

enforcement resources on carriers who appear to affirmatively ignore Commission requirements. Similar benefits accrue to other governmental agencies, such as state regulatory commissions, and state attorney general offices. A third party administrator can provide standardized reporting that can, in relatively short order, identify spikes in activity that suggest possible violations warranting further investigation. The more complaints that are referred to the administrator -- including complaints involving nonparticipating carriers -- the greater the universe of information that the administrator will be able to draw upon and to report to regulators and attorneys general.²⁰

In addition, relative to the announced rules, the third party administrator process is likely to result in the reduction of the volume of complaints that federal and state authorities currently adjudicate, since customers can in the first instance be referred to the third party administrator for resolution of their complaints. Only those customers or carriers that believe the dispute resolution process did not produce a fair result are likely to ask for further regulatory involvement in resolving an allegation of unauthorized conversion. Moreover, the third party administrator process is likely to result in faster resolution of customer complaints than the Commission's announced method, which on paper would take at minimum three to four months, and in practice is likely to take longer. The third party administrator proposal would result in resolution of the vast majority of complaints in 30 business days.

2. Third Party Liability Administrator Proposal

²⁰ State attorney general offices should also be able to subpoena TPA records for use in criminal investigations.

Due to the significant benefits attributable to neutral third party liability administration, and the Commission's request for a proposal to implement neutral third party liability administration, the Joint Parties offer the following proposal to replace the Commission's liability rules. We will describe the structure and obligations of the third party liability administrator, and will also describe the process that the administrator would use in managing the various tasks assigned to it.

Single entity. As previously discussed, the third party liability administrator ("TPA") is intended to provide a single point of contact to which customers can turn to in the event they believe they were converted to a carrier against their wishes. The TPA's role would be to gather customer complaints received from various sources and to ensure that: (1) the customer is immediately switched to his or her carrier of choice; and (2) liability issues are promptly and equitably resolved pursuant to the requirements detailed in this waiver request. The TPA also would exclude complaints that it might receive on other issues, and refer those complaints to the appropriate regulatory agencies. For example, complaints that a carrier's marketing information is misleading (i.e., a claim that a carrier misrepresented its prices or products in a sales communication that does not involve a claim of unauthorized conversion)²¹ is not a complaint about unauthorized conversion. In this case, the TPA should refer the customer to the responsible

²¹ Depending upon the facts of a particular dispute, there may be complaints where it is unclear if the customer authorized the change. For example, the customer may allege that the verification procedure was conducted in a manner that prevented the customer from understanding the questions clearly. The Joint Parties would expect that the TPA will err on the side of being overinclusive in its decision to process a complaint in any factual circumstance where it appears the consumer might have been switched without authorization, to include circumstances where the change process was executed in a potentially misleading way.

state or federal agency.²²

Independent and neutral. As is the case with other neutral administrators in other contexts, independence and neutrality are prerequisites if the administrator function is to resolve consumer complaints in a fair and equitable manner, and if it is to attract the maximum participation of the industry. For this reason, the administrator cannot be associated, owned or controlled by a common carrier. The administrator will be resolving customer complaints, and in this dispute resolution role, must have no outside influence or business motivation in its resolution of complaints in any particular way. In this respect, even the appearance of a conflict would detract from the functioning of the administrator. Similarly, the administrator must also direct carriers to make various payments to other carriers, and its administration of liability obligations requires a disinterested third party.

Governance. The TPA would be governed by an industry board representative of the participants in the TPA. The board will consist of, at minimum, a representative of CompTel, the Telecommunications Resellers Association, the Association for Local Telecommunications Services, and the United States Telephone Association, and up to 17 additional members representing individual carriers. The seventeen carrier representatives shall be equitably distributed among carriers who today derive a majority of their revenue from interLATA toll services, and those that derive a majority of their revenue from exchange and exchange access

²² Ideally, the TPA might be able in its intake interview with the customer to weed out complaints that do not properly belong before it, and immediately refer customers to the appropriate authority for the resolution of their concern. Even should this not occur, however, and the TPA not decide until later in the process that the complaint did not involve unauthorized conversion, the customer would need wait only 30 business days before it receives from the TPA a resolution of his or her complaint along with a referral to the relevant federal and state authorities.

services. Local exchange carriers would hold no more than eight of the seventeen “carrier” seats, and would hold up to eight if there are eight local exchange carriers interested in board seats. The nine seats open to participating interexchange carriers shall be equitably portioned to ensure board representation of long distance carriers of all sizes. Bylaws and operating procedures shall be further developed by the board, but shall at a minimum include a requirement for a monthly meeting, notice of such meeting to board members, participating carriers and the Federal Communications Commission, the opportunity to review confidential matters in executive session, and a requirement that decisions must be adopted by at least a simple majority vote, based on a quorum of thirteen members. In addition, the Board is authorized to hire outside accounting and or legal firms to assist it in governing the TPA. Finally, the Board is authorized to select an arbitration vendor for the purpose of referring carrier-to-carrier disputes for binding arbitration.²³

