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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition for Rulemaking Regarding)
Presubscribed Interexchange Carrier Charges)
)

Rm-10131
CCB/CPD No. 01-12

WORLDCOM'S REPLY COMMENTS

WorldCom, Inc. ("WorldCom") respectfully submits these comments in response to the initial comments filed pursuant to Federal Communications Commission's ("Commission") *Public Notice* released on May 25, 2001 regarding Comptel's Petition for Rulemaking.

I. Summary

As the majority of parties to this proceeding agree, the Commission should revise its PIC change charge policy to eliminate the \$5 "safe harbor" afforded ILEC tariff filings for PIC change charges, require that the charge be set at cost, and require the ILECs to file cost-support data. A safe harbor policy can no longer be justified by the ILEC's inability to produce cost support data, nor can it be justified for the purpose of deterring consumers from switching providers. The parties opposing CompTel's proposed rulemaking do not effectively refute these points or offer any other sound basis for maintaining the safe harbor. Rather the focus of their arguments is that their costs to

perform this function have not been reduced in the last seventeen years, a claim the Commission has already rejected.

Furthermore, as CompTel's petition and IDT Corporation's comments argue, the Commission's rulemaking needs to address what costs would be permissibly included in a cost-based PIC change charge. The necessity of this is emphasized by SBC's comments claiming it recoups the costs associated with its PIC freeze service in this charge. CompTel is correct that the only cost that should be included in the cost studies are those costs directly attributable to the process of changing a customer's PIC.¹

II. The Comments Confirm a Safe Harbor Is No Longer Justified

As a number of parties have noted, the main rationale for the Commission having established a "safe harbor" – that the development of a cost support data would be a difficult challenge to carriers – is no longer true.² Precise costs associated with executing PIC changes can now be documented. No party to this proceeding has claimed otherwise.³ A policy based on this premise therefore is no longer valid and should be revisited. The only other factor the Commission discussed in establishing the safe harbor was that a charge intended to discourage excessive switching is not unreasonable.⁴ Even assuming this is a valid purpose, it does not preclude a requirement that the charge be set at cost, nor does it excuse an examination of the costs. A cost-based charge would deter

¹ CompTel Petition, pp. 9-10. *See also*, ASCENT Comments, pp. 5-6; WorldCom Comments, p. 7; IDT Comments, p. 5. [IDT asks the Commission to seek comment on what ILEC costs should be included in determining the cost of a PIC change.]

² *See* ASCENT Comments, pp. 2-3; Excel Comments, p. 3.; IDT Comments, p. 4; and WorldCom Comments, p. 4.

³ SBC claims there are complexities in developing cost support data but does not identify these complexities. *See*, SBC Petition, p.7. The only complexities demonstrated are that which may result from ILEC attempts, such as SBC's, to load costs associated with other functions into the PIC change cost studies.

excessive switching. An excessive PIC change charge, however, deters competitive decisions. As noted by a number of parties, a policy with the purpose of discouraging consumers from exercising their competitive choice can not be reconciled with the Telecommunications Act of 1996.⁵ The goal of the 1996 Act is not only to remove barriers to competition, but also to promote competition in the long distance market. As AT&T noted, a safe harbor is also inconsistent with the Commission's longstanding commitment to cost-based access services.⁶

The ILECs claim their costs have not decreased as a result of the automation of the process.⁷ Yet, Southern New England Telephone (SNET), now SBC's own affiliate, acknowledged that its PIC change costs had declined as a result of increased mechanization.⁸ Moreover, the Commission specifically rejected these same claims in the MCI Order.⁹ Although Verizon may claim that the cost data it submitted in the record of the MCI complaint fully supports a PIC change rate of \$5, the Commission in the MCI Order did not. The MCI Order specifically states that with regard to "... Bell Atlantic, MCI produced direct evidence indicating that Bell Atlantic's actual PIC-change costs are significantly less than \$5." Furthermore, Verizon's use of the Massachusetts's Department of Public Utilities (MDPU) approval of Verizon's \$5 charge for changes in a customers intraLATA preferred provider to support the reasonableness of the

⁴ See MCI Order, paras. 11-13.

⁵ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Telecommunications Act of 1996" or "1996 Act"). See CompTel Petition, p. 7; Excel Comments, p. 4; IDT Comments, p.4; WorldCom, pp. 5-6.

⁶ AT&T Comments, pp. 1-2.

⁷ They even argue that the costs may have increase. Yet they have never filed cost support to justify a higher rate with their tariff filings.

⁸ SNET Tariff F.C.C. No. 39, Transmittal No. 662, p. 2 (filed Dec. 18, 1995.)

