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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
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MCI Telecommunications Corporation)
)
Petition for Rulemaking)
)
Billing and Collection Services)
Provided by Local Exchange Carriers for)
Non-Subscribed Interexchange Services)

Rulemaking No. 9108

EX PARTE COMMENTS OF PILGRIM TELEPHONE, INC.

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December 15, 1999

No. of Copies rec'd 042
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Pilgrim Telephone, Inc. (Pilgrim), by counsel, and pursuant to Section 1.1206(b)(1) of the Commission's Rules,¹ hereby submits *ex parte* comments in the above-captioned proceeding. The Common Carrier Bureau (Bureau) conducted a meeting on November 30, 1999,² to discuss a number of issues relating to a petition for rulemaking filed by MCI Telecommunications Cor-

¹ 47 C.F.R. § 1.1206(b)(1).

² The meeting, hereinafter cited as the "Billing and Collection Meeting," was attended by twenty-one organizations, at the invitation of the Common Carrier Bureau. *See* FCC, Common Carrier Bureau, "Meeting To Discuss Billing and Collection Services," Nov. 22, 1999 (Bureau Meeting Advisory).

poration (MCI).³ During the course of this meeting, Bureau staff invited the attending organizations to submit *ex parte* statements addressing these issues and other matters raised in the MCI Petition. Pilgrim is filing these comments in response to this invitation.

I. INTRODUCTION

More than two and one-half years have passed since MCI demonstrated in its rulemaking petition that incumbent local exchange carriers (ILECs) are engaging in discriminatory and restrictive practices with respect to their billing and collection for non-subscribed interexchange services, such as collect, 10XXX, third-party, local exchange carrier (LEC) “joint use” calling card, and 900 service calling.

Since the time the MCI Petition was filed, the harmful effects of these ILEC practices on competition and consumers have grown worse. Numerous participants at the Billing and Collection Meeting catalogued a variety of instances in which ILECs have systematically abused their power in the market for non-subscribed calling billing and collection. The mounting evidence of these abuses, together with their undermining of the Commission’s pro-competitive and pro-consumer policies, signals that it is now past time for the Commission to initiate a rulemaking proceeding to examine ILEC billing and collection practices for non-subscribed services and to fashion remedies for this ongoing pattern of anti-competitive market abuses.

³ MCI Telecommunications Corporation, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Petition for Rulemaking, filed May 19, 1997 (MCI Petition). See FCC Public Notice, “MCI Telecommunications Corporation Files Petition for Rulemaking Regarding Local Exchange Company Requirements for Billing and Collection of Non-Subscribed Services,” Rulemaking No. 9108, DA 97-1328, released June 25, 1997 (*MCI Petition Public Notice*). The company has since changed its name to MCI WorldCom, Inc.

Moreover, the Commission already has begun a rulemaking proceeding that is examining ILEC billing and collection in a related context, involving the provision of wireless calling party pays (CPP) services.⁴ The fact that the Commission has decided to examine these issues in the *CPP Rulemaking Proceeding* based upon assertions in the record of that proceeding that commercial mobile radio service (CMRS) providers cannot successfully bring CPP to the marketplace without access to ILEC billing and collection services, offers strong support for the proposition that the Commission should broaden its rulemaking focus in order to address the problems identified in the MCI Petition, in the pleadings filed in response to the *MCI Petition Public Notice*, and most recently at the Billing and Collection Meeting.

II. BILLING AND COLLECTION PROBLEMS FACED BY CASUAL CALLING SERVICE PROVIDERS HAVE BEEN EXACERBATED BY DISCRIMINATORY AND RESTRICTIVE PRACTICES FOLLOWED BY INCUMBENT LOCAL EXCHANGE CARRIERS

Statements and representations made by numerous participants at the Billing and Collection Meeting underscore facts that have already been amply demonstrated in the MCI Petition and pleadings filed in support of the petition. Specifically, participants at the meeting demonstrated that casual calling service providers face substantial obstacles in billing and collecting for their services to the extent they attempt to bill directly or use third-party alternatives to ILEC billing and collection. In addition, discriminatory and restrictive practices followed by ILECs in

⁴ Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207 (*CPP Rulemaking Proceeding*), Declaratory Ruling and Notice of Proposed Rulemaking, FCC 99-137, released July 7, 1999 (*CPP Rulemaking Notice*). The Commission initiated this proceeding two years earlier. See Calling Party Pays Service Offering in the Commercial Mobile Radio Services, WT Docket No. 97-207, Notice of Inquiry, 12 FCC Rcd 17693 (1997).

their contractual arrangements to provide billing and collection services to casual calling service providers are harming competition and consumers.