Participation in the TPA is voluntary. Carriers or carrier representatives, acting on behalf of some or all of their members, may opt in to the TPA. To elect participation in the TPA, carriers or carrier representatives on behalf of named members shall provide to the Board and/or vendor information that the Board and/or vendor determines is necessary for participation, such as the carrier’s name, contact address and telephone number, Carrier Identification Code(s) if

²³ Binding arbitration is also available to resolve carrier-to-carrier disputes between participating and non-participating carriers. These might occur, for example, after the TPA has resolved customer complaints and ordered compensation to flow from one carrier to another. If for whatever reason the carrier that owes compensation contests the amount and refuses to pay or pays only a portion of the amounts due and owing, the carrier that is owed payment may elect binding arbitration to resolve the dispute. Non-participating carriers may also elect to participate in binding arbitration.

any, or any other identifying information deemed necessary.²⁴ Participation in the TPA ensures that the carrier participating will not be subject to the Commission's liability rules, but will instead be subject to the liability requirements of the TPA as defined in this waiver.

The initial Board shall be constituted by having the four named association representatives call for nominations to the Board. If an election is required, the four representatives shall hold an election by whatever reasonable means they determine. Only carriers that agree to participate in the TPA may vote. InterLATA toll carriers may vote for interLATA toll representatives, and local exchange carriers may vote for exchange and exchange access carrier representatives. Thereafter, the Board shall determine future procedures for selection of new board members.

It is important to note that the governing board is not a federal advisory committee similar to the North American Numbering Council. The board would be a privately organized industry organization whose purpose is to oversee a third party liability administrator for unauthorized conversions of customers. While the Commission has waived certain of its rules to permit carrier participation in the TPA and its board, and will define specific requirements that the TPA process must meet so that liability rules can be waived, the Board would not advise the Commission on policy matters.

Finally, the Board shall constitute an Advisory Committee to provide advice and comment on issues from a consumer and regulatory perspective. The following organizations shall be given an opportunity to name one representative each to the Advisory Committee: The

²⁴ The Board shall maintain a current list of participating carriers and make that list available to interested governmental agencies.

National Association of State Utility Consumer Advocates, the National Association of Attorneys General, the National Association of Regulatory Utility Commissioners and the Federal Communications Commission. Advisory Committee members would attend Board meetings, and participate in discussions, but would not vote on matters before the Board.

RFP selection of vendor. Among other duties, the Board shall write and issue a “request for proposal” (RFP), collect responses, select a vendor to function as the TPA, and create a contract under which the TPA must operate. The Board may choose to hire outside counsel or obtain other professional assistance to design the RFP and review the bids.²⁵ The Board shall also include in its RFP, as well as in its subsequent vendor contract, performance standards that the vendor must meet. If the vendor does not meet acceptable performance benchmarks, the vendor can be disqualified for violation of the contract. The initial term of the vendor shall be three years. Thereafter, the Board shall determine the term.

Basic functions. The TPA’s purpose is to ensure the customer is switched back to its preferred carrier at no charge to the customer, ensure that customer credits and carrier-to-carrier compensation are implemented efficiently and properly, administer a nonbinding dispute resolution process between carriers and customers, determine whether an unauthorized conversion occurred, and engage in such monitoring and reporting as is required to ensure the execution of its functions.²⁶ The TPA itself does not act as a repository of money from one carrier

²⁵ In addition, the Board may choose to meet with prospective vendors before and after the issuance of its RFP. The purpose of such meetings is to ensure that vendors’ bids are the most responsive they can be. Open dialogue with prospective vendors should therefore help speed the selection process and enable faster implementation once a vendor is selected.

²⁶ Participation in the TPA process shall permit carriers to disclose the necessary billing records to the TPA and to other carriers irrespective of any other limitations that exist in the Act,

to another. It simply directs the payments of money among carriers, and where applicable, credits owed to customers. It is anticipated that carriers would receive monthly reports from the TPA detailing payments owed to others, or owed to that carrier. With each of these processes, described below, the TPA would be administering a process involving the movement of large quantities of data between it and the various carriers involved in disputes. Based on the Joint Parties' discussions with potential vendors, it appears that the TPA would generally utilize electronic data transfers that the TPA would establish with carriers. However, such mechanisms may not be required to serve all carriers -- especially small carriers -- and for this reason we believe the mechanics of data transfer are best left to the design prerogative of the eventual vendor.

