of-band signaling to carriers transmitting and/or terminating the call. Interexchange carriers generally refer to a customer telephone number as an "ANI" in the presubscription process, underlying facilities-based carrier databases and CDR processes.

carrier's system can associate a call over its network with a specific reseller or its own retail division is through the ANI database. Specifically, if an underlying carrier is able to match the ANI for a call to a reseller, the facilities based carrier forwards a call detail record (CDR) to the reseller. The reseller rates the call and either bills it directly to its customer or forwards the rated CDR to the end user customer's LEC for billing on the LEC bill pursuant to a billing and collection contract. If no carrier is indicated for an ANI in the database, the call appears to the facilities based carrier to be a casual call made by a customer not presubscribed to either the facilities-based carrier or a reseller using the facilities based carrier's network.

When a customer orders long distance service from a reseller, the reseller directs its underlying carrier to add the customer's line number to the underlying carrier's ANI database with indication of the reseller as the customer's interexchange carrier. This process is generally accomplished through an automated interface between the reseller and the customer's underlying carrier. Parallel to updating the ANI database, the reseller or the underlying carrier forwards a CARE request to the customer's LEC directing that the customer's presubscribed interexchange carrier be changed.²⁵

²⁵ CARE stands for "Customer Account Record Exchange." CARE records can be manual or mechanized. Many switchless resellers do not support mechanized CARE. However, underlying carrier's make mechanized CARE services available to their resale customers, whereby the underlying carrier exchanges CARE records with the end user customer's LEC to, among other things, effect PIC changes both for gaining and losing customers. Resellers generally have the option, however, to retain responsibility for their own CARE records, either manual or mechanized. In such cases, the underlying carrier is not aware of what PIC changes, if any, have taken place for line numbers added or removed from its ANI database.

The Commission has already adopted verification procedures with respect to PIC changes as evidenced by its Part 64 rules.²⁶ The Commission should expand these rules to target both switchless resellers and facilities based carriers with resale platforms. The Commission should prescribe confirmation and verification procedures related to modifications to underlying carrier ANI databases that effect PIC changes for switchless resellers. These procedures should reflect the fact that the ownership of a subscriber can change irrespective of whether or not the PIC is changed or modified in the ILEC's switch. Such procedures should include prescription of the following:

- Changes should not be effected in the ANI database without confirmation that the PIC has been changed in the ILEC switch.
- Underlying carriers should provide immediate confirmation to switchless resellers that the ANI database has been updated.
- Submission of CDRs by underlying carriers to ILECs for billing as casual calls under the underlying carrier's name should not occur until sufficient time has passed from the date of the call to allow ANIs to be loaded and confirmed in the underlying carrier's data base.²⁷
- Switchless resellers should not bill customers based on CDRs obtained from an ILEC's switch, in lieu of CDRs obtained from the underlying carrier, unless the switchless reseller has received confirmation that the underlying carrier's ANI database has been updated to include the affected ANI.

GVNW does not consider the above list to be exhaustive. Prescription of other procedures may be necessary to protect both underlying carriers and switchless resellers from resale slamming. Thus, GVNW respectfully requests that the Commission consider

²⁶ See 47 C.F.R. §§ 1100 and 1150.

²⁷ Some underlying carriers have already implemented such holding periods. For example, one underlying carrier holds CDRs for 14 days.

opening a proceeding to provide sorely needed guidelines to govern the manner in which updates are made to the ANI databases of underlying carriers.

4. The Commission Should Adopt a Rule Requiring Underlying Carriers to Support Separate PICs by a Customer for InterLATA and IntraLATA

Some underlying carriers do not support use of their network by one carrier for interLATA and a different carrier for intraLATA. In this sense, the carrier can be either a reseller or the retail division of the underlying carrier. Historically, long distance resale has been limited to interLATA toll (including both intrastate and interstate). In the mid-1990s, states began to adopt intraLATA presubscription.²⁸ In fact, many facilities-based carriers with switchless resale platforms lobbied hard with both state commissions and the Commission for introduction of intraLATA equal access. In response to the 1996 Act, the Commission ordered intraLATA dialing parity effective February 8, 1998.²⁹ Even though an Eighth Circuit decision vacated the Commission's intrastate, intraLATA dialing parity rules,³⁰ many states already have or are proceeding with implementation of intrastate, intraLATA dialing parity. Where a state has mandated intrastate intraLATA presubscription, customers are generally able to select a provider for intraLATA long distance different from their interLATA provider. The industry commonly refers to this as "2-PIC."

²⁸ For example, Illinois adopted intraLATA (or "intraMSA") presubscription in 1995. See 83 Illinois Administrative Code § 773.

²⁹ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Second Report and Order, 11 FCC Rcd 19392 (1996).