A. The Denial of Access to Billing and Collection Provided by Incumbent Local Exchange Carriers Would Seriously Impair the Ability of Carriers To Provide Casual Calling Services

A number of participants at the Billing and Collection Meeting informed the Bureau that, based upon their actual business experience in the casual calling market, there are severe problems associated with attempts to bill and collect for casual calling services without access to ILEC billing and collection. For example, a representative of Integretel stated that there are no effective alternatives to ILEC billing and collection for casual calling services.⁵ The Integretel representative noted that the company has explored billing and collection arrangements through credit card companies but has concluded that this is not a viable option for billing and collecting for casual calls. One problem, according to the Integretel spokesperson, is the fact that the man-

⁵ *Accord* MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, AT&T Corp. Reply Comments, filed Aug. 14, 1997 (AT&T Reply Comments), at 2-3 (emphasis in original) (footnote omitted):

Non-subscribed services generate low monthly revenues per customer and incur relatively high rates of uncollectibles. As a result, AT&T's [*sic*] estimates that its return on sales for these services in the *current* billing and collection environment is more than one-third lower than for presubscribed calling. If IXCs were required to use sources other than ILEC B&C [billing and collection] to bill for non-subscribed services, the combination of higher billing and collection costs and lower returns would cause carriers to lose money on many invoices and thus seriously jeopardize the viability of such offerings.

ner in which many credit card companies issue bills and conduct their billing and collection operations is not in compliance with the Commission's truth-in-billing guidelines⁶ and would require revision to achieve compliance with these guidelines.

The Integretel representative also stated that the company has explored the use of other billing and collection options, such as arrangements with cable companies and electric utilities, but has ruled out such approaches because of serious system incompatibility problems that would require substantial revisions to these billing systems to adapt them for use in connection with casual calling billing and collection. Finally, the Integretel spokesperson indicated flatly that direct billing for casual calling services is simply not an option because it is cost prohibitive.

A representative of Interactive Information Network, Inc., also made the point at the Billing and Collection Meeting that direct billing for casual calling services will not work. The spokesperson attributed the high uncollectibles rates associated with direct billing to the fact that many casual calling customers are confused by bills received from unfamiliar telecommunications companies, especially since the bills are often received months after the call was placed and are often for small amounts involving a single phone call.

These concerns voiced at the Billing and Collection Meeting are the latest manifestation of the presentation of arguments and information by interexchange carriers (IXCs) and other parties that convincingly demonstrate that non-subscribed services present unique and intractable billing and collection problems that can be effectively resolved only through access to ILEC billing and collection. MCI has demonstrated in considerable detail that direct remittance and

⁶ See Truth-in-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, released May 11, 1999.

third-party billing are not practical for non-subscribed services.⁷ More recently, in the *CPP Rulemaking Proceeding*, Pilgrim⁸ and other parties have demonstrated that direct billing and third-party alternatives are not adequate options for non-subscription calls such as CPP.

With respect to direct billing for CPP, an economic study conducted for AirTouch Communications, Inc. (AirTouch), has concluded that, “[b]ecause of the low value of the billing transaction relative to the cost of generating a stand-alone bill, only a company that currently sends a bill to a customer can economically provide the CPP billing services.”⁹ The Katz and Majerus Study also concluded that “[e]ven once a bill is generated and sent to a consumer, there still remain significant costs associated with trying to collect this bill. Given the likely size of bills sent out for CPP, if the collection were done on a stand-alone basis its costs would swamp any revenues collected.”¹⁰ Since CPP involves the issue of billing and collection for service rendered to a non-subscribed customer (*i.e.*, the calling party who is responsible for paying the charge for the call), the problems of direct billing for CPP closely mirror the problems that the Commission must address in this proceeding.

