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

In The Matter of	)	
	)	
Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996	)	
	)	**CC Docket No. 94-129**
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

COMMENTS OF THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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June 13, 2000 **Its Attorneys**

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SUMMARY

The Association of Communications Enterprises ("ASCENT"), a national trade association representing more than 800 entities engaged in, or providing products and services in support of, the competitive provision of telecommunications and information services, hereby opposes the dangerous and ill-advised proposal to require all carriers, including non-facilities-based resale carriers, to obtain and deploy carrier identification codes ("CICs") throughout their respective service areas. To this end, ASCENT submits the following:

- The Commission has failed to demonstrate that "soft slamming" is a problem of sufficient magnitude to justify additional, much less draconian, remedial action.

- A mandatory CIC requirement would impose an enormous financial and competitive burden on non-facilities-based resale carriers, thinning the ranks of the small carrier community and erecting an often insurmountable barrier to entry by small businesses into the interexchange market.

- Better targeted, more effective alternative remedies to the soft slamming problem are available in the event that the yet untested slamming safeguards already adopted by the Commission prove ineffective.

- Translations access is a false answer. Use of translations access rather than Feature Group D access will only marginally reduce the adverse financial and competitve impact of a mandatory CIC proposal.

- A mandatory CIC requirement will adversely impact small LECs whose switching facilities often cannot accommodate substantially greater numbers of CICs without replacement or upgrading.

- The thousands of CICs that will be consumed by non-facilities-based resale carriers in compliance with a mandatory CIC requirement will hasten the exhaustion of 4-digit CICs, prematurely imposing on carriers and consumers alike the burdens associated with another CIC transition.

- A mandatory CIC requirement conflicts directly with Congressional mandates to facilitate, rather than impede, greater participation by small businesses in the telecommunications industry.

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The Association of Communications Enterprises ("ASCENT"), formerly the Telecommunications Resellers Association ("TRA"),[1] through undersigned counsel, hereby submits its comments in response to *Public Notice*, DA 00-1093, released May 17, 2000, in the above-captioned docket ("*Notice*"). In the *Notice*, the Commission invites interested parties to refresh the

[1] The Telecommunications Resellers Association recently changed its name to the Association of Communications Enterprises in order to better reflect its more diversified membership and mission. No longer strictly comprised of carriers providing telecommunications services solely through resale, TRA's membership has expanded in recent years not only to include both facilities-based and non-facilities-based service providers of interexchange, international, local, and wireless services, but providers of an increasingly wide variety of advanced and Internet-based services. The name change to ASCENT is intended to reflect the Association's continued orientation toward the entrepreneurial enterprises that constitute its core constituency, while recognizing the evolving nature of both the communications industry and the Association's membership. ASCENT remains the largest association of competitive providers of telecommunications service in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

record and submit additional comment on its dangerous and ill-advised proposal to require all carriers, including non-facilities-based resale carriers, to obtain and deploy carrier identification codes ("CICs") throughout their respective service areas. ASCENT, on behalf of its more than 800 carrier and supplier members, is shocked and dismayed that the Commission would propose anew a requirement which it has repeatedly been advised would dramatically thin the ranks of smaller competitive providers of interexchange service. ASCENT strongly urges the Commission to heed the directive of Congress to eliminate barriers to the entry and continued participation of "entrepreneurs and other small businesses in the provision and ownership of telecommunications services" and, in accordance with that mandate, to permanently table a proposal calculated to close the doors of the telecommunications market to these entities.

The *Public Notice* seeks comment on six specific issues. The first two issues are essentially non-issues as they relate to "translation access," a false compromise which would only incrementally reduce the devastating impact of a mandatory CIC proposal on non-facilities-based resale carriers. The third issue is misdirected in that it seeks data as to the impact of a mandatory CIC proposal on local exchange carriers ("LECs") and facilities-based interexchange carriers ("IXCs"). The next two issues, however, are critical to ASCENT's 800-plus members. The fourth issue focuses on the financial and competitive impact of a mandatory CIC requirement on non-facilities-based resale carriers. The fifth issue highlights the dearth of data evidencing that "soft slamming" is in fact a significant problem. The final issue touches upon a further problem -- *i.e*, CIC exhaustion -- to which the purported cure will contribute. ASCENT will address each of these issues below, although in their order of importance, as opposed to the order of their listing in the *Public Notice*.

I.