⁹ MCI Order, para. 9. In addition, contrary to SBC's claim that less than half of the orders are handled on mechanized basis (SBC Opposition, p. 1), the Commission has found that the ILECs have automated procedures for the majority of their PIC changes. MCI Order, para. 8.

Commission's \$5 safe harbor is absurd. The MDPU's approval was the result of this Commission's "safe harbor" policy.¹⁰ As the Commission noted in the MCI Order, the MDPU found that Bell Atlantic's actual PIC-change costs were much less than \$5.¹¹ Nonetheless, the MDPU concluded that not having a uniform charge for both interLATA and intraLATA changes might result in consumer confusion.¹² This decision further demonstrates the need for the Commission to revisit its "safe harbor" policy. This policy has not only resulted in interstate long distance consumers be subject to an excessive PIC change charge, but intraLATA toll consumers as well.

ILECs also argue that the Commission should maintain the safe harbor because the charge has a negligible effect on competition and provides them no competitive advantage. They try to support these arguments with claims that the amount of the charge is insignificant, the charge does not deter consumers from switching, and cite to their affiliates ease at entering the long distance market.

These claims are absurd. Any excessive charge limits competition in the long distance market and the aggregate impact on consumers is staggering. CompTel has estimated the excessiveness of the charge to be hundreds of millions of dollars each year.¹³ Even if this may seem insignificant to these monopolies it is not insignificant to consumers and the IXC industry. Moreover, the fact that most IXCs found it necessary to provide reimbursement for these fees in order to attract enough customers to become established as a competitor in the industry suggests that this charge does effect consumers' decision. Furthermore, the fact that IXCs have been willing to pay this fee in

¹⁰ *Investigation by the Department as to the Propriety of the Rates and Charges set forth in Tariffs M.D.P.U. Nos. 10 and 15*, D.P.U. 96-106-A, pp. 22-3 (Apr. 9, 1998) ("MDPU Order").

¹¹ *Id.*, pp. 12-3 and 22. See also MCI Order, para. 8, n.15.

¹² MDPU Order, p 22.

order to become a competitor in the market does not justify the ILECs, who control the essential facilities necessary for these carriers to do business, charging such an excessive rate.¹⁴

SBC's argument that its ease at entering the long distance market demonstrates that the PIC change charge does not impede competition is ludicrous.¹⁵ Of course the charge will not impede SBC's entry into the long distance market. It's the one with the unfair competitive advantage. SBC only incurs the true cost of a PIC change, while extorting an excessive rate from other carriers (or those carriers' customers).

Cincinnati Bell raises the issue that costs may vary by ILEC. In particular they claim that some of the smaller ILECs may incur higher costs than BellSouth's rate, which CompTel suggested as a possible threshold under which a carrier would not be required to justify with cost-support. While WorldCom does not necessarily agree that Cincinnati Bell incurs higher costs, under CompTel's proposal it would still be able to charge a higher fee if they can provide cost support data to justify it.

Finally, contrary to what some parties argue, the Commission in the MCI Order did not restrict reconsideration of the Commission's policies established in the 1984 Access Charge Order¹⁶ and 1987 Access Tariff Order.¹⁷ It specifically noted that the policy may no longer be appropriate and a carrier could petition or participate in a

¹³ See CompTel Petition, p.1.

¹⁴ The ILECs even resorted to citing IXC marketing practices to justify their ability to charge an excessive fee. See Verizon Opposition, p. 2. See also SBC Opposition, p. 6. IXC marketing practices are irrelevant. They do not justify consumers or IXCs paying the ILECs an above-cost fee for PIC changes. Moreover, IXC marketing practices are geared toward promoting competition, while an excessive PIC change charge stifles it.

¹⁵ See SBC Opposition, pp. 6-7.

¹⁶ *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")

¹⁷ *MCI Order*, paras.11-3. See also, *Annual 1985 Access Tariff Filings*, Memorandum Opinion and Order, 2 FCC Red. 1416, 1445-6 (1987) ("1987 Access Tariff Order").

rulemaking proceeding to change the current policy.¹⁸ Obviously a petitioner is not required to cite an order that contradicts the current policy in order to request a rulemaking, as some parties have claimed. The petitioners desired outcome of the rulemaking would be such an order. Nor is new evidence, not produced in the MCI Order, necessary since CompTel did not file a complaint. Moreover, contrary to USTA's claim,¹⁹ the Commission indeed found that the safe harbor policy insulated individual complaints against a company which charge the \$5 rate.²⁰ Therefore, a rulemaking changing that policy and the *status quo* is necessary to ensure consumers and the long distance industry are not subject to excessive fees.