An economic study commissioned by the Billing Reform Task Force (BRTF) recently examined billing and collection for 900-number calls and reached the same conclusion as the

⁷ See MCI Petition at 6-10.

⁸ See *CPP Rulemaking Proceeding*, Comments of Pilgrim Telephone, Inc., filed Sept. 17, 1999 (Pilgrim CPP Comments), at 10-13, 25-27.

⁹ *CPP Rulemaking Proceeding*, Comments of AirTouch Communications, Inc., Attachment A, “Declaration of Dr. Michael L. Katz and David W. Majerus: ILEC Market Power in Billing and Collection,” Sept. 17, 1999 (Katz and Majerus Study), at 10.

¹⁰ *Id.*

Katz and Majerus Study with regard to the deficiencies of direct billing.¹¹ Significantly, the Siwek and Mosteller Study also found that:

[o]utcomes in the marketplace are . . . consistent with our conclusion for 900-number calls. In practice, direct billing and collection for 900-number calls occurs to a *very limited extent*. If direct billing and collection for 900-number calls actually competed with LEC billing and collection, information providers would want to switch to direct billing and collection. . . . Information providers stick with LEC billing and collection for 900-number calls because they do not have competitive alternatives.¹²

The Katz and Majerus Study also examined the feasibility of third-party billing for CPP and concluded that no third-party billing options provided a viable alternative to ILEC billing and collection.¹³ In the case of credit card billing, the Katz and Majerus Study listed several reasons why such billing would not be practical or effective for CPP, including the fact that “credit card companies do not currently have software for calculating the local taxes associated with wireless phone calls.”¹⁴ The Siwek and Mosteller Study reached the same conclusion regarding credit card billing for 900-number service,¹⁵ noting, for example, that “about one-third of the existing pool of potential 900-number callers would be eliminated if information providers relied

¹¹ Stephen E. Siwek & Gale Mosteller, “Billing and Collection for 900-Number Calls: A Competitive Analysis,” Sept. 7, 1999 (Siwek and Mosteller Study), at 4-8.

¹² *Id.* at 7-8 (emphasis added).

¹³ Katz and Majerus Study at 12-14.

¹⁴ *Id.* at 12.

¹⁵ *See* Siwek and Mosteller Study at 8-13.

solely on credit cards” because only 66 percent of households have credit cards.¹⁶ The Katz and Majerus Study also examined cable companies and electric utilities as possible alternatives to ILEC billing and collection for CPP, but concluded that “cable companies and electric utilities do not provide effective limits on the exercise of ILEC market power in CPP billing and collection services.”¹⁷

The pleadings filed by Pilgrim in the *CPP Rulemaking Proceeding* as well as the economic studies discussed here illustrate the need for the Commission to grant the petition for rulemaking filed by MCI, and to begin a proceeding that will afford the Commission with an opportunity to explore the issues of direct billing and third-party alternatives to ILEC billing and collection, in order to make findings regarding whether direct billing and third-party billing are practical and workable alternatives to ILEC billing and collection for interexchange non-subscribed services.

B. Restrictive and Discriminatory Practices Followed by Incumbent Local Exchange Carriers in Their Provision of Billing and Collection for Non-Subscribed Services Are Harmful to Competition and Consumers

Several participants in the Billing and Collection Meeting made representations with respect to anti-competitive pricing practices by ILECs for billing and collection provided for non-subscribed services, as well as restrictive and discriminatory terms and conditions in billing and collection agreements that are having anti-competitive effects. The Integretel representative, for example, alleged that some ILECs have established a \$25.00 monthly cap on the amount that

¹⁶ *Id.* at 9.

¹⁷ Katz and Majerus Study at 14.

third-party casual calling providers are permitted to bill customers through the ILEC bill, but these ILECs do not impose a similar billing cap on their own business units that provide similar services and utilize the ILEC bill.

The MCI representative at the meeting indicated that, although MCI has managed to renew billing and collection contracts for non-subscribed services with some ILECs during the period since MCI filed its petition for rulemaking, the average rate increase for these renewed contracts has been 100 percent. The MCI spokesperson characterized ILEC rates as “punitive,” and also stated that one ILEC has advised MCI that the company does not plan to renew its casual calling billing and collection contract with MCI when the contract expires in March 2000.