ARGUMENT

1. The Relative Insignificance of the "Soft Slamming" Problem Does Not Justify the Injurious Action Proposed By the *Public Notice*

In its initial comments opposing the implementation of a mandatory CIC requirement, ASCENT showed that the Commission's own data confirmed that the bulk of "slams" are committed by a relatively small percentage of the more than 1,000 carriers currently providing interexchange service[2] and that the large majority of carriers are individually responsible for few, if any, generally inadvertent unauthorized carrier changes. Moreover, ASCENT demonstrated that there was no correlation between "slams" and the lack of a CIC; indeed, ASCENT showed that "soft slams" constitute a relatively small portion of unauthorized carrier changes.

Thus, for example, ASCENT showed that of the nearly 10,000 slamming complaints received by the Commission during the first six months of 1998, roughly 30 percent were attributable to AT&T Corp. ("AT&T"), MCI WorldCom, Inc. ("WorldCom"), and Sprint Corporation ("Sprint"), another 16 percent were attributable to a single carrier, and more than 75 percent of the remainder were attributable to 33 carriers, leaving less than 15 percent to be spread among the many hundreds of other carriers. Even more directly consequential, of the 37 carriers identified as being responsible for 85 percent of the slams, more than 75 percent had deployed CICs, rendering the unauthorized carrier changes attributable to them not soft slams.

[2] The Commission reports that there are nearly 600 IXCs purchasing access, and this number does not include the hundreds of non-facilities-based resale carriers that purchase end-to-end service from interexchange network service providers. Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Trends in Telephone Service, Table 10.2 (March 2000).

As ASCENT explained, soft slams require a confluence of circumstances which render their incidence unlikely relative to other unauthorized carrier changes. Slams other than soft slams potentially implicate the entire universe of carriers and customers. Soft slams, on the other hand, can only occur between a network service provider and its resale carrier customers or between the resale carrier customers of the same network service provider.[3] Given the increasing number of interexchange networks and the increasing number of switch-based resale carriers, the opportunities for unauthorized carrier changes among the resale carrier customers of the same network service provider are becoming fewer and fewer.

[3] Moreover, soft slams could only go undetected for any period of time in a LEC-billed environment if the LEC did not identify resale carrier on its invoices. Any unauthorized carrier change involving a non-facilities-based resale carrier that issues its own bills would be immediately known to the consumer and hence, easily remedied.

ASCENT's prior assessment is confirmed by the most recent slamming complaint data reported by the Commission. In the first six months of 1999, the Commission received 12,478 complaints alleging unauthorized carrier changes.[4] Of these, roughly one third were attributable to AT&T, WorldCom and Sprint.[5] Another 17 percent of the slamming complaints involved other major network operators.[6] And 26 percent were attributable to 11 other carriers.[7] Thus, the more than 1,000 remaining providers of interexchange services are responsible for less than 25 percent of the complaints of unauthorized carrier changes processed by the Commission, which translates into a mere two or three complaints per carrier.[8] Accordingly, the vast bulk of the non-facilities-based IXCs upon each of which the adverse impacts of the proposed mandatory CIC requirement would be visited have not contributed in any significant way to the slamming problem the proposal is purportedly designed to address.

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[4] Common Carrier Bureau, Consumer Enforcement Division, Enforcement Bureau, Common Carrier Scorecard, 2 (1999).

[5] Id. at 11.

[6] Id. at 9 - 11 ("Cable & Wireless," "Excel Communications," "Frontier Communications Services," "GTE Communications Corp.," and "Qwest Communications," and "RSL COM USA, Inc.").

[7] Id. ("Accutel Communications," "ACI Communications, Inc.," "America's Tele-Network," "American Nortel Communications," "Brittan Communications," "Business Discount Plan," "Least Cost Routing d/b/a Long Distance Charges," "Local Long Distance," "Minimum Rate Pricing," "US Republic Communications," and "Vista Group International, Inc.")

[8] And this number is actually overstated because 11 carriers are responsible for 40 percent of the remaining 25 percent of slamming complaints -- "Axces Telecommunications," "Basic Long Distance," "Corporate Services Telecom," "International Telecommunications Corp.," "L.D. Services, Inc.," "Long Distance Saving," "Preferred Billing," "Telec, Inc.," "Tel-Save, Inc.," "USA Telecorp.," and US Long Distance, Inc." Id.