III. The Commission's Rulemaking Must Address the Allowable Cost Factors – Which Should Only Be Those Incurred in Making the Switch

The ILEC discussion of their costs further confirm the need for the Commission to initiate this rulemaking and to clearly and unambiguously articulate what costs may be the basis of a PIC change charge. As the Commission previously stated, a “presubscription charge that covers the *unbundled costs of a subscription [PIC] change* would be reasonable.”²¹ Moreover, as CompTel pointed out, the Commission specified that nonrecurring charges should only reflect the “*one-time expense incurred*, upon the request of a customer, in installing, moving, rearranging or terminating an access service

¹⁸ MCI Order, paras. 2 and 14.

¹⁹ See USTA's Comments, p. 5. Also, contrary to USTA's view (see USTA Comments, pp. 3-4), the Commission concluded it could not change the policy in a complaint proceeding, which is why a rulemaking is necessary.

²⁰ MCI Order, para. 14.

²¹ *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422 (rel. Apr. 27, 1984) (“1984 Access Charge Order”).

from the initial receipt of a service order to the point a which service is provided.”²² Yet, since the ILECs appear to be unable to justify a \$5 charge with the actual cost of executing a PIC change, they are attempting to add in other types of expenses.

SBC claims that its costs include expenses associated with its PIC freeze service. First, PIC freeze service is not an IXC service, it is an end-user service. Therefore, the charge should not be imposed on IXCs. Second, consumers should not be forced to bear the costs of a service for which they have not requested nor received. The vast majority of the consumers that switch providers do not subscribe to an ILEC PIC freeze service and therefore should not have to pay the costs associated with this service. The Commission has specifically stated that an “. . . attempt to charge a party for service which that party neither orders nor receives would constitute an unreasonable practice.”²³

SBC also claims that it must recover the cost of investigations of alleged unauthorized conversions through this charge. These costs do not constitute a one-time expense incurred in executing a PIC change as is required under the Commission’s Nonrecurring Charge Order. Moreover, under the Commission rules the disputes are resolved either by the alleged unauthorized carrier or the relevant governmental agency.²⁴ The ILECs role, as executing carriers, is to refer the consumer to the relevant government

²² *Investigation of Interstate Access Tariff Non-Recurring Charges*, Memorandum Opinion and Order, 2 FCC Rcd. 3498, 3501 (1987)(Nonrecurring Charge Order)(emphasis added). See also, CompTel Petition, p. 7.

²³ *In the Matter of Capital Network Systems, Inc.*, Memorandum Opinion and Order, DA 91-1150, para. 4 (1991) afm, Capital Network Systems, Inc. v. FCC, et al., No. 92-1640 (DC Cir. 1994.) Additionally, the Commission’s rule, requiring that carrier-provided solicitation regarding preferred carrier freezes to include an explanation of any charges associated with the preferred carrier freeze, infers that the Commission intended for those consumers who elect the PIC freeze service to pay the associated costs of that service. See 47 C.F.R. section 64.1190(d)(1)(ii).

²⁴ *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, First Reconsideration Order, para. 22-8, and 33 (2000). See also, 47 C.F.R. § 64.1150.

agency and notify the relevant carriers of the allegation.²⁵ So it is unclear how the ILEC's costs have increased as a result of the Commission's changes to its slamming rules. Furthermore, any consumer inquiries the ILEC may receive result of their role from as the local provider rather than controller of the PIC administration, and therefore is should be considered part of their costs of doing business as the local provider.

WorldCom agrees with AT&T that the ILEC tariffs that allow the ILEC to charge an *alleged* unauthorized carrier presents serious potential for anticompetitive abuse and manipulation. The carrier should only be required to reimburse the customer for these charges if there is a finding that the slam occurred.²⁶ However, regardless of whether the consumer, the alleged unauthorized carrier or new carrier pays this charge, the ILEC will be compensated for its costs through a cost-based fee.

ILEC claims on cost demonstrate the need for Commission to act expeditiously and thoroughly in examining these costs and to clarify the permissible cost to be factored into the cost support data. As CompTel stated in its petition, the only permissible costs should be those cost directly attributable to execution the change in switch.

²⁵ 47 C.F.R. §§ 64.1150(a) and (b).

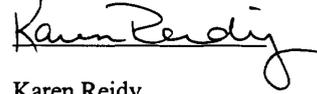
²⁶ The Commission's Order requires the unauthorized carrier to pay if it was responsible for an unauthorized conversion, not upon an allegation. *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 Policies and Rules*

CONCLUSION

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

Respectfully Submitted,

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*Concerning Unauthorized Changes of Consumers Long Distance Carriers, Third Report and Order and
Second Order on Reconsideration, FCC 00-255, para. 85 (2000)(Second Order on Reconsideration).*

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