³⁰ *California v. FCC*, 124 F. 3d 934 (8th Cir. 1997), cert. Granted *AT&T v. Iowa Utils. Bd.*, 118 S. Ct 879 (1998).

Given that resale historically involved only interLATA calls, underlying carriers did not develop their ANI databases in such a manner as to support or recognize the potential for a carrier to have more than a single PIC. In such cases, the ANI database can indicate only a single long distance provider for a line number. This creates an administrative disconnect between the operational limitations of the prevailing ANI database design and the marketplace reality ushered in by 2-PIC. With respect to this 2-PIC problem, the impacted carriers can be either a reseller or the retail division of the underlying carrier. Thus, if a customer were to select carrier A for interLATA toll, and later select carrier B for intraLATA toll, and both A and B use the same underlying carrier, all of the CDRs for the customer's calls carried over the underlying carrier's network would be forwarded to only one of the two carriers. Usually, this would be the last carrier to update the ANI database, in this case Carrier B. Thus, the customer is indirectly slammed with respect to their interLATA service as their interLATA calls would be rated and billed by Carrier B instead of the interLATA carrier they selected, Carrier A.³¹

Most underlying carriers do not currently support "2-PIC." Thus, where both the intraLATA carrier and interLATA carrier use the same underlying carrier, a customer's choice with regard to presubscription may be overridden or disregarded. The Commission should adopt a rule requiring underlying carriers to support separate PICs by customers for interLATA and intraLATA interexchange service when both PICs use the same underlying carrier.

³¹ This type of resale slamming can occur in reverse, where a customer's intraLATA call CDRs are forwarded to the customer's interLATA PIC instead of their intraLATA PIC.

5. **The Commission Should Adopt a Rule Requiring Underlying Carriers to Issue Credits to Customers for Calls Carried Over Their Network Because of the Resale Relationship Which they Bill as Casual Calls**

If a reseller submits a PIC change to the LEC and the parallel update to the underlying carrier's ANI database is delayed by the underlying carrier, or not completed at all, calls routed over the underlying carrier's network may be billed by the underlying carrier as "casual" toll. As casual toll, the calls are usually rated at significantly higher rates than the reseller's or underlying carrier's 1+ direct-dialed rates. In many respects, this is similar to the situation in two recent complaint proceedings involving MCI.³² Customer's are usually outraged when they receive bills including exorbitant charges for "casual" calls from the facilities based carrier when they were expecting more reasonably priced calls billed by the reseller.

Exacerbating this type of "slamming," where the underlying carrier's ANI database does not properly reflect that CDRs belong to a reseller, is the insistence by some facilities based carriers in collecting the complete casual rated charges for such calls from the end user customer. This desire by some underlying carriers to inappropriately benefit from an operational problem is similar to the circumstances evidenced in the Halprin/Freedom Complaints. In Halprin/Freedom, customers were inadvertently PICd to MCI at the same time a third customer in the same office location selected MCI for their PIC. Thereafter, MCI billed Halprin and Freedom through the third customer at normal 1+ direct-dialed rates. Once the third customer terminated service, MCI took the third customer out of its

³² Halprin, Temple, Goodman & Sugrue v. MCI Telecommunications Corporation, File No. E-98-40. Freedin /technologies v. MCI Telecommunications Corporation, file No. E-98-39. Memorandum Opinion and Order, FCC 98-297 (released November 10, 1998). ("Halprin/Freedom Complaints")

billing database. As Halprin and Freedom were still PICd to MCI, but not in MCI's database, MCI treated calls made by Halprin and Freedom as casual calls rated at tariffed casual rates much higher than its 1+ rates. The Commission ordered MCI to refund to Halprin and Freedom the amount paid for the 1+ calls less what they would have been charged at 1+ rates.³³

Some underlying carriers have established hold periods for calls for which their ANI database does not indicate a reseller. For example, one carrier holds CDRs for fourteen days to allow matching to a reseller, should the ANI database be updated during that time. If the ANI database is not updated by the end of the hold period, the calls are then billed as casual calls by the facilities based carrier.

Receipt by a reseller's new customer of a bill with charges from the underlying carrier rated at casual rates for a month of calls is understandably shocking and frustrating for the customer. The customer expected a bill with charges from the reseller at reasonable rates. Once the customer finds out that the facilities based carrier refuses to adjust the charges for the calls down to a reasonable 1+ rate, they usually become extremely displeased. Their frustration and displeasure next turns to the reseller whom they perceived as having led them into the problem. The reseller may lose the customer. In efforts to retain such customers, resellers often must issue credits to the customer and absorb the loss. In the meantime, the facilities based carrier is unjustly enriched. GVNW has seen this scenario repeated innumerable times.