Call center functionality. The TPA would operate a call center that is responsible for receiving customer complaints, and initiating the processing of those complaints. Of course, customers continue to be able to contact carriers directly if they so choose, and many customers are likely to call their carrier first. Complaints to the administrator could come from a variety of sources -- direct to the TPA, referred from preferred or unauthorized carriers, referred from executing carriers, referred from state regulatory agencies or state consumer protection offices, and referred from the Commission itself. In addition, the TPA would at minimum be required to maintain a toll free number and a web page with contact information, and would be required periodically to remind state and federal regulatory agencies, and consumer protection divisions of

other law, or carrier contracts. The purpose of these disclosures shall be solely limited to resolving complaints of unauthorized conversion in accordance with the alternative requirements created by the grant of this waiver. Such billing information shall not be used for any unlawful or unauthorized purpose.

the state attorneys general, of its existence, purpose, and contact information.²⁷ In addition, the TPA would also provide its mailing address so that customers may file written complaints.²⁸

Customer change process. Upon receiving a complaint that includes a request by a customer to be reinstated with his or her preferred carrier, the TPA shall direct the customers' local exchange carrier (LEC) to change the customer back to his or her preferred carrier. The Joint Parties propose that for the purposes of a TPA-directed PIC change, the LECs may charge cost-based rates, as determined by the Commission.²⁹

With respect to the change charge that may have been billed to the customer by its executing LEC due to the unauthorized conversion, or may have been billed by the unauthorized carrier, the executing LEC shall credit the customer for the change charge. The TPA shall

²⁷ It is important that the TPA call center not be mis-used by carriers who inaccurately publicize the TPA's function or who refer calls that are unrelated to unauthorized conversion and PIC changes. If this were to occur, the TPA's costs could increase substantially, possibly eroding TPA participation among the smaller carriers. For that reason, the TPA Board must have the discretion to ask the vendor to take reasonable steps to help ensure that referrals are appropriate, and that there is an opportunity to screen calls that do not belong before the TPA. Reasonable steps might include: (1) a policy that would allow carriers to distribute the TPA number on customer bills at the carrier's option, to include the limitations that the Board will place on the display of such information; (2) the ability to take "warm transfers" from carriers in order to permit carrier representatives to stay on the line to explain, for example, that a 10-10 call is not a PIC change; (3) developing direct access to carrier verification records (at the carrier's option) so that the call center could immediately determine that FCC verification had been obtained; or (4) the ability to initiate three-way calls with the carrier representative, the customer, and the TPA.

²⁸ State and federal agencies may from time to time decide to issue press releases describing the TPA and its processes and providing contact information.

²⁹ In order to encourage carriers of all sizes to participate in the voluntary TPA process, it is important that the operational costs of the TPA be kept as low as possible. ILECs today generally charge \$5.00 for carrier-initiated customer changes, a level that has been in effect since 1984. BellSouth recently changed its PIC charge to \$1.65. It is important for the Commission to review these charges to ensure that the level is no higher than necessary to recover LEC costs.

administer a process to allow the executing LEC recourse to the unauthorized carrier for the amount of the charge credited.³⁰

In addition to submitting the PIC request to the executing LEC, the TPA is responsible for receiving confirmation that the PIC was processed correctly. The TPA shall in the first instance determine how best to administer an efficient and cost-effective confirmation process, in consultation with the various participating carriers.

The preferred carrier has the obligation to restore the customer to the calling plan that the customer had previously selected, if any, or to any currently available calling plan the customer now requests. In addition, the preferred carrier shall, where possible, restore premiums, as discussed below.

Serving LECs shall take no unilateral action. In no event shall the serving LEC, upon notification by a customer or the TPA of an alleged unauthorized conversion, engage in any crediting of the customer's account. This prohibition shall supercede the terms of any contract between an executing LEC and a participating carrier that address the resolution of such customer complaints and the issuance of such credits. Customer crediting shall occur only pursuant to the TPA requirements or the Commission's Part 64 rules, as applicable.

Nonbinding dispute resolution. In addition to the customer change process, the TPA shall conduct nonbinding dispute resolution pursuant to the following processes to be adopted by the Commission as part of this waiver. Nonbinding dispute resolution is intended to provide the

³⁰ At the TPA's discretion, the TPA may choose to initiate an alternative method for crediting change charges, such as requiring the unauthorized carrier to compensate the preferred carrier for the change charge, and requiring the preferred carrier to remit that amount to the customer.

customer with a quick resolution of his or her complaint, and to provide the carriers with neutral and independent resolution of customer concerns, together with a monthly statement of payments owed to others, as well as payments owed to the carrier itself. Nonbinding dispute resolution does not replace or eliminate the customer's ability or the carrier's ability to file a complaint with the Commission, a state regulator or a state attorney general's office. However, nonbinding dispute resolution will be the mechanism of choice for participating carriers, and should be the preferred dispute resolution mechanism that other entities -- e.g., executing LECs and regulators -- employ as an initial means of resolving customer complaints about unauthorized conversion. A fair and equitable process should result in the vast majority of complaints being resolved during the TPA process, and in many fewer complaints being filed with state and federal agencies.

