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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
2000 Biennial Regulatory Review)	CC Docket No. <u>00-257</u>
Review of Policies and Rules Concerning)	
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 OF SBC COMMUNICATIONS, INC.

SBC Communications, Inc (SBC), in response to the Third Further Notice of Proposed Rulemaking¹ (“Notice”), generally supports the Commission’s initiative to amend its carrier change authorization and verification rules. SBC, however, requests that the Commission restrict this rulemaking to “routine” sales or transfers of subscriber bases. In addition, SBC strongly urges the Commission to seek additional comment regarding modification of its authorization and verification rules in instances where competitive local exchange carriers (CLECs) exit a market or cease providing local exchange service altogether or to a specific group of customers, resulting in the transfer of subscriber bases to the underlying facilities-based carrier.

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¹ In the Matter of 2000 Biennial Regulatory Review – Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, *Third Further Notice of Proposed Rulemaking*, CC Docket No. 00-257, FCC 00-451 (rel. Jan. 18, 2001).

I. The Commission Should Define “Routine” Sales or Transfers Subject to this Proceeding.

SBC strongly recommends that the Commission define “routine” sales or transfers and limit this proceeding to such “routine” sales or transfers. SBC does not propose a specific definition, but requests that the Commission restrict the definition of “routine” sales or transfers to transactions consummated as a result of bilateral negotiations. While the *Notice* appears limited to such transactions,² it is imperative that the Commission clarify the sales or transfers subject to any rules adopted in this proceeding. This is particularly critical in light of the increasing number of instances where CLECs exit or cease providing local exchange services in a market, resulting in default transfers to the underlying facilities-based carrier. As discussed in detail in Section IV, such default transfers raise a host of issues, which should be addressed in a subsequent rulemaking.

II. SBC Supports Expedited Procedures for Handling the Routine Sale or Transfer of Subscriber Bases.

SBC fully supports the Commission’s proposal to modify its carrier change authorization and verification rules in instances involving the routine sale or transfer of subscriber bases. For practical reasons, carriers seeking to engage in such routine business transactions must seek a waiver of these rules because it is impractical, if not impossible, for carriers to secure authorization and verification from each subscriber prior to the transfer date. As a result, the Commission has been inundated with waiver petitions, the timely disposition of which has proven administratively burdensome for Commission staff. Continued reliance on this waiver process, therefore, is not in the public interest. Carriers are forced to await disposition of the

² Notice ¶6 n.9.

petition prior to initiating the transfer, which increases the potential for service disruptions. Streamlining these rules, however, will facilitate the seamless transition of customers from one carrier to another, reduce administrative burdens on Commission staff, and allow carriers to preserve resources expended to prepare and file waiver petitions.

As detailed below, SBC supports a two-step process for customer notification of a change in service providers due to a sale or transfer. This will ensure that affected consumers are protected from fraudulent activities.

III. SBC Supports Eliminating the Requirement that Acquiring Carriers Obtain Carrier Change Authorization and Verification Prior to Consummating any Routine Sale or Transfer of a Subscriber Base.

A. Notification requirements

SBC fully supports the Commission's proposal to eliminate the need for acquiring carriers to obtain subscriber authorization and verification prior to the routine sale or transfer of a subscriber base. SBC agrees that affected consumers should be given a minimum of 30 days notice prior to the closing of a sale or transfer transaction. SBC, however, supports a two-step process to notify the affected customers of the transfer. First, the selling or transferring carrier, as opposed to the acquiring carrier, should provide the pre-sale/transfer notification. Second, after the sale or transfer is consummated, the acquiring carrier should notify the transferred customers that the transfer is complete and reiterate much of the information set forth in the pre-transfer letter. The Commission has approved numerous waiver petitions proposing this two-step notification process, finding that such notification ensured that consumers' interests were protected.³

³ See In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996; Qwest Corp. et al. Petition for Waiver, CC Docket No. 94-129, DA 00-2892 (rel. Dec. 22, 2000); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996; Bell Atlantic Communications, Inc. et al Petition for Waiver, CC Docket No. 94-129, DA 00-2816 (rel. Dec. 12, 2000); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996; United-KUC, Inc. Petition for Waiver, CC Docket No. 94-129, DA 00-2735 (rel. Dec. 05, 2000); In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996; Qwest Corp. Sully Buttes Telephone Cooperative Petition for Waiver. 15 FCC Rcd 17494 (2000).