In the *CPP Rulemaking Proceeding*, the Commission has sought comment regarding anti-competitive practices in connection with CPP-related LEC billing and collection,¹⁸ and several parties have submitted information regarding this issue in response to the Commission’s request. For example, the Coalition To Ensure Responsible Billing has alleged that Bell Atlantic, SBC Communications Inc., and BellSouth Corporation have instituted moratoria on new party billing on their local exchange bills, and that competitors are denied access to LEC bills “for receiving even a minuscule number of complaints.”¹⁹ The Coalition concludes that LECs can gain a significant competitive advantage if they are successful in driving competitive services off the local bill.²⁰

¹⁸ *CPP Rulemaking Notice* at para. 61.

¹⁹ *CPP Rulemaking Proceeding*, Comments of Coalition To Ensure Responsible Billing, filed Sept. 17, 1999, at 8.

²⁰ *Id.*

In our dealings and negotiations with some ILECs for billing and collection services, Pilgrim has encountered what we consider to be discriminatory and anti-competitive practices that have hampered our provision of service and appear intended to advance the competitive interests of the ILECs engaging in these practices. In a case earlier this year involving Ameritech, Pilgrim commented to the Commission staff that “[w]e believe that the activities of the ILECs, in this case Ameritech, in their refusal to bill for casual calling, calling card access and information and enhanced services, and refusal to provide real time BNA [billing name and address] and blocking data, constitute violations of the [Communications] Act and the rules and policies of the Commission.”²¹ Pilgrim further observed that some “ILECs refuse to provide billing and collection services because the ILEC has an ‘Image Policy.’ Image Policies are used to censor both communications and services, and prohibit competition with certain ILEC services under the guise that billing and collection would be contrary to the corporate image of the ILEC.”²²

The Siwek and Mosteller Study also points to a case of a refusal by an ILEC to provide billing and collection for 900-number calls:

In 1998, there was a real-world test of whether competitive alternatives to billing and collection for 900-number calls exist. US WEST announced that it would no longer bill for 900-number calls related to psychic programs and games of chance. In the 11 states where US WEST operates, AT&T now will not bill 900 numbers to psychic programs and games of chance. Despite this opportunity for direct billing and collection in US WEST territory, no one has stepped in to fill the void, and these 900 number services no longer exist in US WEST territory. This market out-

²¹ Letter from Walter Steimel, Jr., Counsel for Pilgrim Telephone, Inc., to Jeff Dygert, Enforcement Div., Common Carrier Bur., FCC, Feb. 4, 1999, at 3.

²² *Id.* at 2 (footnote omitted).

come supports the conclusion that there are not competitive alternatives to LEC billing and collection for 900-number calls.²³

These examples of overpricing, the imposition of restrictive and discriminatory billing and collection terms and conditions, and the refusal to provide billing and collection services by ILECs are relevant in the present context of the MCI rulemaking petition because they demonstrate the presence of market power and the harms to competition and to consumers that result from the abuse of this power.

The record in response to the MCI Petition and other information already furnished to the Commission amply demonstrate the need for the Commission to initiate a rulemaking proceeding to examine in greater detail ILEC pricing policies, negotiating tactics, and other practices regarding billing and collection for non-subscribed services in order to reach conclusions and findings regarding the nature and scope of these billing and collection problems, to assess the extent of ILEC power in the relevant market for billing and collection, and to fashion solutions that will serve to enhance competition and protect consumers.

III. THE ESTABLISHMENT OF AN INDEPENDENT INFORMATION DATABASE FOR CASUAL CALLING BILLING AND COLLECTION COULD SERVE AS A VIABLE LONG-TERM, NON-REGULATORY SOLUTION

Bureau representatives at the Billing and Collection Meeting made clear their preference to pursue industry-sponsored technical solutions to billing and collection problems associated with interexchange non-subscribed services, and emphasized their disinclination to “re-regulate”

²³ Siwek and Mosteller Study at 8. A recent trade press report indicated that US West “no longer would provide billing services for Internet access, Caller ID boxes, paging services, and other offerings from third-party vendors.” *US WEST To Terminate Most Third-Party Billing*, TELECOM. REPORTS, Dec. 6, 1999, at 15.