Exacerbating the inequity of saddling large numbers of non-facilities-based resale carriers who have not engaged in any wrongdoing with an intolerable financial and competitive burden, the Commission's own data reveals that roughly 80 percent of the slamming complaints processed by the Commission were attributable to carriers with CICs.[9] And of the 20 percent of complaints involving IXCs without CICs, more than 75 percent were attributable to a mere 11 carriers.[10] The remainder of the hundreds of non-facilities-based carriers without CICs, accordingly, are responsible in the aggregate for roughly five percent of all slamming complaints processed by the Commission. A mandatory CIC requirement obviously would do nothing to impact the 80 percent of unauthorized carrier changes effected by carriers with CICs. And with respect to the remaining 20 percent, ASCENT submits that it would certainly make more sense to direct remedial actions toward the relatively few carriers identified as being principally responsible for the problem, rather than inflicting injury on the bulk of carriers that have not contributed in any significant way to the problem. To the extent that soft slamming is a problem – and given the confluence of circumstances necessary for a soft slam to occur, it is not at all clear that any substantial percentage of the unauthorized carrier changes attributed to carriers without CICs are soft slams[11] -- using a mandatory

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[9] *Compare* Id. with North American Numbering Plan Administrator, DCIC Carrier Codes Updated June 1, 2000). This figure has remained constant from 1998. Common Carrier Bureau, Consumer Enforcement Division, Enforcement Bureau, Common Carrier Scorecard at 14 - 19.

[10] ACI Communications, Inc.," "America's Tele-Network," "Accutel Communications," "American Nortel Communications," "Basic Long Distance," "Combined Billing," "Long Distance Saving," "Minimum Rate Pricing, Inc.," "Preferred Billing," "Telec, Inc.," "USA Telecorp". Id. The 11 carriers without CICs that drew the highest number of slamming complaints in 1998 represented in the aggregate a percentage of slamming complaints comparable to that of their 11 counterparts in 1999. Id.

[11] As WorldCom noted in its initial comments opposing the mandatory CIC requirement, soft slams are "a narrow aspect of the PIC dispute controversy," and there is "no evidence . . . to suggest that 'soft slams' are a problem of such frequency that they require a specific regulatory solution." Comments of WorldCom at 16 (filed March 18, 1999).

CIC requirement to address the problem, as ASCENT has previously argued, is akin to performing surgery with a meat cleaver.

2. The Mandatory CIC Requirement Proposed in The *Public Notice* would have a Devastating Impact on the Small Carrier Community

As it was when ASCENT submitted its initial opposition to the proposed mandatory CIC requirement, the Association's rank and file is comprised of small to mid-sized carriers. Roughly half of ASCENT's existing carrier members, and virtually all of ASCENT's new interexchange carrier members, are non-facilities-based providers.[12] While fully certified as carriers in their own right, ASCENT's non-facilities-based interexchange carrier members utilize the network switching and transmission facilities of other carriers, while performing such "back office functions" as customer service and billing. These providers enter into high volume, extended term service arrangements in order to secure services at rates and under terms and conditions that enable them to compete for generally small business and residential customers.[13] They, accordingly, place at risk not only their investment in regulatory, marketing and "back office" infrastructure, but are exposed to significant monetary penalties in the event that they are unable to attract sufficient customers and generate sufficient traffic to meet their often substantial volume commitments to their network service providers.

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[12] Association of Communications Enterprises, 1999 Reseller Membership Survey and Statistics, 1 (September, 1999). Facilities are generally acquired as carriers gain in financial strength and expand their customer bases. New entrants generally operate as non-facilities-based providers initially and for at least their first few years of operation. Thus, for example, the percentage of "switchless" carriers among ASCENT's membership five years ago was 50 percent greater than today.

[13] Public Service Enterprises of Pennsylvania, Inc. v. AT&T Corp. (Memorandum Opinion and Order), 10 FCC 8390, ¶ 11 (1995) (subsequent history omitted) ("the reseller speculates that the future savings it can offer to the public will enable it to solicit sufficient customers for its resold service to cover the underlying

A significant percentage of ASCENT's carrier members are young companies, including many still properly characterized as "start-ups." Roughly 20 percent of ASCENT's carrier members generate annual revenues of $5 million or less, while approximately 40 percent report annual revenues under $10 million, and more than half have not achieved the $25 million annual revenue threshold.[14] Like most small and emerging companies, ASCENT's small carrier members operate on relatively thin profit margins. Thus, nearly half report earnings of less than five percent, with roughly two-thirds indicating that profit margins fall below ten percent.[15] In short, ASCENT's non-facilities-based resale carrier members are the "entrepreneurs and other small businesses" whose greater participation in the telecommunications industry Congress directed the Commission to facilitate and on whose behalf the Commission committed to "identify and eliminate market entry

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tariff charges and yield a profit.").

