

that default transfers raise a host of issues not examined in the *Notice*, thus warranting further consideration in a subsequent proceeding.

I. The Record Demonstrates that the Commission must Clarify the Sales or Transfers of Subscriber Bases Subject to this Proceeding.

The record demonstrates that some carriers view this proceeding as applicable to any transfer of subscriber bases, including default transfers.¹ Such default transfers would include instances where a CLEC (1) goes out of business and exits a market, often without notice, (2) ceases to provide local exchange services to a specific group of customers, (3) declares bankruptcy, or (4) loses regulatory authority to provide service. None of the foregoing are common or routine business transactions, nor the product of bilateral negotiations. Rather, they are the result of unilateral action on the part of a CLEC, leaving the underlying facilities-based provider or the certified provider of last resort as the default carrier.

The Commission should not include default transfers in this rulemaking, but rather address such transfers in a subsequent proceeding. As detailed in SBC's initial comments, default transfers raise a myriad of issues² not considered in the *Notice*. Indeed, there are a host of issues not raised in SBC's initial comments that must be examined prior to the adoption of any rules governing default transfers.³ Initiating a

¹ IDT Corporation Comments at 4; Qwest Comments at 3; Verizon Comments at 2.

² See SBC Comments at 6-7. SBC discusses a host of issues the Commission should examine prior to prescribing any rules impacting carriers involved in default transfers.

³ For example, the Commission must address whether the default carrier has to absorb the installation costs and other charges associated with default transfers. SBC would strongly disagree with such a requirement. Default carriers become the service provider out of necessity in most instances. They should not have to in essence pay a penalty for assuming this role.

further notice to consider these issues would ensure that commenters fully recognize the many issues surrounding default transfers, and have an opportunity to comment on these specific issues.

II. The record demonstrates that a Two-Step Notification Process is Unnecessary.

In its initial comments, SBC supported adoption of a two-step process for customer notification of a change in service providers due to a routine sale or transfer. After reviewing the record, SBC is convinced that a pre-transfer notification requirement is sufficient to inform consumers of an impending transfer. Most commenters agree that a 30-day pre-transfer notification requirement should be adopted and that the notice should (1) advise affected subscribers who the acquiring carrier is; (2) provide some information pertaining to the rates, terms and conditions of the acquiring carrier; (3) address carrier change charges; and (4) advise subscribers of their right to select an alternative provider. SBC agrees with commenters that this advance notification will provide affected subscribers the requisite information to determine whether to remain with the acquiring carrier or switch providers.

The record demonstrates, and SBC now agrees, that there is no justification for adopting a post-transfer notification requirement. First, the pre-transfer letter and post-transfer letter would provide the same information, thus rendering the post-transfer letter duplicative and unnecessary. Second, as Sprint notes,⁴ the Commission's existing Truth-In-Billing rules require carriers to notify customers of a carrier change in their first bill.⁵ Further the rules require carriers to provide a toll-free number where customers may

⁴ Sprint Comments at 3.

place inquiries about any charges contained on their bill.⁶ Thus, if any affected subscribers failed to take notice of the pre-transfer letter, their first bill would inform them of the change and the associated charges. Obviously, these subscribers would have the right to switch to a new provider at any time.

Third, as several carriers point out, carriers typically send “welcome” packages or letters to their new customers within days of a carrier change introducing themselves and in many instances providing information regarding their rates and services.⁷ SBC agrees with ASCENT that an acquiring carrier surely will initiate contact with new customers as part of its retention strategy. A formal post-transfer notification requirement, therefore, would only prove redundant and a waste of finite resources. Fourth, acquiring carriers should be able to treat all new customers, including customers acquired as a result of sale or transfer of a subscriber base, in the same manner.

III. The Selling or Transferring Carrier Should Provide the Pre-transfer Notification.

Commenters did not address whether it is more appropriate to require the selling or transferring carrier to provide the pre-transfer notice. Instead, most commenters simply agreed with the Commission’s tentative proposal to require the acquiring carrier to send the pre-transfer letter. Because the sale or transfer transactions subject this proceeding should be the product of bilateral negotiations, the transferor should have some responsibility in notifying affected subscribers of the transfer process. As detailed in SBC’s comments, the more reasoned and practical approach would be to require the

⁵ 47 C.F.R. § 64.2001(a).