SBC strongly supports requiring the selling or transferring party to provide affected customers advanced notice of the transfer. First, the selling or transferring party has the relationship with the subscriber. In many instances, subscribers will have no familiarity with the acquiring carrier. Subscribers who receive notification letters from unfamiliar carriers may disregard them as unwanted solicitations. Second, where customers have exclusive contracts with the selling/transferring carrier, notification by the acquiring carrier could promote confusion, particularly if the selling carrier has yet to notify the customer that the contract is terminating. Third, the selling or transferring carrier already has the necessary subscriber information at its disposal and therefore is in the best position to provide pre-sale/transfer notice with minimal use of time and resources. Accordingly, to prevent customer confusion, facilitate customer review of the notice, and safeguard carrier resources, the best approach is to require the selling/transferring carrier to provide the pre-transfer notice.

As for the contents of the pre-transfer letter, SBC generally supports the Commission's proposed requirements. Specifically, the pre-transfer notice should include the following: (1) who the acquiring carrier is; (2) that the acquiring carrier will be the subscriber's new provider of telecommunications service; (3) that the subscriber has the right to select a different preferred provider; and (4) that no carrier change charges will be imposed as a result of the transaction. SBC opposes any requirement that the pre-transfer letter provide detailed information regarding the acquiring carrier's rates, terms and conditions. The selling carrier may not have this information and, further, has no control over the rates of the acquiring carrier, which could change prior to the transfer date. Such detailed information should be included in the post-transfer letter sent by the acquiring carrier to affected customers actually transferred to the acquiring carrier. SBC, however, does support notifying consumers that their rates may change as a result of the transfer or sale, and when the acquiring carrier's rates will take effect. Further, the notice should include contact information for the acquiring carrier for questions regarding rates, terms and conditions. The foregoing is more than adequate to ensure that consumers are informed of any rate changes.

Once the sale or transfer is consummated, the acquiring carrier should be required to send a post-transfer letter to the transferred customers within 30 days of the transfer. This notice, at minimum, should (1) confirm that the transfer has occurred and that the acquiring carrier is the current provider, (2) inform consumers of their right to choose another provider, (3) provide the acquiring carrier's rates, terms and conditions, and (4) include contact information for questions regarding the transition or service. Taken together, this two-step process will adequately protect the rights of transferred customers.

B. Other proposals to minimize regulatory burdens

SBC opposes requiring carriers to notify the Commission of a sale or transfer 30 days before consummation of the sale or requiring carriers to certify compliance with Commission rules. Carriers have every incentive to provide consumers advance notice of subscriber transfers to ensure seamless transition of services and thwart complaints. This incentive is heightened given the Commission's vigorous slamming liability rules. Further, the thrust of this rulemaking is to expedite the procedures for handling the sale or transfer of a subscriber base. Requiring carriers to prepare and file notifications with the Commission undermines this streamlining effort because carriers would have to expend resources to prepare and file these notifications –just as they did for the waiver petitions-- and Commission staff would have to review them. To the extent consumers complain that they have not received adequate notification, the Commission can revisit whether to impose additional carrier notification requirements.