[14] Association of Communications Enterprises, 1999 Reseller Membership Survey and Statistics at 15.

[15] Id. at 26.

barriers for small businesses, to remove or reduce impediments, and to increase opportunities for small business participation in the telecommunications market."[16]

As ASCENT, and any number of other commenters, previously advised the Commission, the deployment of a CIC throughout a carrier's service area is a substantial and expensive undertaking. ASCENT has obtained cost estimates from a number of the major network service providers for nationwide deployment of a single CIC. These estimates generally range from $500,000 to $1,000,000 depending on the reach of the interexchange network service provider's network facilities, the comprehensiveness of the deployment – *i.e.*, Bell Operating Companies ("BOCs") only, BOCs and the GTE Corporation ("GTE") operating companies, or the BOCs, GTE and the larger independent telephone companies ("ITC"),[17] -- tandem or central office deployment, and a variety of other variables. By way of example, WorldCom estimates a cost of $750,000 to deploy a CIC with the BOCs and the major ITCs, rising to $1 million if all independents are included. Sprint projects the cost of a nationwide CIC deployment at between $600,000 and $650,000. Global Crossing Ltd. ("Global Crossing") estimates a cost closer to $500,000 for the BOCs and the major ITCs, while AT&T expects the cost to be closer to $1 million for a full nationwide deployment.

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[16] Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Report), 12 FCC Rcd 16802, ¶ 2 (1997); 47 U.S.C. § 257.

[17] To ASCENT's knowledge, none of the estimates contemplated CIC deployment in switches operated by competitive local exchange carriers.

Charges for CIC deployment vary widely in different regions of the country and for different local exchange carriers ("LECs"). For example, Pacific Bell, GTE and a number of the ITCs charge very little to deploy a CIC, levying, if anything, a small administrative charge. At the other extreme, Ameritech Corp. ("Ameritech"), Bell Atlantic Corporation ("Bell Atlantic"), BellSouth Corp. ("BellSouth"), and other of the ITCs assess charges in the tens of thousands of dollars per state.[18] Charges levied by SBC Communications Inc. ("SBC"), and US WEST Communications, Inc. ("US WEST") generally fall under $10,000 per state. Individual charges are generally assessed by LECs for the first end-office deployment and for the remainder of end-office deployments, as well as on a per-tandem basis. Some LECs levy administrative charges. Some interexchange network service providers add a per-ASR charge for the substantial effort involved in completing the multiple access service requests ("ASR") required for an extensive CIC deployment.[19] In short, there is no consistency in either amount or structure of the charges assessed by LECs or interexchange network service providers for deployment of a CIC.[20]

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[18] For example, BellSouth assesses charges in the $10,00 to $30,000 range to deploy a CIC throughout a state, while Bell Atlantic and Ameritech levy per-state charges in the $5,000 to $25,000 range.

[19] An ASR would be required for every switch in which a CIC was to be loaded, including tandems (plus subtending offices) or central office switches.

[20] Thus, for example, it would cost more than $30,000 to deploy a CIC with BellSouth and the major ITCs in the State of Kentucky, but less than $10,000 to deploy a CIC with Pacific Bell and the major ITCs in the State of California.

It belabors the obvious to suggest that an expenditure of upwards to $1 million for a nationwide CIC deployment would impose an enormous burden on the small and mid-sized IXCs that comprise the rank and file of ASCENT, particularly given the razor thin profit margins smaller carriers must contend with in today's highly competitive interexchange market. But these initial costs represent only a small part of the total cost burden a mandatory CIC requirement would represent for small providers. As ASCENT previously described for the Commission, a carrier which utilizes the facilities of multiple interexchange network service providers in order to provide its customers with greater service and rate diversity must deploy a CIC for each network service provider from which it takes service, greatly increasing the cost of a mandatory CIC requirement.[21] And given that most network service agreements extend for one to three years, non-facilities-based-carriers that might otherwise forego the competitive benefits of utilizing multiple network service providers will likely confront a "Hobson's choice" -- pay for deployment of multiple CICs or pay the penalties resulting from the breach of second or third service agreements which they can no longer financially honor.