The process for nonbinding dispute resolution is as follows:

1. Upon receiving a complaint, the TPA, in addition to immediately ordering the LEC to switch the customer to his or her preferred carrier, must immediately notify the executing, accused and preferred carriers.³¹ The accused carrier must immediately suspend billing and collection for that customer. If a bill has already been sent, or it is otherwise impossible to prevent a bill from being sent, the accused carrier shall not take further steps to collect payment, and shall not take any adverse action against the customer for nonpayment, such as notifying a

³¹ This waiver does not purport to further define the meaning of "immediate" notification. In the RFP process, potential vendors should provide their commitment to notification, and their RFP response will in part be judged on the timeliness of their ability to initiate notification promptly. To the extent possible, the TPA, in consultation with the Board, should develop an administrative process to allow the TPA to identify nonparticipating resellers that share a facilities-based carrier's Carrier Identification Code to allow the TPA to more easily identify a nonparticipating reseller.

credit bureau of late payment or asking a local exchange carrier to initiate disconnect for nonpayment. The TPA shall administer a process to support a “stop collections” message to the executing LEC or accused carrier, as applicable.

2. The accused carrier has 20 business days from the date of notice by the TPA to respond, by producing a copy of the FCC-authorized verification, a business record of its verification, or other evidence that it may choose to produce. The TPA, in consultation with participating carriers, may establish reasonable methods of quickly accessing verification records through electronic or other means. The Board, in consultation with the TPA, may establish rules to determine under what specific extenuating circumstances a carrier might be given additional time to respond. The Joint Parties anticipate that requests for extensions should be rare.

3. The TPA has an additional 10 business days to complete its investigation and render its decision. If a copy of the actual, FCC-authorized verification record is provided (e.g., a tape of a third party verification call), the presumption shall be that no slam occurred. The TPA shall, as a general rule, attempt to contact the customer if it appears that there is valid FCC-authorized verification. The TPA shall further develop a set of additional business rules that it will utilize to reach resolution of complaints. For example, in certain circumstances, the TPA may choose to contact the customer to play a TPV tape, or it may choose to accept faxes from the customer so that it might compare signatures on an LOA. In addition, the TPA may choose to contact the executing carrier to determine whether its execution of the PIC order was correct. In its response to the RFP, potential vendors should provide additional detail concerning what business rules they would use to resolve complaints, including what type of evidence they would routinely request to examine and what business rules they would use to ensure that the decisions made are

uniform and non-arbitrary.

If the accused carrier does not produce any record, or the record does not reflect the use of FCC-authorized verification methods, or the accused carrier affirmatively pleads “no contest” to the accusation, the TPA must decide that an unauthorized conversion has occurred.

4. While the TPA process is always available to reestablish customers with their preferred carrier and to determine if an unauthorized conversion has occurred, the TPA shall limit carrier liability, carrier crediting, and payments to customers, if applicable, to the most recent three month period, measured from the date the complaint is received in the TPA call center.³² The three-month limitation shall be overridden at the discretion of the TPA when the customer has been denied the opportunity to present its slamming claim due to the unauthorized carrier’s failure to bill, or other similar circumstances to be determined by the TPA.

5. A TPA decision that an unauthorized conversion has occurred triggers the following requirements:

(A) the TPA informs the unauthorized carrier, the preferred carrier, and the customer of its decision;

(B) if the customer elected not to pay the unauthorized carrier’s bill, the customer is entitled to up to a 30-day credit; in this case, the TPA will direct the unauthorized carrier to credit the customer’s account for up to 30 days of actual usage, beginning on the date the unauthorized conversion was implemented; for customer charges incurred on Day 31 or thereafter, the unauthorized carrier

³² As a result, the three month period includes the up to 30 days of free service that customers are eligible to receive, to the extent the customer has elected not to pay the unauthorized carrier.

must provide to TPA, and the TPA to the authorized carrier, a copy of the customer's bill for charges beginning on Day 31; the bill shall include a total amount due or sufficient detail so as to make calculation of total charges practicable; the preferred carrier shall be entitled to collect from the customer no more than 50 percent of the unauthorized carrier's charges as presented to the TPA and preferred carrier;³³ the preferred carrier, at its option, may decide to provide a greater discount level if it chooses to do so, provided that its practice remains nondiscriminatory;³⁴

(C) if the customer paid his or her bill, the unauthorized carrier must remit the full amount of the customer's bill to the preferred carrier; the preferred carrier shall then promptly remit 50 percent of the revenues received to the customer;³⁵

6. A TPA decision that no unauthorized conversion occurred triggers the requirement

³³ The unauthorized carrier is not entitled to issue any bills to customers, and, as stated above, must cease billing any billing and collections activity.

³⁴ Under certain narrow circumstances, the affected carriers shall be free to mutually agree to a true rerating of a subscriber's bill where there has been an unauthorized change. The requirements for such a mutual agreement should be narrowly tailored so as to avoid interfering with the economies of scale that the TPA achieves through the proxy process. The circumstance under which carriers may agree to a true rerating should be limited to the scenario where the subscriber is a large business whose total billings to the unauthorized carrier exceed \$10,000. The most likely scenario under which such a mutual agreement would be available is where a carrier accidentally slams a large customer, either through a systems or a human error. Such an exception to the general 50% proxy rule is needed so that an innocent carrier with such a large and valuable customer is not deprived of substantial revenues when it has not engaged in any misconduct.

