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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 3, 2001

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington. D.C. 20554

Re: Reply Comments of Competitive Telecommunications Association
In the Matter of CompTel's Petition for Rulemaking
RM-10131

Dear Ms. Salas:

Enclosed please find an original and four copies of the Reply Comments of Competitive Telecommunications Association in the above-referenced proceeding.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to me in the envelope provided. Please direct all questions regarding this filing to Robert Aamoth at (202) 955-9676 or Heather Wilson at (202) 887-1240.

Respectfully submitted,

H M Wilson

Robert J. Aamoth, Esq.
Heather M. Wilson, Esq.
Counsel for Competitive Telecommunications Association

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JUL - 3 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Petition for Rulemaking Regarding	)	RM-10131
Presubscribed Interexchange Carrier Charges	)	CCB/CPD 01-12

REPLY COMMENTS OF THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby submits reply comments in the above-captioned proceeding. As the original petitioner in this proceeding, CompTel would like to address the comments filed in support of, and in opposition to, its Petition for Rulemaking.

At the outset, CompTel notes that the majority of parties filing comments in this proceeding strongly support CompTel's Petition, with only two incumbent local exchange carriers ("ILECs") and their industry association, the United States Telecom Association ("USTA"), filing any opposition to CompTel's Petition to review and revise the policies behind the presubscribed interexchange carrier ("PIC") change charge. CompTel has no doubt that these parties oppose CompTel's Petition because it threatens a very profitable source of revenue for the ILECs, at a very high cost to consumers and competition. However, the majority of commenters correctly encourage the Commission to revise the current PIC change charge policy by pointing to the Commission's long-held policy preference in favor of cost-based charges, especially when they are applied directly to consumers. It is noteworthy that the ILECs have not identified any public policy basis for charging a PIC fee that is in excess of costs.

Additionally, supporters of CompTel's Petition show that the $5.00 safe harbor has a direct bearing on the rates that consumers pay for long distance service and, just as importantly, has a significant and detrimental effect on competition in the long distance telecommunications market. By contrast, the ILECs and USTA merely offer transparent claims that a $5.00 charge is *de minimis*, and therefore cannot have a direct or harmful effect on consumers or competition. Such arguments are disingenuous at best and do not reflect the current status of the marketplace where razor-thin profit margins are the norm and the competitive impact of cost reductions is significant.

Simply put, the ILECs have been receiving a windfall in PIC change charges for many years, and it is time for this gravy train to stop. The Commission should expeditiously issue a *Notice of Proposed Rulemaking* to correct this problem.

I. The Majority of Comments Filed in This Proceeding Indicate Support For, and Demonstrate the Need for, Changes in the Current PIC Change Charge Policy.

The overwhelming balance of comments in support of CompTel's Petition illustrate why the time is ripe for the Commission to revisit the PIC change charge safe harbor in light of changes in the industry, changes in the marketplace, and changes in telecommunications policy.

One of the most important arguments in favor of reviewing and revising the $5.00 PIC charge safe harbor is that this policy is not based on the ILECs' cost of performing this functionality. The Commission specifically noted the absence of cost-based evidence when it

initially adopted the PIC safe harbor charge in 1984[1] and affirmed it in 1987.[2] Given the dramatic change in the way the ILECs process PIC change requests, the availability of cost data today, and a significant shift toward access charges that are cost-based, especially if the fee "represents a direct charge to end users,"[3] it is imperative that the Commission revisit the policies behind the current PIC safe harbor charge. AT&T points out in its comments that the Commission specifically excluded the PIC change charge from price cap regulation of the major ILECs in part because the charge was applied directly to end users.[4] As such, the Commission determined that PIC change charges would "continue to be regulated under a traditional approach" based on the cost of these services.[5] IDT Corporation and the Association of Communications Enterprises ("ASCENT") also note that the establishment of a cost-based recovery system for PIC change charges is consistent with the Commission's policy requiring non-recurring charges to reflect only the "one-time expenses incurred."[6] Indeed, IDT Corporation concludes that, in light of the fact that the Commission has never articulated any other policy supporting a non-cost based charge, "there is no other basis upon which the

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1 *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 55 Rad Reg 2d. (P&F) 1422 (1984).