But this is not the end of the burden. Each time a non-facilities-based carrier desires to transfer from one network service provider to another, it will have to bear anew the cost of CIC deployment.[22] This additional burden will not only limit the carrier's service options,[23] but it will

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[21] As AT&T explained in its initial response to the mandatory CIC proposal, "if reseller 'A'" which purchases underlying service both from interexchange carriers 'B' and 'C,' was assigned only a single CIC code, the LECs' switching systems could not, without more, accurately determine the proper interexchange carrier to which the reseller's call should be routed." Comments of AT&T at 36 (filed March 18, 1999).

[22] E.g., Comments of WorldCom at 18 - 19 (filed March 18, 1999).

[23] The limitations do not implicate price alone. The process of filing and coordinating the transition of a nationwide CIC-based non-facilities-based resale carrier from one network service provider to another would consume many months. Indeed, WorldCom has estimated that the process would extend for nine

reduce its bargaining power with its current provider who will know that the substitution of another provider's service will entail substantial additional cost for its non-facilities-based resale customer. Bargaining power is already skewed in favor of the network service provider in its dealings with the generally far smaller non-facilities-based carrier customer. A mandatory CIC requirement will deny the resale carrier even the leverage associated with the realistic ability to select another network service provider.

Moreover, the Commission can rest assured that whatever additional costs its mandatory CIC proposal may inflict upon LECs and interexchange network service providers will find their way back to the non-facilities-based resale carrier, whether it be in the form of surcharges or increased per-minute charges. For example, U S WEST has proclaimed that:

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months. Id. at 18.

> Upgrades to accommodate new CICs in the quantities necessary to support all resellers may not be possible with some switch types. Even where upgrades are possible to accommodate more CICs, significant memory enhancements could be required. A LEC's costs to upgrade its switches would be substantial. In addition to the costs of upgrade hardware and software, there are also labor costs to update the switch databases to activate new CIC codes. These labor costs can be significant since the average CIC add takes two person-hours per code per office for GTE.[24]

Broadwing, Inc. ("Broadwing") echoed this assessment, proclaiming that "resellers themselves should bear the costs of developing and paying for an industry-wide solution," as did US WEST, declaring that "the cost 'causation' here seems entirely identifiable and the cost recovery easily targeted to the entities who should bear such costs – the small number of resellers who do not currently have CICs."[25]

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[24] Comments of GTE at 6 (filed March 18, 1999).

[25] Comments of Broadwing at 2 (filed March 18, 1999); Comments of US WEST at 15 (filed March 18, 1999).

As should be readily apparent, a mandatory CIC requirement would strike a damaging, often fatal, blow at the community of small carriers. A carrier generating annual revenues of $5 or $10 million in a highly competitive environment which produces slim profit margins cannot withstand the burden associated with a $500,000 or $1 million or $2 million governmentally-mandated expenditure and remain financially and competitively viable. Additional costs of this magnitude will likely drive many smaller IXCs out of business and certainly will prevent the entry of new entrepreneurial providers into the interexchange market. As Global Crossing eloquently stated, the costs associated with compulsory CIC deployment would be "a prohibitive entry barrier -- and swift exit ramp -- for numerous smaller resellers."[26] WorldCom correctly characterized a mandatory CIC requirement as "a substantial barrier to entry."[27] And Qwest Communications International, Inc. ("Qwest") frankly noted that "[r]equiring resellers to obtain individual CICs would saddle them with significant cost and ultimately reduce the number of resellers that are able to service the telecommunications marketplace."[28]

3. Translations Access would not Mitigate the Damage the Mandatory CIC Requirement Proposed in the *Public Notice* Would Occasion

The *Public Notice* appears to assume that requiring "resellers to purchase translations access alone, as distinguished from Feature Group D access," would mitigate to a substantial degree the adverse financial and competitive impact of a mandatory CIC requirement on small non-facilities-

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[26] Comments of Global Crossing at 5 (filed March 18, 1999).

[27] Comments of WorldCom at 18 (filed March 18, 1999).

[28] Comments of Qwest at 8. (filed March 18, 1999).

based resale carriers.[29] As ASCENT understands translations access, it merely relieves a carrier of the existing requirement that it acquire Feature Group D ("FGD") trunk access as a precondition to obtaining a CIC. Indeed, the *Public Notice* opines that "[t]he need to purchase Feature Group D access to obtain a CIC is one reason that switchless resellers generally share the

[29] Public Notice at 2.