³⁵ It is noteworthy that under this proposal, the 50 percent refund received by customers is not limited to 30 days of usage, but would apply for up to three months' of usage paid to an unauthorized carrier.

that the TPA notify the customer of its decision, and of the customer's rights of appeal to the Commission. The TPA shall provide information to customers to enable them to file an FCC formal or informal complaint. Notice may also include addresses and contact information for relevant state and federal agencies. In addition, the TPA shall notify the accused carrier. A decision that no unauthorized conversion has occurred triggers no liability payments between carriers. The exonerated carrier may bill the customer for any unpaid charges.

7. Subsequent to the resolution of the customer complaint, a carrier determined to be "unauthorized" may elect to request nonbinding dispute resolution against the executing or submitting carrier if the unauthorized carrier believes the executing or submitting carrier is at fault.³⁶ The TPA shall accept requests from carriers it has deemed to be "unauthorized" to pursue further investigation against the executing or submitting carrier. Resolution of the customer complaint is in no way contingent on this further stage of investigation and dispute resolution. Stated differently, disputes among carriers are an optional second step, initiated at the request of the unauthorized carrier, that begins only after the customer dispute is resolved. The TPA shall give executing carriers and submitting carriers 30 business days to respond to inquiries with information that the customer change at issue was executed properly.³⁷ The TPA shall then have 10 business days to decide if the submitting or executing carrier shall compensate the unauthorized carrier pursuant to the *Second Order*, at paragraph 54. If the executing or submitting carrier were at fault, as determined by the TPA, the executing or submitting carrier

³⁶ Per the discussion, *infra*, of treatment of nonparticipating carriers, the participating unauthorized carrier may request an investigation of a case involving a nonparticipating carrier.

³⁷ At the discretion of the TPA, this may include information about the history of the PIC on the disputed line.

would reimburse the unauthorized-but-blameless carrier the total amount of the customer's invoice as determined in the resolution of the customer complaint.

Premiums. Premiums shall be restored, where possible, based on the customer's average usage over the most recent three month period in which the customer used the preferred carrier's service. Customers are entitled to the premiums only to the extent they have paid usage charges as required by the TPA process.

When the dispute involves a nonparticipating carrier. In the event that the authorized carrier, unauthorized carrier, executing, or submitting carrier is not a participant in the TPA process but another carrier involved in the dispute is a participating carrier, nonparticipating carriers would be required to follow TPA procedures to the extent necessary to determine liability, facilitate customer credits and permit efficient carrier-to-carrier compensation. The nonparticipating carrier would therefore follow TPA procedures for the purposes of resolving a specific customer complaint, but would not otherwise participate in the process, be entitled to reporting, or participate in the Board. Nor would a nonparticipating carrier be subject to the annual revenue assessment to support the TPA.³⁸ In granting this waiver request, the Commission should specify that nonparticipating carriers are bound to the TPA process on a per complaint basis.

Monitoring of customer change process. The TPA would ensure that the customer has in

³⁸ As discussed *infra*, the Board shall develop and implement a "per complaint" processing fee not to exceed \$50.00. The processing fee should apply to participating and nonparticipating carriers alike, on a per complaint basis.

fact been moved to his or her preferred carrier.³⁹ With respect to its monitoring function, it is anticipated that the TPA can in the first instance collect data from the preferred carrier to ensure that the customer has been correctly switched.⁴⁰

Monitoring and further dispute resolution of carrier-to-carrier payments. In addition to providing regular statements to participating carriers, the TPA shall monitor the payment of funds between carriers. Disputes that arise between carriers over payments shall be mediated by the TPA. If not resolved, the dispute shall be referred to binding arbitration using an accredited arbitration agency.

Monitoring of evidentiary submissions. The TPA would be responsible for reviewing dispute resolution cases to determine whether participating carriers are routinely engaging in repeated false assertions concerning the existence of FCC-authorized verification material. Based on operating experience, the Board shall during its first full year of operation set a threshold of repeated false verification cases that would result in penalties to that carrier. This would be in the form of additional fees that might be assessed to the carrier to pay for additional TPA expenses in monitoring that carrier's activity or that would include termination of the carrier's ability to participate in the TPA. Reports would also be available to interested state and federal agencies.

³⁹ The TPA is not otherwise responsible for monitoring the specific calling plan or basic schedule of charges that the customer has selected, or for ensuring that the preferred carrier has placed the customer with the calling plan of his or her choice.

⁴⁰ The preferred carrier would, of course, receive such information from the executing LEC. It may be desirable for the TPA to develop a more direct means of securing this information from executing LECs. In this waiver, the Joint Parties seek Commission approval for the TPA to secure direct data from the executing LECs.

Monitoring of repeated complaints from individual customers. The Board shall direct the TPA to develop a database of customers who repeatedly complain of unauthorized conversions, and the TPA's resolution of those complaints. If antitrust approval is granted or deemed unnecessary, the TPA shall at minimum disclose to participating carriers the names of customers (and associated ANIs) who repeatedly complain, with the resolution that no unauthorized conversion has occurred, or a "no contest" response from the carrier.