2 Despite the ILECs' attempt to increase the PIC change charge in 1987, the Commission retained the $5.00 ceiling, noting that the carriers had failed to adequately justify their proposed increases. *Annual 1985 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Rcd. 1416 (1987).

3 *See* Comments of AT&T at 3, note 4, citing *Policy and Rules Concerning Rates for Dominant Carriers*, 6 FCC Rcd. 2637, 2715 (1991).

4 *Id.*

5 *Id.*

6 *See* Comments of ASCENT at 5, citing *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd. 3498, 3501 (1987); and *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as Amended*, Memorandum Opinion and Order, 12 FCC Rcd. 20549, ¶ 296 ("Unreasonably high non-recurring charges ... can have as much of a chilling effect ... as

(continued...)

Commission can conclude that a non-cost based charge remains reasonable."[7]

The result of PIC change charges that exceed costs is a distinct competitive advantage for the ILECs, which is even more pronounced where an ILEC has entered, or obtained Section 271[8] authority to enter the in-region long distance service market. While the ILECs and USTA try to downplay this very significant consequence, commenters in support of CompTel's Petition all note that this is a critical issue and offer examples of how the ILECs exploit this advantage at the expense of competitors and competition. AT&T provides a blatant example of this anti-competitive behavior in California, where Pacific Bell, rather than assessing a PIC change charge on customers who request a carrier change, assessed "PIC switchback" charges on the IXC under the pretext that the carrier changes were the result of slamming claims by the affected customers.[9] In addition to AT&T's experience, other commenters note that ILECs now competing in the long-distance market have a distinct advantage over competitors because the ILEC only has to pay the economic cost of the PIC change request, while everyone else pays the $5.00 PIC change charge.[10] Furthermore, the commenters point to the Commission's own expressed concern about ILECs being well-positioned to obtain a competitive advantage in markets where they are authorized to provide long distance service

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(...continued)
unreasonably high recurring fees. Both types of charges must be cost-based in order for [] competition to take root and flourish.")

7 *See* Comments of IDT Corp. at 4.

8 47 U.S.C. § 271.

9 *See* Comments of AT&T at 7, citing *AT&T Communications of California, Inc. v. Pacific Bell, et al.*, Complaint, Case No. 99-12-029 (Cal. PUC 1999).

10 *See, e.g.*, Comments of Excel Communications at 5; Comments of WorldCom, Inc. at 6; and Comments of ASCENT at 3.

pursuant to Section 271 of the Telecommunications Act.[11]

Perhaps the most serious consequence of allowing the ILECs to continue levying above-cost PIC change charges and the ultimate effect on competition in the long-distance market is the direct and significant harm to consumers who must bear the burden of inflated costs for service, as well as a potential decline in competitive choices.[12]

II. The ILECs Have Not Presented Any Relevant or Convincing Arguments in Opposition to CompTel's Petition for Rulemaking.

Efforts by the ILECs to dissuade the Commission from initiating a rulemaking in response to CompTel's Petition are disingenuous and unconvincing. These parties have used their comments to argue that the $5.00 PIC change charge (1) is reasonable and in some cases does not cover the ILECs' (extraneous) costs; (2) is such a *de minimis* charge that it cannot have any impact on competition in the long distance market; and (3) does not justify "putting the ILECs and the Commission's staff through the unnecessary and burdensome exercise"[13] of a rulemaking. The self-serving purpose behind these arguments is apparent, and successfully rebutted by the evidence presented in CompTel's Petition, supporting comments, and in the *MCI Order*.

The ILECs' argument that the seventeen year old $5.00 PIC change charge is reasonable and often fails to cover the ILECs' costs in providing this service[14] is ridiculous. In

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11 *See* Comments of WorldCom, Inc. at 6; and Comments of ASCENT at 3, both citing *MCI Telecommunications Corp. v. U.S. West Communications, Inc., et al.*, Memorandum Opinion and Order, 15 FCC Rcd. 9328, note 30 (2000) ("*MCI Order*").

