

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
CompTel Petition for Rulemaking Re:)	RM No. 10131
Presubscribed Interexchange Carrier)	CCB/CPD01-12
Charges)	

REPLY COMMENTS OF IDT CORPORATION

I. Introduction

IDT Corporation (“IDT”) hereby submits its Reply Comments in the above-captioned matter. As demonstrated below, those carriers that oppose CompTel’s Petition fail to demonstrate any reason, other than their self-interest in maintaining bloated anti-competitive rates and practices, that should persuade the Commission from initiating the requested rulemaking. This rulemaking, as noted in IDT’s Initial Comments and echoed in the Comments of the Association of Communications Enterprises, WorldCom, Inc., AT&T, and Excel Communications, Inc., should be instituted immediately, for the purpose of reexamining the policies that established the \$5.00 PIC change charge as the industry standard and lowering the charge to its cost, thereby eliminating the PIC change charge as a barrier to competition and an economic windfall to Incumbent Local Exchange Carriers (“ILECs”).

II. Response to Comments Filed by the United States Telecom Association

The United States Telecommunications Association's ("USTA") Comments suggest that the "test" to revise the current PIC change charge regime is to "cite to any new order contradicting the PIC charge policies."¹ This is incorrect. The USTA's "test" is contrary to the Federal Communications Commission's ("Commission") language in MCI,² wherein the Commission stated, "nothing in this order should be construed as discouraging any party from initiating or participating in rulemaking proceedings to reevaluate the Commission's policy regarding PIC-change charges in light of the marked changes in long distance competition and local phone service *over the past fifteen years*."³ Additionally, the Commission noted, "it may well be that the policies of the 1984 Access Charge Order and the 1987 Access Tariff Order are no longer appropriate in light of changes in the industry *since that time*."⁴ Therefore, the "test" for those parties that seek PIC change charge reform is to demonstrate that the Commission policies underlying the \$5.00 PIC change charge are outdated, and that the Commission should move to a more cost-based model, as it has in other areas, such as access charges. For those parties that would maintain the *status quo*, their "test" is to demonstrate that the policies set forth seventeen years ago remain valid and/or new policies compel the Commission to maintain the \$5.00 safe harbor. It is clear from the various ILEC comments filed in this case that these carriers desperately want to prevent the

¹ In the Matter of CompTel Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Comments of the United States Telecom Association, RM No. 10131; CCB/CPD 01-12 (June 18, 2001)("USTA Comments") at p.4.

² MCI Telecommunications Corporation v. US West Communications, Inc. et al., 15 FCC Rcd 9328, *Memorandum Opinion and Order*, rel. May 18, 2000 ("MCI").

³ *Id.* at ¶ 2 (emphasis added).

⁴ *Id.* at ¶13 (emphasis added).

Commission from even considering these issues, as the ILEC position is inconsistent with marketplace realities and contrary to recent Commission policy.

The USTA provides an equally incorrect analysis of the impact of \$5.00 rate ceiling on future allegations of unjust and unreasonable PIC change charges. The USTA writes, “[T]he \$5 rate ceiling does not provide any insulation from individual complaints against a company for alleged unjust and unreasonable charges. Thus, no party is harmed by maintaining the *status quo*.”⁵ This is utterly and completely wrong. The holding of MCI is that companies imposing a \$5.00 PIC change charge *are* insulated from a finding of unreasonableness absent Commission action. Therefore, consumers and carriers that remit the \$5.00 charge have no alternative other than to seek a review and revision of the \$5.00 PIC change charge.

III. Response to Comments Filed By Cincinnati Bell Telephone Company

The Comments filed by Cincinnati Bell Telephone Company (“CBT”) provide the same sort of shallow and incorrect analysis provided by the USTA. As such, the Commission should not be persuaded by CBT’s opposition to CompTel’s requested rulemaking.

CBT first notes, “CompTel fails to present any direct evidence that a PIC change charge of \$5 is unreasonable or exceeds carriers’ costs to process a PIC change.”⁶ However, the Commission has already received considerable evidence that the \$5.00 charge exceeds carriers’ cost, including: (1) Verizon’s actual charges are “significantly

⁵ USTA Comments at p. 5.