ILEC billing and collection.²⁴ In this connection, parties attending the meeting were encouraged by the Bureau staff to propose and discuss possible technical solutions that would free the Commission of any need to take any regulatory steps to ensure that ILECs cannot engage in billing and collection practices that harm competition or consumers.

One such possible technical approach was referenced by MCI in its petition for rulemaking. Specifically, MCI noted that “[o]ne long-term solution for billing and collection for non-subscribed services could be the creation of a viable and efficient clearinghouse for charges to, and payments from, non-subscribed customers.”²⁵ The prospect of establishing such a clearinghouse also received attention at the Billing and Collection Meeting. A representative of the BRTF raised the possibility of establishing a clearinghouse as a means of arriving at a technical solution to the various billing problems under discussion at the meeting. The clearinghouse could make BNA and other call-related information available to all casual calling service providers.

A. Criteria for Establishing a Call-Related Information Database

Pilgrim supports any efforts to establish a billing information database as one potentially effective means of addressing the billing and collection problems faced by casual calling service providers, and we encourage the Commission, as part of the rulemaking proceeding it should initiate in response to the MCI Petition, to take steps to delineate the objectives and specifications of such a database. Moreover, Pilgrim would welcome the opportunity to participate in any

²⁴ The Commission in 1986 excused LECs from the obligation to provide billing and collection services under tariff to interexchange carriers for their subscription services. *Detariffing of Billing and Collection Services*, CC Docket No. 85-88, Report and Order, 102 F.C.C. 2d 1150 (1986) (*Billing and Collection Order*), *recon. denied*, 1 FCC Rcd 445 (1986).

²⁵ MCI Petition at 9.

Commission-sponsored industry efforts to address technical and other issues related to establishment of such a database and to build an industry consensus regarding the technical aspects of, and ground rules for, administering the database.

We suggest that the Commission, in examining the objectives and specifications of the database, should take into account the following criteria and considerations:

- The administration of the database must be neutral, so that the control and management of the database are not manipulated to the advantage or disadvantage of any segment of the telecommunications industry. Commission rules governing the establishment and administration of the database could ensure that such safeguards are in place. We thus emphasize our view that, in order for such a clearinghouse mechanism to work fairly and effectively, the Commission must be directly involved in reviewing and approving the operational, procedural, and administrative framework established for the clearinghouse.

- To be most effective, the database should include all information relevant to billing for non-subscribed calls. Call-related information stored in the database should include the type of information currently contained in the Line Information Database (LIDB), billing name and address, and call blocking information. The database should be accessible on a “real time” basis to ensure proper handling and billing for non-subscribed calls.

- There must be non-discriminatory access to the database. For example, the BRTF spokesperson, in outlining the clearinghouse proposal at the Billing and Collection Meeting, stated that all LECs should be required to submit call-related data for inclusion and maintenance in the database, and that LEC business units providing non-subscribed services should be required to obtain call-related data from the independently maintained clearinghouse, in the same manner as other casual calling service providers. Pilgrim endorses such an approach, because we

believe that only an information database established and operated in such a manner could begin to ease some of the problems currently caused by ILEC control of call-related information. In particular, requiring ILEC business units that provide non-subscribed services to rely on the clearinghouse database would help to ensure that ILECs will furnish accurate, detailed, and timely information to the database and would help to eliminate discriminatory ILEC practices regarding access to and use of this information.

- An important aspect of a Commission rulemaking examining the establishment of a neutrally maintained call-related information database would, of course, be the issue of charges for access to information housed in the database and the overall recoupment of costs for the operation of the database. Pilgrim supports the possibility of setting up the database through a bidding process, permitting any entity (including ILECs) to fashion proposals for the administration of the database. Such a competitive bidding process would be effective as a means of ensuring that issues and problems relating to setting up and running the database are identified and resolved in the most optimum fashion. Pilgrim also believes that the Commission should explore, in a rulemaking initiated in response to the MCI Petition, the need to establish a non-discriminatory structure of reasonable rates for use of the database by all service providers.

