

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

In the Matter of

)	
2000 Biennial Regulatory Review)	
Review of Policies and Rules Concerning)	CC Docket No. 00-257
Unauthorized Changes of Consumers)	
Long Distance Carriers)	
)	
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 ON BEHALF OF IDT CORPORATION

Pursuant to the Federal Communications Commission’s (“Commission”) January 18, 2001 Third Further Notice of Proposed Rulemaking,¹ IDT Corporation (“IDT”) submits these comments in reply to the Commission’s proposals to modify its carrier change authorization and verification rules when a telecommunications carrier sells or transfers its subscriber base to another carrier.

As explained in greater detail below, there is no need for the Commission to “reinvent the wheel” during this proceeding. The Commission has dealt with numerous waiver petitions every month² and a review of the Commission’s actions reveals that these waiver petitions are generally resolved in a consistent manner, ensuring adequate

¹ Third Further Notice of Proposed Rulemaking, I/M/O 2000 Biennial Regulatory Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, CC Docket No. 00-257; 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, FCC 00-451 (January 18, 2001).

² *Id.* at ¶ 3.

subscriber notice and protection. The challenge for the Commission in this proceeding is to examine these well-established practices to determine whether they have protected subscribers and/or carriers in the past and are necessary going forward. Absent such a determination, the Commission should not codify such actions simply to adhere to prior practice. Similarly, the Commission should only implement new practices if it has concluded that its previous practices have proven inadequate to the needs of subscribers and/or carriers.

Whether 47 C.F.R. Sec. 64.1120 should be modified to eliminate the need for authorization and verification of a carrier to effect any sale or transfer of a subscriber base.

IDT agrees with the Commission's proposal to modify 47 C.F.R. Sec. 64.1120 to eliminate the need for authorization and verification of a carrier to effect any sale or transfer of a subscriber base. Many of the alternative means of informing subscribers proposed by the Commission, if implemented, will ensure the same level of consumer protection while providing greater flexibility for carriers. Moreover, the Commission's proposal, if implemented, will reduce the burden placed on the Commission to respond to the many waiver petitions it receives. All parties to this proceeding – subscribers, carriers and the Commission stand to benefit from this proposal. Therefore, it should be implemented, subject to consideration of the issues raised below.

Whether to require the acquiring carrier to provide each subscriber with a second written notice reiterating required information after the transfer has occurred.

In granting previous waivers of the subscriber carrier selection change provisions, the Commission has generally approved carrier plans to send two notices: a first to inform affected customers of the pending transaction and a second letter to inform customers once the carrier change has been made. Nevertheless, we urge the Commission to consider whether this established principle is a meaningful one and should therefore be retained.

As the Commission has required in past proceedings, a subscriber should receive notice prior to the close of a transaction for a carrier change. In this proceeding, the Commission has chosen to require the notice not later than 30 days prior to the transaction's close, a time period IDT does not oppose. Presuming this notice period is codified, a subscriber will receive a significant period of time to switch carriers (if he so chooses), and know the starting date for the acquiring carrier. Obliging the acquiring carrier to submit a nearly identical, additional notice once the transaction has been completed and the new service provider has begun seems to provide no tangible benefit to subscribers while requiring considerable cost and inconvenience for the acquiring carrier.

IDT understands that the Commission has made this proposal to further ensure that subscribers make an informed decision to receive service by the acquiring carrier. However, a second notice does not secure this goal: the notice will not be received until service by the acquiring carrier has already begun. Moreover, subscribers will receive a bill from the acquiring carrier within 30 days of the starting date, further informing subscribers that a carrier change has been made, at rates and terms set forth in the initial

notice. For the reasons stated above, the recommendation to provide a second notice after the transfer has occurred does not further the Commission's goal of consumer protection, while it places a high regulatory burden on carriers. Therefore, the Commission should decline to codify this provision in the course of this proceeding.

Whether 30 days is the appropriate length of time for notifying subscribers and/or certifying compliance with Commission requirements.