Reporting generally. Carriers and interested state and federal agencies may seek specific reports based on information that the TPA routinely collects. Reporting requests should be addressed to the Board. It is anticipated that most requests could be honored, although the Board may seek to standardize reporting to lessen administrative burdens and costs. Reporting that the TPA should routinely provide to the Commission includes, at minimum, a monthly report on:

- the volume of customer change requests that the TPA directs the executing carriers to make;
- speed of service in completing nonbinding dispute resolution, using contractual benchmarks;
- number of unauthorized conversions found;
- identity of carriers found engaging in unauthorized conversions and complaint volumes by carrier, both as simple volume and as percentage of revenues;
- liability payments, by carrier; and
- exception reporting for repeated cases of verification evidence that does not comply with Commission regulations or is otherwise false.

Annual assessments on participating carriers and other funding. Participating carriers

shall be assessed an equitable pro rata share of the annual operating expenses of the TPA. The Board shall be responsible for setting the amounts and shall provide assessments for the following calendar year to participants as early in the fourth quarter as possible. In order to encourage participation in the TPA by smaller carriers, annual revenue assessments shall not apply to carriers whose annual revenues are less than \$100 million.

The Board shall establish per complaint fees that shall be used to decrease annual assessments on carriers in the current or future budget year, and that shall be applicable to all carriers that the TPA has determined to be unauthorized, including carriers whose annual revenues are less than \$100 million. The processing fees would be set at a level reflecting the cost to the TPA of processing a complaint. In no event shall per complaint processing fees exceed \$50.00.

Administration of assessments by the Board. Annual assessments are paid to the Board, pursuant to whatever schedule the Board adopts. Assessments are not paid directly to the TPA. In the discharge of its duties to collect assessments and pay the TPA vendor, the Board may hire an accounting firm, and make whatever reasonable arrangements regarding the TPA's fees as is required.

B. Good Cause Exists to Waive Slamming Liability Rules and Replace the Rules with a Third Party Liability Administrator

1. Benefits of Third Party Administration Are Substantial

As outlined above, the benefits of a TPA, in lieu of the Commission's rules, are significant.

From a customer perspective, using the TPA system in a situation involving unauthorized conversion is as simple as a single phone call. That one call results in the customer being switched to his or her preferred carrier, resolution of the complaint, crediting of the customer's bills if an unauthorized conversion occurred, and referral to federal or state authorities if the customer remains unsatisfied. From the carrier's perspective, the TPA is a much more streamlined and efficient mechanism to administer customer complaints. Local exchange carriers, in particular, should be substantially benefitted by the creation of a TPA, since they will no longer need to tie up customer service resources with complaints. Because the dispute resolution is handled by an independent and neutral third party, the integrity of the dispute resolution process is substantially improved relative to the Commission's announced rules. As a result, customers and carriers alike are far more likely to agree that they have been fairly and equitably treated. Finally, the TPA process is much less likely to be subject to fraud and abuse. The central monitoring function of the TPA will allow repeat users of the process to be monitored to determine if there is a likelihood of fraud.

From the perspective of the Commission, the TPA enables regulators to focus enforcement resources on carriers who appear to affirmatively ignore Commission requirements. The same is true for the state commissions, and state Attorney General offices. The TPA can provide standardized reporting that can identify spikes in activity that suggest possible violations warranting further investigation. The more complaints that are referred to the TPA -- including complaints involving nonparticipating carriers -- the greater the universe of information that the

TPA will be able to draw upon to report to regulators and attorneys general.⁴¹ In addition, relative to the announced rules, the TPA process is likely to result in the reduction of the volume of complaints that federal and state authorities need to adjudicate, since customers who have been converted to a new carrier without their permission can be referred to the TPA in the first instance. Only those customers or carriers that believe the dispute resolution process did not produce a fair result are likely to ask for further regulator involvement in resolving an allegation of unauthorized conversion. Moreover, the TPA is likely to result in faster resolution of customer complaints than the Commission's announced method, which on paper would take at minimum three to four months, and is likely to take far longer in practice. The TPA proposal would result in resolution of the vast majority of complaints in 30 business days.

Finally, the TPA fulfills the policy objectives that the Commission has established with respect to unauthorized conversions -- unauthorized carriers should not benefit from rule violations, customers should be absolved of a months' worth of charges, and customers should immediately be switched back to their preferred carrier.

2. Costs of the Announced Rules Are Prohibitive and the Rules Are Virtually Un-executable

As discussed in the accompanying Motion for Stay, the rules announced in the *Second Order*, for all practical purposes, are not possible to implement and, even if they were implementable, are prohibitively expensive. In addition, the added costs borne by the industry to

⁴¹ State attorney general offices would also be able to subpoena TPA records for use in criminal investigations.

implement the rules would likely create upward pressures on rates. This result is entirely unnecessary, given the TPA proposal outlined in this waiver request.