⁶ In the Matter of CompTel Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Cincinnati Bell Telephone’s Comments to CompTel Petition for Rulemaking, RM No. 10131; CCB/CPD 01-12 (June 18, 2001)(“CBT Comments”) at 3.

less than \$5.00;”⁷ (2) “the costs of processing automated PIC-changes are less than the costs of manual PIC-changes;”⁸ and (3) BellSouth charges \$1.49 for a PIC change⁹ and Southern New England Telephone (“SNET”) introduced efficiencies to reduce the cost of its PIC-change charge in 1995 to \$2.30.¹⁰ These facts, along with others, including: (1) the manner in which a PIC change is implemented has changed considerably since 1984;¹¹ and (2) only one carrier has ever been able to demonstrate that its cost exceeded \$5.00 present considerable evidence and raise serious questions about whether the \$5.00 PIC change charge exceeds carriers’ cost.

On the issue of the “reasonableness” of the charge, CompTel *has* presented evidence that the \$5.00 is unreasonable. Since the PIC change charge is not solely cost based, its “reasonableness” is relative to the policies that support its implementation. In its Petition, CompTel addresses the policies under which the \$5.00 charge was implemented and demonstrates that these policies no longer apply in the current marketplace. In doing so, CompTel demonstrates that the absence of policies to support a non-cost based charge, combined with the evidence in MCI that a PIC change does not cost \$5.00 to implement, raise serious questions as to the reasonableness of the \$5.00 PIC change charge. CBT, on the other hand, fails to address, let alone provide support, the policies stated by the Commission when it established the \$5.00 PIC change charge ceiling. While CBT is free to argue that the policies which supported the \$5.00 PIC

⁷ MCI at ¶ 8.

⁸ *Id.* at ¶ 9.

⁹ In the Matter of CompTel Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Petition for Rulemaking, RM No. 10131; CCB/CPD 01-12 (May 16, 2001) (“CompTel Petition”) at p. 9.

¹⁰ MCI at ¶ 7. It is more than a little ironic that SBC Communications, Inc. strenuously argues in favor of a \$5.00 PIC change charge when its own subsidiary, SNET, has demonstrated how to reduce the costs associated with a PIC change charge nearly 67% to \$2.30.

¹¹ *Id.* at ¶ 8.

change charge ceiling remain viable, it is difficult to take CBT seriously when it fails to provide any evidence in support of its position.

CBT also expends considerable energy explaining how CompTel's Petition should be denied because costs may vary for carriers depending on certain characteristics, such as the size of the market and the degree of competition within that market.¹² This argument is irrelevant to CompTel's Petition because the Petition does not request an absolute ceiling for *any* carrier's PIC change charge. Like the current method, wherein a PIC change charge of \$5.00 or less is deemed reasonable while any charge greater must be accompanied by cost support, under the CompTel Petition, the "reasonable" figure is simply lowered to \$1.49. A greater charge may be still implemented if it is demonstrated by cost support. In accordance with the recommendations set forth in CompTel's Petition, if CBT or other carriers can demonstrate that a PIC change charge costs them in excess of \$1.49, the carriers are permitted to provide detailed cost support and set a PIC change charge accordingly. Therefore, because CompTel's Petition does not propose an absolute maximum on any carrier's rate, it does not place a disproportionate burden on carriers according to their size or the degree of competition in the respective market.

CBT next argues that CompTel fails to present evidence that the \$5.00 PIC change charge has any bearing on long distance rates or the level of competition. In support of its argument, CBT notes the decreasing cost of long distance service. This evidence is meaningless as CBT fails to consider that rates might be even lower if carriers did not have to spend \$5.00 or more¹³ every time a subscriber is gained. CBT

¹² CBT Comments at pp. 4-5.