It is consistent with many of the Commission's previous waiver orders to provide 30 days notice before subscribers are switched to the acquiring carrier. IDT asserts that 30 days is more than sufficient time for subscribers to contact their present carrier and/or acquiring regarding the pending changes to their service provider. Moreover, it provides subscribers more than sufficient time prior to acquisition to switch their service to a third-party carrier, if they so choose. Since the 30-day period has been used previously and provides considerable subscriber notice in a commercially reasonable manner, IDT does not oppose this recommended period.

However, IDT recommends the Commission take notice that transactions of the type addressed in this proceeding often arise in times of crisis and account for these special circumstances accordingly. Such crises include but are not limited to instances where the original carrier may have: (1) lost regulatory authority to provide service; (2) declared bankruptcy; or (3) contractual or personnel problems which prevent service from being provided. In such cases, 30 days notice may be too long to ensure a seamless transition to the acquiring carrier. Therefore, if the Commission adopts any notice provision, IDT recommends the Commission also adopt a provision granting a carrier the right to demonstrate (prior or subsequent to the transfer) that special circumstances prevented the carrier from meeting the notice provision. A carrier would be absolved of a

violation of the notice requirement if it demonstrated: (1) particular facts prevented the notice provision from being met; (2) a good faith effort to meet the notice provision; and (3) consumers would have been harmed if the notice provision were met. This absolution strikes a reasonable balance between the Commission's proposed notice requirement and marketplace realities.

Since the Commission has proposed eliminating its petition for waiver requirement, it is not unreasonable for carriers to simply inform the Commission that a notice of a pending acquisition has been made to a carrier's subscribers. For the reasons stated above, IDT does not oppose the Commission's proposal to demonstrate compliance with the Commission's notice requirements not later than 30 days prior to the transfer as it ensures the Commission sufficient notice prior to the consummation of the transfer. However, as detailed in the preceding paragraph, IDT recommends the Commission acknowledge grant absolution of a violation of the notice requirement where the aforementioned special circumstances arise.

Whether such certification with the Commission should include copies of sample notification letters.

While IDT does not oppose the proposal that carriers be required to file with the Commission notice of a pending acquisition not later than 30 days prior to the acquisition, we do not agree that this notice necessarily be comprised of sample notification letters. Carriers may mail different notification letters to subscribers (based on different plans that may be available to the individual subscriber, etc.). As a result, providing the Commission with a sample of each different notification letter may prove onerous, while providing samples of only some types of notifications may unnecessarily raise concern over those notices not presented to the Commission. The most efficient

way to resolve this issue is to have the acquiring carrier file with the Commission a verified statement that all information required by the Commission appears on all notices. A carrier could still append sample notices to its filing, but should be under no obligation to do so.

Whether notice requirements should differ depending upon the type of telecommunications service being provided, such as local, intraLATA toll or interLATA toll service.

This proposal is inconsistent with previous Commission Waiver Orders and, as such, is unnecessary in this proceeding. Additionally, Section 258 does not differentiate notice provisions based on the type of telecommunications service provided. Therefore, IDT asserts that it is unwise and unnecessary to create such distinctions in the course of this proceeding. Moreover, many carriers may provide more than one type of service to a customer. By implementing different notice requirements depending on the service provided, carriers would become obliged to send to subscribers receiving multiple services either multiple notices or notices that contain potentially confusing or contradictory information. The notice process should be simple yet informative. The Commission should refrain from imposing different standards or obligations where such distinctions serve to confuse rather than enlighten.

Whether notice requirements should differ depending upon the size of the carriers involved.

This proposal is inconsistent with previous Commission Waiver Orders and, as such, is unnecessary in this proceeding. Additionally, neither Section 258 nor any other relevant statute places different notice or customer service requirements on a carrier based on the carrier's "size." Therefore, it is unwise and unnecessary to implement such differential treatment in this proceeding. Additionally, it would be patently unfair to

provide one set of subscribers with less protection than another, simply because of the “size” of their respective carriers. Moreover, it is unclear how “size” would be determined: by a carrier’s revenues, its number of subscribers or some other means of measure. Furthermore, the Commission has not set forth any basis for determining which type of carrier (*i.e.*, a “large,” “medium” or “small” one) should be excused of certain notice requirements and why such relaxation should be granted. Since this proceeding involves the relaxation of rules that apply to all carriers equally, the Commission articulated no reason to distinguish between carriers at this juncture. Ultimately, the result of this proceeding should be to ensure adequate, uniform notice is provided when a carrier sells or transfers its subscriber base to another carrier, regardless of the carrier’s size.