B. Advantages and Disadvantages of Establishing a Database

Several considerations make attractive the establishment of a single database containing all information necessary to process and bill for casual calls, but the Commission should not

overlook the fact that, as MCI observed in its petition,²⁶ there are also several issues and problems associated with such an approach.

One of the principal advantages of such a database is that it could make billing for non-subscribed calls more efficient, more effective, less prone to errors and delays, and less costly. Since each of these factors continues to be problematic in the current environment, Pilgrim believes that there is a strong public policy basis for the initiation of a rulemaking proceeding to explore whether a billing information database established pursuant to the criteria outlined in the previous section could successfully address these problems.

An independently controlled and operated information database, to which all service providers have non-discriminatory access at reasonable rates and on reasonable terms and conditions, could also help to break the ILECs' bottleneck control over billing information. In light of the assertions made at the Billing and Collection Meeting, Pilgrim believes it is incumbent upon the Commission to explore in a rulemaking proceeding whether and to what extent ILECs have market power with respect to the provision of billing information, whether ILECs are abusing this power to further their own anti-competitive objectives, and whether steps can be taken, such as establishment of an independent call information clearinghouse, that will combat these deleterious market forces.

These potential advantages of a clearinghouse, however, should not deflect attention from the difficulties that are likely to plague any effort to create such an administrative structure for non-subscribed call information. One potential difficulty with the clearinghouse approach is that

²⁶ *Id.* at 9-10.

establishing a unified billing information database that combines BNA, LIDB information, and other call-related information to be made available on a real-time basis to all casual call service providers presents numerous technical complexities that are not easily resolved. MCI alluded to this concern in its petition²⁷ and also reiterated this point at the Billing and Collection Meeting, suggesting that these various issues still await solution more than two and one-half years after MCI first requested a Commission rulemaking.

In addition, an important component of making a call-related information clearinghouse work is the need for industry-wide cooperation and consensus regarding the operational criteria for the clearinghouse. Thus, as Pilgrim suggested in the *CPP Rulemaking Proceeding*,²⁸ successful establishment of a clearinghouse mechanism for handling billing information for non-subscribed calls would depend in large part upon LEC participation and cooperation.²⁹

Moreover, as the MCI representative emphasized at the Billing and Collection Meeting, even assuming sufficient industry consensus and cooperation, implementing a call-related database clearinghouse remains a *long-term* undertaking. The time line necessary for this task must be compared to the current urgent problems faced by casual calling service providers as a result of ILEC billing and collection practices. Pilgrim agrees with MCI and other participants at the

²⁷ *Id.* at 9.

²⁸ Pilgrim CPP Comments at 11.

²⁹ See MCI Telecommunications Corporation Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, Reply Comments of MCI Telecommunications Corporation, filed Aug. 14, 1997, at 6 (footnote omitted) (“In order for a clearinghouse arrangement to work at all, the clearinghouse must have an agreement with the LEC, pursuant to which the LEC provides the clearinghouse with information sufficient to match LEC records with the IXC call detail.”).

meeting that ILECs' market power abuses are harming competition and consumers right now. In these circumstances, the Commission should examine closely whether it is reasonable for the promotion of a billing information clearinghouse to be the lead weapon in the Commission's arsenal as it evaluates the problems documented in the record in response to the MCI Petition.

Finally, and perhaps most fundamentally, a clearinghouse would only solve part of the problem. Although Pilgrim supports an independently operated clearinghouse, to which all carriers have non-discriminatory access, we are concerned about the difficulties involved, the time necessary to implement such a clearinghouse, and the fact that casual calling service providers currently face serious competitive disadvantages to the extent they are denied access to ILEC bills. The Bureau in fact has acknowledged the significance of this latter point, stating in the Bureau Meeting Advisory that “[w]e are interested in discussing *industry sponsored solutions* to the problem of *access to the local exchange carrier bill*.”³⁰

The Bureau is correct in giving this focus to the issue — while access to ILEC-controlled billing information is important and currently constitutes a problem in itself, access to ILEC bills is the central problem, and the Commission should not avoid the simple fact that any failure to come to grips with this problem would be a failure of public policy with negative implications for competition and consumers.

³⁰ Bureau Meeting Advisory at 1 (unpaginated) (first emphasis in original, second emphasis added).