When an underlying carrier bills calls to a reseller's customer because of a problem

³³ Halprin/Freedom Complaints at ¶ 43.

with updating the underlying carrier's ANI database, the Commission should require that underlying carriers follow a modified version of the "make whole" remedy adopted in the *LOA Order*. In the *LOA Order*, the FCC supported a make whole remedy "allowing unauthorized IXCs to collect from the consumer the amount of toll charges the consumer would have paid if the PIC had never been changed."³⁴ The Commission stated that if cooperative efforts by carriers failed to resolve such problems it "would prohibit unauthorized IXCs from collecting more than the original IXCs rates" through the complaint process.³⁵

With respect to switchless resale, where the underlying carrier itself bills calls that it carried over its network only because the customer ordered interexchange service from a switchless reseller using the underlying carrier's network, the "make whole" policy should be adopted in a modified form. For switchless resale, the underlying carrier should only be made whole at the level of revenue it would have received had they directed the CDRs to the reseller and charged the appropriate wholesale rates. To effect such a policy, the Commission should prescribe rules requiring that when an underlying carrier bills calls as casual calls instead of forwarding the CDRs to the customer's reseller carrier because of a breakdown or delay in the ANI database updating process, the underlying carrier must issue adjustments to the end user customer once the reseller makes a good faith showing that the customer belonged to the reseller. These adjustments should totally credit the end user customer for the calls.

Parallel to issuing credits to the end user, the underlying carrier should forward

³⁴ LOA Order at ¶ 37.

CDRs for the calls to the reseller in a manner similar to that which would have occurred had the ANI database been timely updated. The reseller would pay for the calls at the applicable wholesale rate and may rebill the customer at the reseller's rates, as long as the underlying carrier forwarded such CDRs within a prescribed period of time. Such a prescribed timeframe would be defined from "X" number of days from the date of the call. A prescribed timeframe is necessary to insure timely delivery of the CDRs to the switchless reseller before collectibility has been harmed by the passage of too much time.

6. **The Commission Should Adopt Rules Requiring Underlying Carriers to Exclude Resellers Guilty of Slamming from Their Network**

Because of the ability of unscrupulous resellers to unilaterally effect assignment of customers to themselves within their underlying carrier's database, the switchless resellers suffer greater exposure to slamming than facilities-based carriers. In some instances, another reseller using the same underlying carrier will effect an update to the ANI database, replacing another reseller with itself. Similarly, the retail division of the underlying carrier may effect a change in the ANI database replacing a reseller with itself. If these changes are made without the authorization, the customer has been slammed. Such changes can be made even if the customer has in place a PIC freeze, as CDRs are directed to resellers or retail divisions of underlying carriers based on the ANI database, not the customer's PIC. As with other cases of slamming, the customer may not become aware they have been slammed until they are billed by the slamming company. However,

³⁵ Id.

should the customer call their local telephone company regarding the slamming, the local telephone company will have no record of a PIC change, further confusing the customer.

To address the greater vulnerability of switchless resale to slamming by other resellers using the same underlying carrier, the Commission should takes steps to ensure underlying carriers exclude resellers from their networks who are guilty, either consciously or negligently, of significant levels or consistent patterns of slamming. Underlying carriers should monitor levels of slamming by individual resellers involving manipulation of their ANI databases. Such monitoring should include evaluation of data from other resellers whose customers are slammed by resellers using the same underlying carrier. Additionally, such monitoring should include self reporting by resellers of slamming complaints filed by customers with the Commission, state commissions and states attorney general. If an unreasonable level of slamming is evidenced by such monitoring, the underlying carrier should exclude all future access by the reseller to the underlying carrier's ANI data base if the offending carrier fails to address or correct such activity.

7. **The Commission Should Take Steps to Ensure Underlying Carriers Do Not Use Data Related to Resellers to Market Their Own Products**

GVNW's clients have relayed information indicating the possibility that the retail divisions of underlying carriers have on occasion used data available only because a reseller uses the underlying carrier. It is GVNW's understanding such use of the ANI database by the underlying carrier or its affiliates would be in violation of Section 222(b) of the Communications Act. Such actions by underlying carriers or their affiliates may or may not lead to slamming. However, should the Commission review its policies with

respect to resale, GVNW respectfully requests that the Commission include issues related to underlying carrier use of data to which it has access only because of the resale relationship.

8. **If the Commission Adopts Rules Requiring Non-Discriminatory Provision of Billing and Collection to Non-Affiliates, the Commission Must Expressly Allow Exclusion of Problem Billing**

In its comments, GVNW requested that the Commission take up the issues raised in MCI's Petition proposing that the Commission adopt a nondiscrimination safeguard for B&C for non-subscribed services.³⁶ GVNW was not alone in requesting the Commission take-up this issue;³⁷ unfortunately, GVNW may have been alone among parties requesting the Commission address the issue in expecting that the Commission more clearly affirm that ILECs are not required to provide B&C services.