The announced rules -- which, among other things, require unauthorized and preferred carriers to exchange customer usage data for the purpose of re-rating the customer's calls -- are unworkable. At the smallest volumes imaginable, it might be possible to implement a manual process to execute the Commission's directives. But in an environment where customers change carriers approximately 50 million times during a year, and given that the complexity of the carrier change process is increasing with the advent of full intrastate dialing parity and the beginning of local exchange competition, the Joint Parties have been unable to devise a system that would permit each carrier to communicate vast quantities of data with hundreds (and perhaps eventually thousands) of other carriers so as to execute the demands of the rules. The rules literally require the development of electronic bonding at a level never before imagined, since the bonding would need to exist not just between each IXC and the serving LECs, but between all IXCs and all LECs simultaneously. In the Joint Parties' view, the development of such data flows between carriers would take years -- not the three months that the Commission provided -- and would conservatively cost hundreds of millions of dollars in capital and operating costs even if it were achievable.

Re-rating is a particular problem. Usage data captured by the unauthorized carrier would need to be transferred to the preferred carrier. As the Joint Parties interpret the Commission's order, the unauthorized carrier's responsibility is to pull the usage data from its traffic records. This is significant because once the traffic records are processed through billing systems, different "rounding" or call measurement practices apply depending upon calling plans. As a

result, billing records cannot be used for the re-rating process the Commission outlined.⁴² None of the Joint Parties today has an automated system that would allow raw traffic data to be pulled and transferred to a preferred carrier in usable form. In fact, the software used to store and hold traffic information is highly individualized by carrier -- larger carriers cannot and do not utilize "off-the-shelf" applications for these purposes, and legacy traffic systems are highly specialized.⁴³ Based upon our initial exploration of the feasibility of implementing the Commission's rules, the problem of translating traffic data into a standardized format for electronic bonding purposes is most difficult, likely to be extremely expensive, and virtually impractical to implement.

Even if these problems could be solved, there are additional operational expenses that carriers would have to incur which would be unnecessary if the waiver is granted. For example, once the preferred carrier received the traffic data, it has to run the usage data against its billing system data at the rates and on the terms and conditions that were tariffed at the time the usage was incurred. As a result, it cannot apply the traffic data to its *current* billing system, but must have the ability to apply to traffic data to *historical* billing. This is a substantial problem, in that carriers often adjust calling plans and occasionally make substantial adjustments in calling plans.

⁴² For example, a unauthorized carrier might have placed a customer on a calling plan using a minimum billing increment of one minute. A billing record would be insufficient for the purpose of re-rating a call to a preferred carrier's calling plan, which might require re-rating using 6 second increments.

⁴³ In addition, there is no practical ability today for carriers to pull volumes of raw traffic data for individual subscribers by subscriber line for those cases where an unauthorized conversion is alleged. Most internal auditing of customer billing is performed using "call types" or hypothetical calls designed to test whether the billing systems are producing the correct bill for all possible call types, not actual customer records. This capability would take months or years to develop for larger carriers.

To the best of the Joint Parties' knowledge and belief, there is no automated mechanism available today to perform the re-rating analysis against rate plans as they existed at the moment the traffic would have been rated had the customer been with the preferred carrier all along. To the extent customers receive such crediting today, it is the result of an informal negotiation between the carrier and customer, based on the customer's past billing records, and giving customers the benefit of the doubt.

Moreover, there are staggering difficulties in implementing the data flows necessary to exchange information concerning liability payments, which is the easier of the problems the industry faces in implementing the announced rules. There are simply no business rules or industry practices that would govern the format, timing, and conditions under which different carriers would bill and remit payments to each other. The Commission's announced rules are wholly inadequate for this purpose, since they simply announce a few deadlines. For example, once a preferred carrier decides an unauthorized conversion occurred of a customer who paid his or her bill, the preferred carrier must ask the unauthorized carrier to remit the amount paid. There are no business rules or agreements within the industry that would govern the timing of the preferred carrier's "invoice", or the unauthorized carrier's "payment". There are no business rules or agreements concerning the format of these transactions -- electronic (type of software, presentation, etc.), fax, or e-mail. In this environment of uncertainty, carriers are highly likely to refuse attempts to "invoice" them because they cannot process the "invoices" received, and the process is very likely to break down within a matter of weeks. Larger carriers, for example, do not have the ability to process thousands of faxes in an effort to comply with preferred carrier "invoices", while smaller carriers are not likely to be able to process electronic "invoices" from

larger carriers. In contrast, having a single TPA that could standardize practices and serve as the clearinghouse for liability transactions, is substantially more efficient and practical.

3. Third Party Proposal Adheres to Statutory and Commission Requirements

In addition to the benefits of the TPA relative to the Commission's announced rules, the TPA adheres to the statutory and Commission requirements established to discourage unauthorized conversions and to compensate customers for their inconvenience. While there are a few differences between the proposed TPA and the Commission's announced rules, those differences permit a much more streamlined and efficient process to be utilized to process customer complaints, and to give effect to the Commission's policy direction discouraging unauthorized conversions by removing financial incentives. Moreover, the differences do not affect the TPA's compliance with statutory or Commission requirements.