Whether the acquiring carrier should be required to continue to charge affected subscribers the same rates as those charged by the original carrier for a specified period after the transfer.

This proposal is inconsistent with previous Commission Waiver Orders and is completely unnecessary in this proceeding. Upon sufficient notice and the completion of the subscriber transfer, the acquiring carrier should not be required to charge the same rates as those charged by the original carrier for several reasons. First, instituting any such obligation prevents the acquiring carrier from branding its own service: providing the rates and terms enjoyed by its other subscribers. Second, such a requirement may, in fact, oblige the acquiring carrier to charge subscribers more than they would otherwise pay under the available terms and conditions of the acquiring carrier.³ Third, this requirement would compel the acquiring carrier to institute calling plans and other services for a potentially infinitesimal percentage of its total number of subscribers. The impact this may have on network modifications, regulatory obligations (such as tariffing such new plans and services) could be so great as to prevent carriers from engaging in certain carrier changes. Ultimately, such an obligation should be rejected because is contrary to the very purpose of this proceeding: to provide adequate notice and permit the subscriber to determine its carrier. After “adequate notice”— as the Commission defines that term in this proceeding – is given, it must be presumed that the carrier has acted in good faith and the subscriber has made an informed choice. Where a subscriber has received adequate notice to make her decision, it is neither the role nor right of the Commission or the carrier to constrain that subscriber’s decision.

³ In fact, where a subscriber agrees to receive service from a carrier only to find that he is being charged the higher rates of his previous carrier, the customer may allege that he has been “crammed.”

Whether carriers should commit to handling customer complaints regarding the service of the original carrier to ensure that transferred subscribers are not deprived of recourse after the transfer.

This proposal is inconsistent with previous Commission Waiver Orders and is unnecessary in this proceeding for several reasons. First, the proposal's premise – that subscribers will be deprived of recourse for the actions of the original carrier upon the consummation of the transfer – is baseless. The original carrier is obliged to act in accordance with applicable state and/or federal law during the period of service. The original carrier is not absolved of any improprieties simply because its subscriber has transferred to another carrier. Second, if the Commission required the acquiring carrier to handle and resolve all the original carrier's outstanding complaints, it would force acquiring carriers to estimate the potential liability undertaken and then negotiate terms to protect against potential loss. This places an additional burden upon the acquiring carrier and also introduces an element of risk that may be so great as to prevent the acquisition. Moreover, acquiring carriers may not have immediate access to the original carrier's customer records and other necessary information, thereby creating the distinct possibility that the acquiring carrier may be unable to adequately respond to complaints about service prior to the acquisition. Ultimately, whether the acquiring carrier is bound to resolve customer service complaints of the original carrier is best left to negotiations between the two carriers. Through negotiation – not mandate – the carriers can address this issue and ensure that the appropriate carrier is legally and contractually bound to resolve customer service complaints of the original carrier.

Whether the Commission should adopt specific measures to protect consumers from unscrupulous carriers that may attempt to sell their customer bases to evade the repercussions of Commission enforcement actions.

In the absence of more specific examples or proposals, it is unclear what the purpose or execution of such “specific measures” should be. Ordinarily, when a carrier agrees to transfer or sell subscribers to another, the carriers contractually agree how they shall handle pending and/or future claims made by subscribers, state or Federal regulatory agencies or other parties. Therefore, it is unclear how any additional measures would protect subscribers sold or transferred under a streamlined subscriber transfer process. Moreover, the Commission is not stripped of its authority to review the actions of a carrier that may have violated the Commission’s rules simply because that carrier transfers some or all of its subscribers to another carrier. Ultimately, because the Commission has not demonstrated a need to adopt specific measures to protect consumers from unscrupulous carriers that may attempt to sell their customer bases to evade an enforcement action, IDT declines to recommend the Commission take such action in this proceeding.