¹³ The Commission should also consider that if a subscriber requires a multiple PIC change, whether both are made at the same time or are made individually at different times may result in multiple \$5.00 PIC

fails to account for the simple fact that every IXC who gains a subscriber and remits the PIC change charge on its behalf has just lost \$5.00. This loss must either be recovered through per minute charges or in some other manner or the cost must remain as a loss. Either way, the carrier, and its ability to compete, is impacted by the expense. It is sheer folly to suggest otherwise.

CBT also suggests that CompTel's argument fails because it did not "produce evidence or even suggest that there is significantly more competition in those regions where the PIC change charge is lower than \$5."¹⁴ This argument must fail for several reasons. First, it was not CompTel's position that the charge is the only variable affecting competition. Second, it must fail because it sets an impossible standard that CompTel could never meet. It would be impossible to irrefutably demonstrate a direct correlation between an ILECs PIC change charge and the degree of competition in a given region. There are too many factors that affect competition. The closest the Commission can come to resolving this issue is to ask, "Which is more likely to inhibit competition: a \$5.00 PIC change charge or a less than \$5.00 PIC change charge?" It is difficult to imagine any argument which concludes that increased costs to switch carriers promote competition, but CBT is welcome to address this issue in the Commission's rulemaking.

CBT then makes the argument that IXC payment of the PIC change charge should be viewed as "a cost of doing business."¹⁵ Curiously, in support of its argument, CBT states that its "data" suggests that "IXCs' practice of reimbursing customers for PIC

change charges, making the cost of acquiring the subscriber greater and the ILEC benefit of switching the subscriber equally great.

¹⁴ CBT Comments at p. 6.

¹⁵ *Id.* at p. 6.

change charges is on the decline....”¹⁶ This raises a serious question about the impact of the charge on consumers heretofore raised in IDT’s Initial Comments. To the degree that consumers pay this charge, it must be viewed as anticompetitive because it creates an additional expense *to consumers* and an additional barrier to competition, thereby harming consumers. In its rulemaking, the Commission should not only consider the impact of the charge on carriers that pay the fee for their subscribers, the Commission should also consider the charge’s impact on those subscribers that pay the fee themselves. Quite simply, the Commission needs to decide whether a \$5.00 PIC change charge should be the “cost of doing business” not only for carriers, but for consumers.

CBT also claims that because circumstances in the long distance market have not changed since MCI, the Commission’s findings in that case should not be “reversed.”¹⁷ This argument fails for several reasons. First, CompTel’s Petition is not a Motion for Reconsideration. It does not request that any aspect of MCI be reversed or otherwise repealed. Second, CBT fails to note the Commission’s language in MCI recommends that any new rulemaking should address the marketplace since 1984, not since the 2000. (“[N]othing in this order should be construed as discouraging any party from initiating or participating in rulemaking proceedings to reevaluate the Commission’s policy regarding PIC-change charges in light of the marked changes in long distance competition and local phone service *over the past fifteen years.*”¹⁸ and “[I]t may well be that the policies of the

¹⁶ *Id.* at pp. 6-7. In the absence of reliable data by CBT or any other carrier, it is difficult to know how many of what percentage of subscribers have paid the PIC change charge, it is clear that at least some carriers do not remit the PIC change charge on their subscribers behalf, making the PIC change charge a consumer issue as much as a competitive issue.

¹⁷ *Id.* at p. 7.

¹⁸ MCI at ¶ 2 (emphasis added).

1984 Access Charge Order and the 1987 Access Tariff Order are no longer appropriate *in light of changes in the industry since that time.*¹⁹⁾

CBT's final argument that CompTel's Petition is "clearly premised on the same circumstances"²⁰ as MCI is incorrect. In MCI, the company claimed that because ILECs failed to lower the \$5.00 PIC change charge in accordance with the cost efficiencies made since the implementation of the charge, the charge was unreasonable and therefore, MCI deserved damages for its payment of the charge. In other words, MCI requested a retroactive finding of unreasonableness based on the Commission's policies establishing the PIC change charge. In contrast, CompTel's Petition seeks to prospectively reexamine the underlying policies that support the current PIC change charge in light of current marketplace realities and establish a more cost-based rate. The premise of CompTel's Petition is completely different from MCI, and Commission's action in MCI in no way precludes granting CompTel's Petition. To the contrary, the Commission's invitation for such a Petition compels the granting of the Petition.