CICs of their underlying carriers."[30] The *Public Notice* misperceives the extent of the financial distinction between FGD access and translations access.

As described in the *Report and Recommendation of the CIC Ad Hoc Working Group to the North American Numbering Council (NANC) Regarding Use and Assignment of Carrier Identification Codes (CICs) ("Report of CIC Ad Hoc Working Group")*, "[c]urrently, a FG D CIC applicant must purchase at least one FG D access trunk from some access provider, somewhere in the nation."[31] Thus, while translations access does eliminate "the need for the provisioning of distinct access trunk groups," it is a meaningless change because most small non-facilities-based carriers would never order their own access trunk groups. As the *Report of CIC Ad Hoc Working Group* explains, "[u]pon receipt of its CIC assignment and completion of business arrangements with a facilities based provider, ["a FG D CIC"] applicant need not obtain any additional access trunks and may request of any access provider that traffic originated from lines pre-subscribed to its CIC be routed over the access facilities of the other service provider."[32] It is thus common among non-facilities-based IXCs that have deployed CICs to obtain but a single FGD access trunk, which they are not even required to maintain once they have secured a CIC.

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[30] Id. at 2, fn. 4.

[31] Report and Recommendation of the CIC Ad Hoc Working Group to the North American Numbering Council (NANC) Regarding Use and Assignment of Carrier Identification Codes (CICs), 8 (February 1998).

[32] *Id*.

The $500,000 to $1 million per-CIC cost figures cited in the preceding section of these comments, accordingly, do not incorporate the acquisition costs of distinct access trunk groups by switchless resale carriers. Rather, they reflect only the cost of CIC deployment through the ASR process. Satisfaction of the FGD trunk access requirement could add as little as $2 or $3 thousand for a single FGD access trunk or hundreds of thousands of dollars for full FGD access trunk deployment. With respect to the base figures cited in the preceding section, however, "the access ordering process associated with [translations access]," as the *Report of CIC Ad Hoc Working Group* recognizes, "does not significantly reduce the time or expense required."[33]

Translations access, therefore, is not the answer. A savings of a few thousand dollars off a mandated expenditure of $500,000 to a $1 million obviously would have a negligible mitigating effect.

4. The Mandatory CIC Requirement Proposed in the *Public Notice* Would Adversely Impact Small LECs

Although not ASCENT's constituency, the mandatory CIC proposal espoused by *Public Notice* will also adversely impact small LECs. As a number of LEC commenters noted in addressing the proposal when initially floated, certain switch types simply will not be able to accommodate all the new CICs a mandatory CIC requirement would generate. Upgrading capacity may not be possible in many circumstances, but will always be costly where it can be accomplished. For small LECs, the burden of switch replacement or upgrading could be financially taxing.

In its comments addressing the mandatory CIC requirement when it was first

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[33] *Id.*

proposed, GTE detailed the capacity limitations which characterize many currently operational switches:

> [W]hile some switch types – if modified to enhance the memory – have the capacity to handle all 10,000 possible 4-digit CICs, many do not. GTENS presently averages over two hundred CICs per switch in its 1600 plus switches. Almost half of these switches have a capacity of only 255 codes. While many of these smaller capacity switches are in locations that are less likely to be targeted by a large number of resellers, that is not always the case. The GTD 500 switch, which comprises a third of GTENS' total, has the capacity of only 500 CICs. A 500 CIC capacity may be insufficient in some locations to handle all resellers who would obtain CICs if the FCC adopted [the proposed mandatory CIC requirement]. In addition, GTENS cannot add any new CICs to its switches in Hawaii because international operations have already utilized the total capacity.
>
> Upgrades to accommodate new CICs in the quantities necessary to support all resellers may not be possible with some switch types. Even where upgrades are possible to accommodate more CICs, significant memory enhancements could be required. A LEC's costs to upgrade its switches would be substantial. In addition to the costs to upgrade hardware and software, there are also labor costs to update the switch databases to activate new CIC codes. These labor costs can be significant since the average CIC add takes two person-hours per code per office for GTE.[34]

While these limitations will create direct burdens for small LECs, they potentially may adversely impact ASCENT's interexchange carriers members as well. Unless the Commission requires switch upgrades or replacements so as to increase CIC capacity, non-facilities-based resale carriers with new CICs may well be shut out of selected markets as a result of capacity limitations.