SBC opposes the adoption of different notice requirements depending on the service provided or the size of the carrier. The recommended notice requirements are relevant for any service offered and should apply equally to all carriers. SBC does not support a requirement that carriers provide a toll-free customer service number, but supports a requirement that carriers provide sufficient carrier contact information to allow consumers to address any service concerns. SBC also opposes any requirement that acquiring carriers continue to charge affected customers the same rates charged by the transferring carrier for a specified period of time. It would be inappropriate public policy to force acquiring carriers to charge other carriers' rates

unless the acquiring carrier has a contractual obligation to do so. Such a requirement also would force acquiring carriers to develop special programming, the costs for which would be borne by consumers. Moreover, the pre-transfer requirements are sufficient to ensure that subscribers are aware of potential rate changes. Carriers should have the flexibility to decide whether to charge different rates than the transferring carrier, subject to the two-step notification process. Finally, SBC opposes a requirement that carriers commit to handling complaints regarding the service of the original carrier. Again, acquiring carriers have every incentive to resolve complaints with customers to retain their business. Transferring and acquiring carriers should have the flexibility to devise the most appropriate method for handling and resolving customer complaints.

IV. The Commission Should Address Non-Routine Transfers of Subscriber Bases Separately.

In most instances, the transfer of subscriber bases will involve routine business transactions between carriers. However, there are instances where CLECs exit a market for business or financial reasons,⁴ or cease providing local exchange services altogether or for a specific group of customers, resulting in the transfer of subscribers to the underlying facilities-based carrier. While the *Notice* appears restricted to routine sale or transfer transactions,⁵ SBC is concerned that the Commission may apply the rules adopted in this proceeding to all instances involving the transfer of a subscriber base, including those where CLECs exit a market, often times without any notice, leaving the underlying facilities-based provider or the certified provider of last resort as the default carrier.

SBC strongly urges the Commission to address default transfers separately from routine sales or transfers. Default transfers involve a host of issues not raised in the *Notice*. For example, when should a CLEC planning to exit a market notify the underlying facilities-based

⁴ SBC has experienced numerous instances throughout its regions where resellers and facilities-based data LECs have left a market with no notice to SBC or filed bankruptcy. Each time, SBC has had to scramble to provide services to these abandoned customers.

⁵ *Notice* ¶6 n.9.

carrier? CLECs filing for bankruptcy likely would have a difficult time adhering to any notification requirement due to limited resources and the pendency of the bankruptcy proceeding. What is the default carrier's obligation to contact affected subscribers? Unlike routine sales or transfers of subscriber bases, the exiting CLEC and default carrier have not jointly decided to transfer the subscriber base. The transfer to the default carrier occurs solely because the default carrier is the underlying facilities-based provider. Default carriers, therefore, should not be forced to assume pre-transfer responsibilities rightly borne by exiting CLECs.

What if a CLEC exits with no notice to the underlying facilities-based provider or end-users? Forcing default carriers to comply with notification requirements could prove onerous to default carriers left scrambling to provide services to affected end-users. What is the default carrier's obligation to provide vertical services? Does the default carrier have to make "as is" conversions or only provide a dial tone? It may be impractical, if not impossible, for a default carrier to determine a subscriber's vertical services. For example, default carriers cannot automatically transfer an unbundled network element or facilities-provisioned end user without the end user contacting the LEC. It would be inappropriate to require default carriers to make immediate "as is" conversions. What is the default carrier's obligation to take subscribers that refuse to settle outstanding bills with the default carrier or that do not meet the default carrier's qualification standards. SBC strongly believes that default carriers should have flexibility in determining whether to accept subscribers with delinquent bills and, in any event, would appreciate an opportunity to address such an issue.

The foregoing are only examples of the many issues surrounding default transfers. It is imperative that the Commission seek comment on these and other related issues prior to prescribing rules impacting carriers involved in default transfers.

V. Conclusion

For the foregoing reasons, SBC requests that the Commission eliminate its requirement that acquiring carriers comply with its carrier change authorization and verification rules to effect a routine sale or transfer of a subscriber base. The Commission should define "routine"

sales or transfers and clarify that this proceeding is limited to such “routine” sales or transfers. Further, the Commission should adopt the two-step notification process detailed herein, which will ensure the protection of consumer interests.

While the modifications discussed herein should streamline procedures for routine sales or transfers of subscriber bases, they will not resolve the increasing number of waiver petitions involving default transfers. SBC therefore urges the Commission to consider the myriad issues surrounding default transfers raised in these comments and seek further comment on appropriate procedures for handling default transfers.

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