⁶ 47 C.F.R. § 64.2001(d).

selling or transferring carrier to provide advance notice to affected subscribers. The transferor has the established relationship with the affected subscribers, has the necessary subscriber information at its disposal, and has the best chance of getting subscribers to read the pre-transfer notice. Further, advance notification by the selling or transferring carrier should eliminate any potential for customer confusion and require minimal use of time and resources.

Moreover, the acquiring carrier is already obligated to notify affected subscribers of the carrier change pursuant to the Commission's Truth-In-Billing rules.⁸ In addition, as noted above, most carriers send new customers "welcome" packages within days of a carrier change. Acquiring carriers already take sufficient post-transfer measures to protect consumer interests. The selling or transferring party, therefore, should bear the responsibility of providing notice on the front end.

IV. The Record Supports Excluding Detailed Rate, Terms and Conditions Information in the Pre-transfer Notice.

Several commenters, including SBC, oppose any requirement that the pre-transfer notice include detailed information regarding rates, terms and conditions.⁹ The reality is affected subscribers need to know that their rates may change as a result of the transfer, and have sufficient contact information for the acquiring carrier to make inquiries regarding rates, terms and conditions. Once subscribers have this requisite information, they will have everything at their disposal to make an informed decision.

⁷ ASCENT Comments at 3; ITTA Comments at 3; Sprint Comments at 3.

⁸ 47 C.F.R. §§ 64.2001(a)&(d).

⁹ AT&T Comments at 4; ASCENT Comments at 5-6; SBC Comments at 4; Verizon Comments at 2

Moreover, as AT&T notes, carriers generally offer subscribers numerous calling plans and packages. A requirement that the pre-transfer notice include a description of the acquiring carrier's rates, terms and conditions would not prove particularly beneficial because subscribers' rates will vary depending on the combination of services they obtain from the carrier. Rather, a pre-transfer notice requirement directing subscribers to contact the acquiring carrier would be most helpful to subscribers. Subscribers could then make specific inquiries regarding the rates, terms, conditions applicable to a particular service or combination of services.

V. SBC Opposes the Adoption of Different Notification Requirements Based on the Size of the Carrier.

ITTA urges the Commission not to impose additional regulatory requirements on small and mid-size carriers.¹⁰ The Commission should reject this request and apply any notification requirements adopted in this proceeding to all carriers. The purpose of the advance notification requirement is to provide consumers with sufficient notice to enable them to choose their desired telecommunications provider. Subscribers of small, mid-size, and large carriers are equally deserving of such notice. ITTA has not demonstrated that such a requirement is burdensome for small and mid-size carriers or that such a requirement for these carriers would outweigh consumer benefits. Absent the foregoing, it would be against public policy for the Commission to grant ITTA's request.

¹⁰ ITTA Comments at 4.

VI. Conclusion

For the foregoing reasons, the Commission should (1) address all default transfers in a separate rulemaking to allow carriers the opportunity to comment on the myriad of issues surrounding such transfers; (2) reject the two-step notification proposal detailed in SBC's initial comments and instead adopt only a pre-transfer notification requirement; (3) require the selling or transferring carrier to provide the pre-transfer notice given that the acquiring carrier has to comply with notice requirements under the Truth-In-Billing rules; (4) not require carriers to provide detailed information regarding rates, terms and conditions in the pre-transfer letter, but rather require the inclusion of sufficient contact information for the acquiring carrier to enable subscribers to inquire about rates; and (5) deny all requests to adopt differing notification requirements based on the size of the carrier.

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CERTIFICATE OF SERVICE

I, Loretia Hill, do hereby certify that on this 1st day of March 2001, a copy of the foregoing "Reply Comments" was served by U.S. first class mail, postage paid, to the parties listed on the attached sheets.

A handwritten signature in cursive script, appearing to read "Loretia Hill", written over a horizontal line.

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