5. The **Mandatory CIC Requirement Proposed In the *Public Notice* Would Contribute to CIC Exhaustion**

[34] Comments of GTE at 6 (filed March 18, 19990.

The mandatory CIC requirement proposed in the *Public Notice* will certainly hasten the exhaustion of 4-digit CICs, requiring the premature expansion of CICs from four to five with the substantial expenditure of carrier resources attendant thereto. The FGD CIC format provides for a pool of 10,000 codes. By the end of 1999, more than 2,000 of the available CICs had been assigned.[35] Absent implementation of a mandatory CIC requirement, the North American Numbering Council ("NANC") had projected a "useful life of 22 years" for 4-digit CICs, recommending that the process of expanding to a 5-digit CIC be initiated "when the four-digit CIC resource is estimated to be within five years of exhaust."[36] That timetable – which was based on a linear distribution rate of several hundred CICs annually -- will certainly be accelerated by the immediate assignment of thousands of CICs to non-facilities-based resale carriers.

ASCENT estimates that there are more than a thousand carriers presently providing toll service of which at least half are non-facilities-based. If the mandatory CIC requirement proposed in the *Public Notice* were to be implemented, each of these entities would require not just one CIC, but one CIC for each of the network service providers whose service it uses. Thus, most of the non-facilities-based resale carriers would require at least two CICs, with many needing three, four, five or even six to continue operating as presently constituted. Hence, the existing supply of 4-digit CICs will in all likelihood be quickly reduced by 30 to 40 percent.

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[35] Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Trends in Telephone Service at Table 10.1.

[36] *Report of CIC Ad Hoc Working Group at 6.*

ASCENT is certainly not alone in this assessment. Ameritech has expressed concern that "assigning CICs to switchless resellers would hasten the exhaustion of 4-digit CICs."[37] AT&T concurs that "[o]pening CIC assignment to switchless resellers would pose a serious threat of rapidly exhausting those numbering resources."[38] SBC adds that "[a]ny requirement that every reseller have its own CIC will hasten the day that the telephone industry will incur the additional expense to allow for the expansion to 5-digit CICs."[39] WorldCom agrees that a mandatory CIC requirement would "speed the exhaust of CICs."[40] And GST Telecom Inc. ("GST") concludes that "it is likely that there would be a shortage of CICs if each switchless [reseller] received its own CIC."[41]

Premature CIC exhaustion would of course prove problematic for the industry as a whole. As described by Ameritech in its initial comments addressing the mandatory CIC proposal:

> The industry has just completed an arduous and expensive transition from 3-digit to 4-digit CICs. That transition took years to complete and required expensive modifications in provisioning systems, billing systems, switch software, and customer premises equipment. It also required corresponding changes in carrier access codes (CACs), which surely resulted in considerable customer confusion despite costly customer education efforts. Given the enormous expense and customer dislocation associated with CIC conversions, Ameritech believes that CICs should be assigned to switchless resellers only as a last resort -- *i.e.*, only if alternative measures are clearly inadequate in addressing the slamming problems uniquely associated with switchless resellers. That is not the case here.[42]

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37 Comments of Ameritech at 8 (filed March 18, 1999).

38 Comments of AT&T at 36 (filed March 18, 1999).

39 Comments of SBC at 5 (filed March 18, 1999).

40 Reply Comments of WorldCom at 19 (filed May 3, 1999).

41 Comments of GST at 15.

42 Comments of Ameritech at 8 (filed March 18, 1999).

6. The Mandatory CIC Requirement Proposed In the *Public Notice* Flies in the Face of Express Congressional Mandates

In the Telecommunications Act of 1996 ("Telecommunications Act"), a persistent theme was the elimination of barriers to market entry, particularly market entry by small businesses. Thus, for example, Congress directed the Commission in Section 257 "to identify and eliminate market entry barriers for small businesses in the provision and ownership of telecommunications and information services, and in the provision of parts or services to providers of telecommunications services and information services."[43] In Section 253, Congress provided the Commission with broad power to preempt any state or local statute, regulation or requirement which "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."[44] And in Section 251, Congress endorsed a local market entry vehicle – *i.e.*, resale – which had traditionally been the means of market entry utilized by small businesses with limited financial means.[45] As the Commission has recognized, "[r]esale will be an important entry strategy . . . for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks."[46]

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[43] 47 U.S.C. § 257.