First, in the event a customer has not paid his or her bill and charges are due for calls made on Day 31 or thereafter, preferred carriers may bill the customer using a simplified discount of 50 percent off of the unauthorized carrier's billed amount. The discount structure -- in lieu of the more complex re-rating system announced by the Commission -- will assist in compensating the preferred carrier for revenue lost due to the unauthorized conversion, but without the costly and difficult problem of gathering traffic data and re-routing calls. Moreover, a 50 percent discount structure will be more beneficial to consumers than the Commission's adopted rules, since 50 percent off the unauthorized carrier's billed amount will in all likelihood be less expensive than if the preferred carrier billed at its rates.

Second, for those customers who paid their bill, the unauthorized carrier would remit the

full amount paid by the customer to the preferred carrier. Upon receipt of these revenues from the unauthorized carrier, the preferred carrier would remit 50 percent of the amount received to the customer. This plan is substantially more beneficial to customers in most cases than the Commission-announced rules, which only require that customers receive any “excess” to the extent that the preferred carrier’s rates were lower than the unauthorized carrier’s rates. This streamlined system will give full effect to the Commission’s policy of ensuring that unauthorized carriers do not benefit from unauthorized conversions, and it is a quicker and more equitable method of resolving customer concerns.

Third, while carriers will immediately suspend billing and collection activity for a customer raising a challenge, credits and compensation only flow once the third party administrator has been given 30 business days to decide if an unauthorized conversion occurred and the administrator agrees with the customer. These differences permit the creation of a much more streamlined and efficient process that will operate to resolve the vast majority of complaints quickly, while providing financial disincentives for carriers to switch customers without proper authorization. By this short delay to resolve the dispute, the Joint Parties estimate that the TPA will be able to reduce the number of instances that require crediting of customer’s bills and/or carriers to remit charges to another carrier.

In all other respects, the TPA honors the Commission’s policy choices for minimizing unauthorized conversions. Customers will continue to be advised that they do not need to pay the bill that they are challenging. The TPA will switch the customer back to its preferred carrier, at no cost to the customer. The customer is absolved of up to 30 days of usage charges in cases where the customer has not paid. If a payment has been made to the unauthorized carrier, the

unauthorized carrier remits the full amount to the authorized carrier, thereby preventing the unauthorized carrier from benefiting from its violation of the rules. If the customer is not satisfied with the TPA resolution, the customer will be referred to the relevant federal and state agencies to prosecute a complaint.

4. Requirements Are Enforceable, and Result In No Change In the Application of Existing Regulatory, Civil, or Criminal Penalties

The TPA proposal would be established pursuant to a Commission order, and would be enforceable to the same degree as any other Commission requirement. Participating carriers, in organizing the TPA, contracting with a vendor, and participating in the TPA process, would be bound by the Commission's directives in establishing the TPA.⁴⁴ To the extent that participating carriers, the Board, or the vendor violated these requirements, there would be a violation of Commission requirements and the Commission could proceed under its statutory powers against any or all participating carriers for violations in the same way, and using the same enforcement powers, as it does today with violations of slamming rules. Of course, there is a strong incentive for participating carriers to follow the TPA requirements as adopted by the Commission, because the alternative -- to follow the requirements of the Commission's announced rules -- is unworkable and prohibitively expensive.

Finally, carriers participating in the TPA have been granted a waiver only of the four

⁴⁴ It is also possible that in its proceeding on reconsideration or elsewhere that the Commission may wish to establish rules for the TPA, as it has done for numbering administration or local number portability. In the context of this waiver proceeding, it would appear procedurally improper to request the Commission's consideration of rules. However, it is possible to reduce the Commission's requirements for TPA to rules, and to release these for comment in the reconsideration round.

enumerated liability rules. Participating carriers otherwise remain subject to all other Commission rules, civil penalties, and criminal penalties that exist today and that are applied by state and federal authorities.

III. CONCLUSION

As established in this request for waiver, the TPA proposal will provide substantial benefits for consumers, carriers, and regulatory agencies relative to the Commission's announced rules. The Commission's policy objectives will be achieved, so that unauthorized carriers do not benefit from engaging in rule violations and so that consumers will be compensated for their inconvenience in cases where unauthorized conversions occurred. The TPA is workable and achievable in the short run.

For these reasons, the Joint Parties request that the Commission waive the following liability rules for carriers electing to participate in neutral third party liability administration: section 64.1100(c); section 64.1100 (d); section 64.1170; and section 64.1180. In place of these rules, the participating carriers would utilize a neutral third party liability administrator to administer customer complaints and carrier-to-carrier liability, as detailed in this filing.

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CERTIFICATE OF SERVICE

I, Vivian Lee, do hereby certify that copies of the foregoing Joint Petition for Waiver of MCI Worldcom, Inc. in the Matter of Implementation of the Subscriber Carrier Section Changes Provisions of the Telecommunications Act of 1996 and the Policies and Rules Concerning Unauthorized Changes of Consumers by Long Distance Carriers were sent, on this 30th day of March, 1999, via first-class mail, postage pre-paid, to the following:

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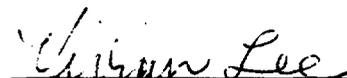
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