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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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

AT&T REPLY COMMENTS

Pursuant to the Commission’s May 25 Public Notice in this proceeding,¹ AT&T submits this reply to comments by other parties on the above-captioned petition by the Competitive Telecommunications Association (“CompTel”) requesting the Commission to initiate a rulemaking on primary interexchange carrier (“PIC”) change charges to require immediate reductions in the current rates of major incumbent local exchange carriers (“ILECs”) to cost-based levels.²

The comments confirm CompTel’s showing that the \$5.00 “safe harbor” for ILEC PIC change charges created by the Commission more than seventeen years ago has long since outlived any legal or policy justification for exempting those charges from

¹ Public Notice, DA 01-1299, “CompTel files Petition for Rulemaking Re: Presubscribed Interexchange Carrier Charges,” RM No. 10131, CCB/CPD 01-12 (released May 25, 2001)(“May 25 Public Notice”).

² In addition to AT&T, the following parties filed comments on CompTel’s Petition: the Association of Communications Enterprises (“ASCENT”); Cincinnati Bell Telephone Company (“CBT”); Excel Communications, Inc. (“Excel”); IDT Corporation (“IDT”); SBC Communications Inc. (“SBC”); the United States Telecom Association (“USTA”); Verizon Telephone Companies (“Verizon”); and WoldCom, Inc. (“WorldCom”).

the well-established requirement that access charges must be cost-based. Thus, as AT&T showed in its Comments (p.3 n. 3), using a non-cost based charge as a deterrent to “excessive” carrier changes by end users, even if had been justifiable in the immediate post-divestiture environment, can no longer be squared with the dictates of the Telecommunications Act of 1996. That conclusion is mirrored in other parties’ filings; for example, MCI (p. 7) points out that above-cost charges for carrier selection are “inherently inconsistent with a goal of promoting and increasing competition in the long distance services market.” Accord, ASCENT, p. 2 n. 3; Excel, p. 4; IDT, p. 4.

In like manner, commenters recognize that perpetuating the non-cost based PIC change charge necessarily has a dampening effect on vigorous competition among carriers by increasing unnecessarily the costs that interexchange carriers (“IXCs”) bear when reimbursing newly acquired customers for these ILEC charges. See AT&T, p. 4; ASCENT, p. 4; Excel, p. 5; WorldCom, p. 7. Moreover, the non-cost based charges provide an additional -- and wholly unjustifiable -- subsidy to ILECs that increasingly are becoming direct competitors of IXCs in established toll markets, as well as in emergingly competitive local services.³ See ASCENT, p. 4; Excel, pp. 4-5. In light of these circumstances, the Commission should adopt regulations requiring ILECs to refile their tariffed PIC change charges, with appropriate cost support required by Section 61.38 of

³ This serious defect in the current charging arrangements would be eliminated if a cost-based change charge were used instead to fund a neutral third party administration of the carrier change process, which AT&T has previously demonstrated should be adopted. See AT&T Comments, p. 8 n.13.

the Commission's rules, to assure that these charges do not exceed the actual costs of the PIC change functions provided by those carriers.⁴

Predictably, the only opposition to the Petition comes from ILECs and their mouthpiece, USTA. None of these parties, however, even attempts to refute the showings by CompTel and supporting commenters that setting PIC change charges to deter "excessive" carrier changes, which was one of the two predicates for the non-cost based charge, is no longer a legitimate regulatory objective (if, indeed, it ever was). And the ILECs likewise fail to refute that there is no longer any basis for the Commission's other concern in originally permitting the \$5.00 safe harbor-- that is, the alleged difficulty of developing cost support for the presubscription charge.⁵

Indeed, Verizon's filing shows that the ILECs have long had the ability to produce the necessary support for these charges; as an attachment to its comments, Verizon includes voluminous cost support for a 1993 filing by one of its predecessors of a "PIC switchback option" charge.⁶ Nothing in the intervening eight years should have

⁴ However, as AT&T showed (p. 5 n. 8), until an up-to-date record is compiled in the rulemaking the Commission should not establish any threshold for PIC change charges below which it will not require cost support for tariff review purposes. As IDT correctly points out (p. 5), basing such a threshold on ILEC rates filed over a decade ago would defeat the objective of limiting ILECs to their current costs.

⁵ See Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Memorandum Opinion and Order, released April 27, 1984; Annual 1985 Access Tariff Filings, 2 FCC Rcd 1416, 1445-46 (1987).

⁶ See Verizon App. B (Bell Atlantic Transmittal No. 562, filed March 15, 1993).

diminished the ILECs' ability to produce such support material for their current rates.⁷

Instead, the ILECs raise two threadbare attacks on the Petition. First, these carriers claim that the Petition is somehow defective because it allegedly is “based entirely upon speculation” about the ILECs' current costs underlying the PIC change charge, relative to the safe harbor level. See Verizon, p. 1; accord, CBT, p. 3 (claiming “CompTel fails to present any direct evidence” that the charge exceeds ILEC costs); SBC, p. 2. The short answer to these arguments is that the information which would permit such a determination is exclusively in the hands of the ILECs, who have failed to put forward any current evidence showing that their costs even approximate the \$5.00 safe harbor level established more than seventeen years ago.⁸

In a related vein, the ILECs assert that they have not achieved any significant cost economies or operational efficiencies in implementing PIC changes in the

⁷ Verizon's reliance on the PIC switchback tariff, moreover, confirms the correctness of AT&T's showing (pp. 6-8) that the Commission should include in its rulemaking not only the \$5.00 change charge but all other presubscription-related charges assessed by ILECs. Like the charges subject to the “safe harbor,” those fees are subject to competitive abuses – even if they were reduced to cost-based levels. However, requiring the ILECs to cost justify those rates will, at least, mitigate the potential distortions of the marketplace resulting from those assessments.

⁸ SBC (p. 2) also suggests that the current costs of PIC change functions may actually exceed the safe harbor level. This in terrorem argument is meritless. As AT&T showed in its Comments (p. 3 n. 4), the PIC change charge is exempt from the Commission's price cap regime. Moreover, the ILECs face no effective competitive constraints on the level of those charges to their end users of IXC access customers. Thus, if the ILECs' costs of providing that function were markedly higher than the safe harbor level, those carriers would have had every incentive already to file higher, cost-supported change charges. The fact that almost none of the ILECs has done so speaks volumes about the true cost-price relationship of the charges.

years since the safe harbor was established. See, e.g., SBC, pp. 2-3; CBT, pp. 4-5. Again, these claims are factually unsupported, and are directly contradicted by the Commission's own prior conclusion in the MCI Complaint Order that "LECs have, in fact, realized substantial cost savings from the automation of their PIC-change processes over the past fifteen years."⁹

CONCLUSION

For the reasons stated above and in AT&T's Comments, the Commission should promptly initiate a rulemaking to reduce major ILEC's PIC change charges immediately to cost-based levels, and to preclude those carriers from applying even cost-based charges in a discriminatory and anticompetitive manner.

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⁹ MCI Telecommunications Corp. v. U S WEST Communications, Inc., 15 FCC Rcd 9328 (2000)("MCI Complaint Order"), ¶ 9.

CERTIFICATE OF SERVICE

I, Theresa Donatiello Neidich, do hereby certify that on this 02nd day of July, 2001 a copy of the foregoing "AT&T Comments" was served by US first class mail, postage prepaid, on the parties named below.

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