[44] 47 U.S.C. § 253.

[45] 47 U.S.C. § 251(c)(4).

[46] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 32 (1996) (subsequent history omitted).

Against this backdrop, the mandatory CIC proposal sticks out like a sore thumb. Certainly, an agency operating under the twin mandates to identify and eliminate market entry barriers for "entrepreneurs and other small businesses" and to prevent states and localities from impeding the ability of "any entity to provide any interstate or intrastate telecommunications service" should not be enacting requirements which will thin the already limited ranks of small telecommunications businesses."[47] As the Commission has recognized, market entry prohibitions need not be direct to be unlawful, they need only have the effect of prohibiting market entry. Moreover, the Commission has further conceded that the imposition of "a financial burden that has the effect of prohibiting certain entities from providing telecommunications services" is unlawful.[48] As explained by the Commission, regulations whose "economic impact . . . [is] great enough to have the effect of prohibiting entities subject to these requirements from providing [a telecommunications service] run afoul of pro-competitive Congressional mandates.[49] The economic impact of a mandatory CIC requirement is clearly sufficient to prevent new entry into and/or continued participation in the interexchange market by small businesses.

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[47] As the Commission has acknowledged, "small businesses represent only a small portion of the businesses in telecommunications." Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses (Report), 12 FCC Rcd 16802 at ¶ 5.

[48] Petitions for Declaratory Ruling and/or Preemption of Certain Provisions of the Texas Public Utility Regulatory Act of 1995, 13 FCC Rcd. 3460, ¶ 13 (1997) (subsequent history omitted).

[49] Id. at ¶ 81.

Certainly, as with state and local requirements as to which Commission preemption is sought, an analysis must be undertaken to determine whether an otherwise offending regulation is "necessary" to achieve important public purposes. Here, it is virtually impossible to make a case that the mandatory CIC requirement proposed in the Public Notice is "necessary" to reduce instances of slamming. First, the safeguards adopted by the Commission implementing the prohibitions against unauthorized carrier changes embodied in Section 258 of the Telecommunications Act have yet to take effect and, hence, it cannot be known whether any additional action is required.[50] Second, as ASCENT has demonstrated (and other parties have concurred[51]), soft slams constitute a relatively small portion of unauthorized carrier changes. Third, there are alternative remedies which would likely be far more effective in addressing whatever soft slamming problem may exist.[52] As ASCENT has demonstrated, targeted enforcement actions against a relatively few carriers would address the bulk of the unauthorized carrier changes which arguably are soft slams. Certainly, an action is not

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[50] 47 U.S.C. § 258; Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996 (First Order on Reconsideration), CC Docket No. 94-129, FCC 00-135 (May 3, 2000).

[51] As previously noted, WorldCom has recognized that there is "no evidence . . . to suggest that 'soft slams' are a problem of such frequency that they require a specific regulatory solution." Comments of WorldCom at 16 (filed March 18, 1999).

[52] ASCENT does not view alternatives which incorporate the mandatory CIC requirement as viable options. For example, it has been suggested that LECs and interexchange network service providers be required to deploy CICs for non-facilities-based resale carriers without charge. ASCENT submits that there is no effective way to police such a requirement. Costs will be passed through to non-facilities-based providers in one form or another, if not in direct charges than through increased per-minute rates. Likewise, creating exceptions from the mandatory CIC requirement would address only part of the problem. For example, it has been suggested that the mandatory CIC requirement be applied only to non-facilities-based carriers that utilize LEC billing. Soft slams, the argument goes, are more pernicious in a LEC-billed environment, as opposed to instances in which the non-facilities-based carrier issues its own invoices, because an unauthorized carrier change would be far more visible (and hence more quickly remedied) in the latter circumstance, while in a LEC-billed environment, a slam might go undetected for a greater period of time. While ASCENT would certainly not oppose the creation of exemptions which would free some percentage of non-facilities-based resale carriers of the burdens attendant to a mandatory CIC requirement, it does not view such exceptions as an acceptable compromise.

necessary if it is redundant, addresses a problem not demonstrated to be of significance, or constitutes a less effective remedy than readily available alternatives, particularly if use of the alternatives would not generate the adverse consequences of the proposed action.

II.

CONCLUSION

By reason of the foregoing, the Association of Communications Enterprises urges the Commission in the strongest possible terms to table for good the mandatory CIC requirement proposed in the *Public Notice*.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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