IV. Response to Comments Filed by SBC Communications Inc.

SBC Communications Inc. ("SBC") presents several arguments in opposition to CompTel's rulemaking, none of which should preclude the Commission from initiating a rulemaking.

SBC states, "although there has been increased mechanization of the process when PIC-change requests are received from IXC's, that mechanization was designed

¹⁹ *Id.* at ¶13 (emphasis added).

²⁰ CBT Comments at p. 7.

primarily to allow for *faster* processing of PIC-change requests, not to reduce costs.²¹ This exact argument was made by ILECs in MCI, wherein the Commission, “[found] defendants’ assertions in this regard to be unsupported in the record.”²² While nothing should prevent SBC from presenting evidence to the contrary in a rulemaking, SBC’s reliance on old, failed arguments must call into question the strength of the carrier’s position in the present proceeding.

Indeed, SBC’s Comments are largely baseless and focused more on scaring the Commission into believing that a rulemaking will result in increased PIC change charges or “new PIC-related charges, including the potential chilling effect that such charges could have on customers reporting incidents of unauthorized PIC changes.”²³ These scare tactics should not persuade the Commission. In order to justify its claim that “There is a good chance PIC-change charges would actually *increase* if all these costs were calculated and included in the charges,”²⁴ SBC seeks to expand the components of the PIC change charge by stating that “[t]he Commission must consider *all* costs related to PIC changes in evaluating the reasonableness of the current safe harbor.”²⁵ As the Commission is undoubtedly aware, SBC argues in favor of such a broad view of the costs associated with a PIC change charge in order to justify its current charge. In fact, SBC reveals that its PIC change charge “covers much more than just the actual processing of PIC-change requests.”²⁶ This bold admission further demonstrates the need for the

²¹ In the Matter of CompTel Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, Comments of the SBC Communications Inc., RM No. 10131; CCB/CPD 01-12 (June 18, 2001)(“SBC Comments”) at p. 1.

²² MCI at ¶ 9.

²³ SBC Comments at p. 7.

²⁴ *Id.* at pp. 2, 7, 7-8.

²⁵ *Id.* at p. 5.

²⁶ *Id.* at p. 2.

Commission to initiate a rulemaking to limit the ILEC costs that compose the PIC change charge.

SBC repeatedly makes the aforementioned argument that “There is a good chance PIC-change charges would actually *increase* if all these costs were calculated and included in the charges.”²⁷ This claim is without merit. Under current regulatory treatment, any carrier can present a cost study to the Commission demonstrating that its costs for the PIC change exceed the \$5.00 ceiling currently permitted and set an increased rate accordingly. Nothing in CompTel’s Petition affects this right. What SBC means is that if the Commission expands the services whose costs may be recovered through the charge, ILECs may be able demonstrate that their PIC change costs exceed \$5.00. However, for the reasons stated in CompTel’s and AT&T’s Petitions,²⁸ the Commission should decline to expand those services that may be recovered through the PIC change charge. In fact, the Commission should limit those recoverable services directly attributable to the process of changing a customer’s PIC. If the Commission takes such a pro-competitive position in this proposed rulemaking, it is almost certain the charge will decrease.

²⁷ *Id.* at pp. 2, 7, 7-8.

²⁸ See, CompTel Petition at pp. 9-10; In the Matter of CompTel Petition for Rulemaking Regarding Presubscribed Interexchange Carrier Charges, AT&T Comments, RM No. 10131; CCB/CPD 01-12 (June 18, 2001)(“AT&T Comments”) at pp. 5-6.

V. Conclusion

For the reasons stated herein, the Commission should reject the recommendations of the USTA, CBT and SBC and immediately implement a rulemaking as requested by CompTel.

Respectfully submitted,

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