GVNW's clients may have valid business reasons for choosing not to provide billing and collection services. These business reasons are not related to whether the ILEC is or is not in competition with third parties wishing to bill services on the ILEC's bill. These business reasons, instead, are related to avoiding losses experienced by many small ILECs caused by performance of B&C for third parties and maintaining the integrity

³⁶ MCI Telecommunications Corporation Petition for Rulemaking , Billing and Collection Services Provided by Local Exchange Carriers *for Non-Subscribed Services*, filed May 19, 1997 (*MCI Petition*). In June of 1997, the Commission open a proceeding related to the *MCI Petition*, *MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services*, RM No. 9108, DA-1328 (rel. June 25, 1997).

³⁷ For example, the following parties commented requesting the Commission to adopt rules requiring nondiscriminatory provision of B&C services to non-affiliates: Pilgrim Telephone, Inc., Billing Reform Task Force, America's Carriers Telecommunications Association (ACTA), MCI WorldCom, Inc., Coalition to Ensure Responsible Billing and Competitive Telecommunications Association.

of the ILEC's business relationship with customers. It is not fair that ILECs should be forced to suffer an association, in their customer's minds, with unscrupulous third parties.

GVNW expects that the issue of prescriptive requirements for non-discriminatory ILEC provision of B&C to non-affiliates will engender much discussion and legal analysis. However, should the Commission adopt such a rule, it must exclude from such a duty those services which engender the high levels of consumer complaints and uncollectibility. At the very least, ILECs should not have to bill for third parties and services involving unwanted services, unreasonably high charges and unscrupulous and deceptive practices. Such rules should allow an ILEC the ability to unilaterally cancel B&C agreements if it can demonstrate that charges and information provided to the LEC by a third party are for services either not ordered by the end user, unscrupulous, corrupt, inaccurate, or given to unusually high levels of uncollectibility.

9. **If the Commission Adopts Rules Requiring Non-Discriminatory Provision of Billing and Collection to Non-Affiliates, the Commission Must Provide for Full Recovery of Related Costs by Small and Rural Telephone Companies.**

As GVNW pointed out to the Commission in its comments, many small ILECs have costs assigned to interstate billing and collection, pursuant to the Commission's Part 69 access charge rules, in excess of interstate B&C revenues.³⁸ GVNW also pointed out that small companies do not have the economies of scale, with respect to B&C that larger companies may have. Moreover, small companies have little control over either the level

³⁸ GVNW Comments at 11. GVNW's comments referenced its earlier comments in the *Rate-of-Return Access Reform* proceeding. *Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation*, CC Docket No. 98-77, Notice of Proposed Rulemaking, FCC 98-101 (rel. June 4, 1998) (*Rate-of-Return Access Reform NPRM*).

of costs assigned to B&C under Part 69 access charge rules or the rates charged third parties for B&C services.³⁹ Should the Commission adopt rules prescribing non-discriminatory provision of B&C to non-affiliated parties, the Commission needs to address cost recovery issues unique to small companies to ensure that small companies fully recover costs attributable to B&C. This may require that, for small companies anyway, B&C be tarified to ensure that all parties pay the full cost of B&C service.

Conclusion

GVNW applauds the Commission for its efforts to insure adequate information exists by which customer choice is respected in the increasingly complex telecommunications landscape. Unfortunately, bill disclosure and format changes will not protect customer choice with respect to interexchange service provided by switchless resellers. To preserve customer choice and promote competition, GVNW respectfully requests the Commission to consider opening a proceeding to adopt prescriptive rules, as discussed herein, regarding the OSSs, interfaces, practices and procedures of switchless resellers and underlying carriers. By adopting additional guidelines, the Commission can treat the root causes underlying the confusion that has surfaced in the marketplace rather than the symptoms generated therefrom.

Should the Commission consider the issue of ILEC duties with respect to provision of B&C services, GVNW respectfully requests that the Commission do so with

³⁹ Id. At 10.

GWNW Inc./Management
Reply Comments CC Docket No. 98-170
December 16, 1998

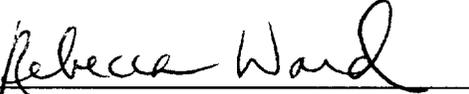
special consideration for the financial consequences and customer relationship issues of
mandatory provision of B&C on small ILECs.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 18th day of March, 1999, I have caused a copy of the foregoing **LETTER** to be served, via hand delivery, upon the persons listed on the attached service list.


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