12 *See* Comments of WorldCom at 6.

13 *See* Comments of SBC Communications at 7.

14 *See generally,* Comments of Cincinnati Bell and Comments of SBC Communications, Inc.

any event, it has been fully repudiated by evidence in the *MCI Order*, where the Commission found that the ILECs have "realized a substantial cost savings from the automation of their PIC change process over the past fifteen years."[15] Furthermore, SBC's argument that the PIC change charge should include extraneous costs, such as the cost of responding to customer slamming inquiries,[16] is not consistent with the Commission's policy requiring nonrecurring charges to reflect only the "one-time expenses incurred."[17] CompTel believes it is contrary to Commission policy to force every consumer and every carrier to pay through PIC change charges for illegal slamming activities.

CompTel considers the ILECs' argument that a $5.00 charge is *de minimis*, and has no effect on long distance rates[18] or competition, to be ludicrous, especially in the face of the Commission's express finding that "a PIC-change charge greater than the cost of providing this service" imposed by ILECs with Section 271 authority, puts them in a favorable position to obtain "a competitive advantage over non-local exchange carrier providers of long distance service."[19] In particular, $5.00 charges that total hundreds of millions of dollars in fees[20] to consumers is certainly not a *de minimis* amount of money,[21] and although long distance rates

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15 *MCI Order* at ¶ 9.

16 *See* Comments of SBC Communications at 5.

17 *See* Comments of ASCENT at 5, citing *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd. 3498, 3501 (1987).

18 *See* Comments of Cincinnati Bell at 6.

19 *See* Comments of ASCENT at 3, citing the *MCI Order*, note 30.

20 CompTel Petition at 1.

21 SBC Communications' claim that the ILEC-imposed PIC change charge of $5.00 cannot result in a price squeeze because some carriers offer monetary incentives to subscribers to switch carriers is akin to comparing apples and oranges. One charge is automatically imposed by the ILEC, whereas the other is a voluntary marketing tool used only by certain carriers. The PIC change charge still offers a competitive advantage to ILECs and (continued...)

have declined over several years, a savings of hundreds of millions of dollars can only result in further long distance rate reductions and increased competition for subscribers.

The ILECs' attempt to avoid the "burdensome exercise" of a rulemaking offers an important insight to the reasons behind the ILECs' arguments in opposition to CompTel's Petition. For seventeen years, the ILECs have been able to rely on a $5.00 safe harbor charge, without justifying their costs for providing this service, to reap a windfall profit. Fear of losing this profit source fuels their weak attempts to keep the IXCs, the Commission, and consumers from discovering their actual costs of providing PIC change services.[22] CompTel believes it is in the best interests of consumers and competition for the Commission to disregard these disingenuous arguments by the ILECs and initiate a rulemaking in response to CompTel's Petition in this proceeding.

(...continued)
their IXC affiliates who don't have to reimburse their subscribers for the $5.00 PIC change charge, regardless of their marketing plans.

22 CompTel recognizes that the ILECs' actual costs may vary and encourages smaller carriers such as Cincinnati Bell to produce actual cost data in support of their claims for a higher PIC change charge. The $1.49 safe harbor charge proposed by CompTel is simply a proposed ceiling; any ILEC should feel free to offer actual cost data in seeking an exception to this proposed new safe harbor charge.

Conclusion

For the reasons stated herein, CompTel urges the Commission to proceed with a rulemaking in response to CompTel's original Petition and the overwhelming support received from industry commenters in this proceeding.

DATED: July 3, 2001

Respectfully submitted,

H. M. Wilson

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CERTIFICATE OF SERVICE

I, Heather M. Wilson, counsel for Competitive Telecommunications Association, hereby certify that a true and correct copy of the foregoing Reply Comments of Competitive Telecommunications Association were sent this 3rd day of July, 2001, by first class mail, postage prepaid to the following:

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