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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	RM-10131
	)	
Petition for Rulemaking Regarding	)	CCB/CPD No. 01-12
Presubscribed Interexchange Carrier Charges	)	
	)	

WORLDCOM'S COMMENTS IN SUPPORT OF COMPTEL'S PETITION

Pursuant to the Federal Communications Commission's ("Commission") *Public Notice* released on May 25, 2001 (DA 01-1299), WorldCom, Inc. ("WorldCom") hereby submits its comments in support of Comptel's Petition for Rulemaking.

INTRODUCTION

WorldCom wholeheartedly supports CompTel's petition. Long distance consumers have been overpaying hundreds of millions of dollars a year to exercise their right to choose a new provider of service.[1] The Commission must require the local monopolies to reduce the inflated fees they charge long distance consumers selecting a new presubsubscribed interexchange carrier (PIC). A number of factors have changed since the Commission established the $5 "safe harbor" for PIC change charges, namely a gaining of experience by the industry, a drastic decline in the actual cost to perform this

[1] *See*, CompTel Press Release, "CompTel Petitions FCC to Force Bell Monopolies to Lower Over-Inflated PIC-Charge," May 16, 2001.

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function, and the passage of the Telecommunications Act of 1996.[2] It is time for the Commission to revisit its policy and ensure that the amount charged reflects the cost to implement the change.

I. BACKGROUND

Incumbent local exchange carriers (ILECs) predominately control the essential databases and systems listing the end-user's PIC, and use those data bases and systems to route customer calls to that carrier. Thus, when a customer decides to change its presubscribed long distance carrier it is typically the ILEC that actually executes the carrier change. A PIC change charge is imposed on end-users pursuant to the local carrier's tariff.[3]

The Commission has historically been concerned with "excessive or unsupported charges" for changing presubscriptions, even at the inception of its regulatory scheme to open interstate telecommunication services to competition. Nevertheless, the Commission found that ILECs should be able to recover some of their costs and needed to be able to do so without having to submit cost support data, which at the time the Commission considered a "difficult challenge" for carriers.[4] Consequently the Commission, in its *1984 Access Charge Order*,[5] established a $5.00 ceiling on what an

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[2] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)("Telecommunications Act of 1996" or "1996 Act".)

[3] As CompTel notes, although the charge is assessed on end-users, it is a common practice in the long distance industry for the newly chosen carrier to partially or fully reimburse the customer for the charge he or she was assessed by the local carrier. Consumers still ultimately pay the charge, if not directly, indirectly through higher long distance rates. *See,* CompTel Petition, p. 5.

[4] *See In the Matter of MCI Telecommunications Corporation v. US West Communications, Inc., et al.,* Memorandum Opinion and Order, FCC 00-178, paras. 11-3 (2000)("MCI Order").

[5] *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422, App. B (rel. Apr. 27, 1984)("1984 Access Charge Order")

incumbent LEC would be permitted to charge for a PIC change absent proper cost support, which it reaffirmed in the *1987 Access Tariff Order*.[6]

At the time of these Commission orders the ILECs employed highly labor-intensive procedures for performing PIC changes. The process has subsequently been automated. In 1997 MCI filed complaints against various ILECs for failing to revise their tariffs to reflect the cost savings they experienced as a result of the automation of the procedure. Based on the record in that proceeding, the Commission concluded that the ILECs had "in fact realized substantial cost savings from the automation of their PIC-change process over the past fifteen years."[7] Nonetheless, the Commission denied MCI's complaint. The Commission found that the *1984 Access Charge Order* had established a $5.00 "safe harbor" which prevents the Commission from finding this amount to be unreasonable in an enforcement proceeding against any particular carrier. The Commission, however, emphasized that nothing in its decision should be construed as discouraging any party from initiating or participating in a rulemaking proceeding to reevaluate the Commission's policy regarding PIC-change charges, noting that the current policy may no longer be appropriate.[8]

In response, CompTel petitioned the Commission to initiate a rulemaking proceeding to revise its policies governing ILEC PIC change charges. Specifically, CompTel requests that the Commission eliminate the $5.00 safe harbor under which ILEC PIC change charges are deemed reasonable, and revise its policies to require that these charges be set at cost.

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[6] *See, MCI Order,* paras.11-3. *See also, Annual 1985 Access Tariff Filings,* Memorandum Opinion and Order, 2 FCC Rcd. 1416, 1445-6 (1987)("1987 Access Tariff Order").
[7] *MCI Order,* para. 9.
[8] *Id.,* paras. 2 and 13-14.

II. THE COMMISSION MUST REVISIT ITS PIC CHANGE CHARGE POLICY AND ENSURE COST-BASED CHARGES

It has been seventeen years since the Commission established its "safe harbor" policy for PIC change charges. As the Commission indicated may be the case, it is time for a review of that policy considering the marked changes in the telecommunications industry.[9] At the time the Commission established the $5.00 safe harbor policy, the regulatory scheme to open the interstate telephone market to competition and the correlating PIC change processes were in their infancy. After nearly two decades the processes are more sophisticated and efficient, and the Commission and carriers are more knowledgeable. CompTel is correct that the $5.00 safe harbor can no longer be justified on the grounds that the development of cost support data is a difficult challenge for carriers. The ILECs have now had over seventeen years of experience in processing PIC changes from which they can develop cost support data. As CompTel points out, the fact that BellSouth and SNET produced detailed cost support data for their tariff filings demonstrates that ILECs are able to produce such data. Hence, a safe harbor is unnecessary.

The cost support data generated by BellSouth and SNET also demonstrate that $5.00 significantly exceeds the cost to execute the switch of the end-user's PIC.[10] This amount was set when interexchange carrier (IXC) submissions of PIC change requests were being faxed or mailed and processed individually, and therefore were extremely labor intensive and time consuming, having often required up to two weeks to

[9] *See MCI Order*, paras. 2 and 14.

complete.[11] The industry has since predominantly deployed fully automated procedures for processing PIC changes. As CompTel described, an industry standard Customer Account Record Exchange (CARE) system is used by both the IXC in submitting the order and the ILEC in validating the order and forwarding it on to the operations support system to update the switch.[12] The Commission, in evaluating the evidence presented in the MCI complaint proceeding, found that these automated systems process PIC changes virtually instantaneously and require little, if any, manual labor from the ILECs.[13] The Commission rejected the ILEC assertion that the cost to process these PIC change orders had not declined as a result of this automation. On the contrary, the Commission found that the ILECs have experienced *substantial* cost reductions from the automation of their PIC-change processes.[14]

In the *MCI Order*, the Commission indicated that the PIC change charge policy established by the *1984 Access Charge Order* was intended to allow non-cost factors to be considered in setting the rate. It refers to the Commission's statement that indicated a charge that discourages excessive amounts of shifting back and forth between or among interexchange carriers is not unreasonable.[15] As CompTel correctly points out, however,

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[10] *See, Id.*, paras. 7 and 9 ["Defendants do not [] describe specific disparities between their PIC-change systems and those of BellSouth and SNET that would call into question the relevance of MCI's comparisons."]

[11] *See Id.*, para. 8 ["[U]ncontroverted evidence establishes that 1) the manual procedures used by the [ILECs] for processing PIC changes in 1985 were extremely labor intensive and time consuming and 2) the [ILECs] have since automated procedures for the majority of their PIC changes."]

[12] *See* CompTel Petition, p. 8.

[13] *MCI Order*, para. 8.

[14] *Id.*, para. 9.

[15] *See, Id.* para.13. The Commission's statement, however, seems to be more of a defense for the imposition of a charge at all, rather than justification for an above-cost charge. While it may be logical to have consumers consider the economic cost to change carriers, it is not sound policy to have their decision be influenced by an inflated cost. In fact the *1984 Access Order* specifically states that a "presubscription charge *that covers the unbundled costs* of a subscription [PIC] change would be reasonable." *Id.*, para. 11 (emphasis added), quoting *1984 Access Charge Order* at Appendix B, 13-5. The Commission's statement that the $5.00 threshold " . . . would reflect *some* cost recovery . . ." (emphasis added) indicates that, at the

such a policy is antithetical with the Telecommunications Act of 1996. As the Commission has recognized, one of the "[t]hree principal goals established by the telephony provisions of the 1996 Act [is] . . . *promoting increased* competition in telecommunications markets that are already open to competition, including the long distance services market."[16] Clearly a policy that allows ILECs to charge an above-cost fee for PIC changes in order to discourage consumers from responding to the constantly evolving offerings of competing providers is inherently inconsistent with a goal of promoting and increasing competition in the long distance services market.

Moreover, the ILEC entry into the in-region long distance market, by virtue of section 271 of the 1996 Act, magnifies the harm to consumers and competitors resulting from an above-cost charge for switching providers.[17] As Comptel discusses, this enables the ILECs to engage in a price squeeze, thereby providing the ILECs' affiliates an unfair competitive advantage.[18] The Commission itself has recognized that an above-cost charge may provide ILECs a competitive advantage over non-LEC providers of long distance services upon the ILECs' entry into the in-region long distance services market.[19] Therefore, consumers are not only harmed by the inflated costs, but also by a potential decline in competitive choices.

Consequently, WorldCom agrees with CompTel that the Commission must revise its PIC change charge policy to require this charge to be set at cost. In addition, the

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time of these orders, the Commission may not have anticipated $5.00 would be above cost. Rather, the $5.00 was meant to provide recovery for at least a portion of the cost when carriers were unable to produce supporting cost data.

[16] *In the Matter of Local Competition Provisions in the Telecommunications Act of 1996 Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers,* First Report and Order, FCC 96-325, para. 3 (1996)("Local Competition Order")(emphasis added).

[17] *See* 47 U.S.C. § 271.

[18] *See* CompTel Petition, pp. 5-6.

[19] *MCI Order,* para. 14, n. 30.

Commission must order large and mid-size price cap ILECs to file revised PIC change charge tariffs consistent with the new policy. Furthermore, in order to streamline the tariff review process, the Commission should adopt CompTel's proposal to establish a threshold under which tariff filings proposing revised PIC-change charges will be presumed lawful and need not be accompanied by cost support. WorldCom agrees with CompTel that this amount should be *no greater* than the $1.49 that BellSouth has charge for over a decade.[20] Conversely, tariff filings proposing a higher fee should not be presumed lawful and should be required to be accompanied by detailed cost support that only include costs directly attributable to the process of changing the end-user's PIC.

CONCLUSION

For the reasons stated, the Commission should grant CompTel's petition.

Respectfully Submitted,

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[20] Upon further examination, the Commission may determine the threshold should be even lower. For example, the Commission should consider the economies of scale experienced in multi-line or multi-service switches. *See 1987 Access Tariff Order*, para. 261.

CERTIFICATE OF SERVICE

I, Vivian Lee hereby certify that on this 18th day of June, 2001, copies of the foregoing were mailed to the following:

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