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

In the Matter of	)	
	)	**CC Docket No. 00-257**
2000 Biennial Regulatory Review Review of Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers	)	
Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996	)	**CC Docket No. 94-129**
Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance	)	

COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES
ON PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel, and pursuant to Section 1.429(f) of the Commission's Rules,[2] hereby offers the following comments on petitions for reconsideration and/or clarification of the *First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129*, FCC 01-156 (rel. May

[1] ASCENT is a national trade association comprised of more than 800 entities engaged in, or providing products and/or services in support of, the competitive provision of telecommunications and information services. ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers, as well.

[2] 47 C.F.R. § 1.429(f).

15, 2001) (the "*Fourth Report and Order*") filed by AT&T Corp. ("AT&T"), Qwest Corporation ("Qwest"), the Verizon telephone companies ("Verizon") and SBC Communications, Inc. ("SBC") in the above-referenced proceeding (the "Petitions"). As set forth more fully below, ASCENT supports AT&T's request for clarification and supports in part and opposes in part the reconsideration requests of Qwest, Verizon and SBC (collectively, the "Incumbent LEC Petitioners").

AT&T Petition

The focus of AT&T's request is the degree of detail which must be provided newly-acquired customers concerning rates, terms and conditions of service. AT&T's position is that the streamlined rules, which obviate the need for carriers to obtain a waiver of the Commission's carrier change rules prior to consummating a subscriber base transfer, "are not intended to impose more stringent advance disclosure requirements than have heretofore applied under the Commission's waiver process."[3] ASCENT concurs in AT&T's assessment that the streamlined rules should not impose more stringent notification requirements than had been required by the Commission under the previous waiver paradigm and urges the Commission to issue the requested clarification.

[3] AT&T Petition for Clarification or, in the Alternative, Limited Reconsideration, p. 2.

Through the *Fourth Report and Order*, the Commission adopted "a streamlined process for compliance with section 258 of the Communications Act . . . in situations involving the carrier-to-carrier sale or transfer of subscriber bases."[4] As the *Fourth Report and Order* makes clear, the streamlined rules are designed to "replace the current, more burdensome waiver process."[5] As the Commission also observes, carriers may be relieved of the "undue burdens" associated with the need to obtain waiver requests "without sacrificing consumer protection."[6] With that in mind, it would be inconsistent with the goal of decreasing burdens to streamline rules for the Commission to simultaneously increase carrier disclosure obligations.

The overall tenor of the *Fourth Report and Order* evidences the sufficiency of the advance disclosure requirements under the waiver paradigm; those same disclosure requirements will continue to protect consumers under the streamlined procedure. And although imposition of more onerous disclosure obligations upon carriers is not necessary for the protection of consumers, AT&T is correct that such requirements "may result in substantial needless expense and delay to participants"[7] in the transfer of customers between carriers. Neither can this result be reconciled with the simplification goals of the Commission. ASCENT accordingly urges the Commission to provide the assurance sought by AT&T that carriers will indeed be deemed to have satisfied the streamlined advanced disclosure requirements by providing the same degree of detail concerning services as would have sufficed under the waiver paradigm.

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4 *Fourth Report and Order*, ¶ 1.

5 Id., ¶ 1.

6 Id., ¶ 2.

7 AT&T Petition for Clarification or, in the Alternative, Limited Reconsideration, p. 2

The Incumbent LEC Petititions

The Incumbent LEC Petitioners raise a variety of issues, including a request for expansion of the case-by-case discretion granted the Common Carrier Bureau to resolve situations where full compliance with the streamlined rules is not possible for an acquiring carrier. In essence, the Incumbent LEC Petitioners ask the Commission to refrain from requiring acquiring carriers from strictly complying with the customer advance notice requirements in cases where the existing carrier is exiting the market and exigencies would militate against a full 30 days advance notice to all customers.

Paragraph 20 of the *Fourth Report and Order* adequately addresses the particular situation described by the Incumbent LEC Petitioners, making provision for such a contingency by directing the Common Carrier Bureau "to resolve on a case-by-case basis" situations "where it is impossible to comply precisely with the requirements set forth in this Order."[8] A narrow reading of Paragraph 20 would not, however, encompass closely related situations, that is, where acquiring carrier compliance would be impossible not for the incumbent, but for a competitive local exchange carrier ("LEC") acquiring customers from a carrier which is exiting a particular market. Consistent with the underlying purpose of Paragraph 20 – the facilitation of customer base transfers to avoid detriment to *customers* – ASCENT urges the Commission to confirm that the delegated case-by-case authority of the Common Carrier Bureau is to be exercised whenever customers are in danger of losing service absent emergency waiver of the streamlined rules, regardless of whether the acquiring carrier is an incumbent LEC or a competitive LEC.

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[8] *Fourth Report and Order*, ¶ 20.

It is beyond dispute that situations will inevitably arise which will render full compliance with the streamlined rules impossible. Through Paragraph 20, the Commission has provided a sufficient relief mechanism for incumbent LECs. Unfortunately, the text of the paragraph appears to contemplate the existence of only one circumstance under which relief would be necessary, i.e., "where a competitive local exchange carrier is leaving a particular market and is required by state law to transfer its customer base back to the incumbent."[9] The same exigencies which will occasionally prevent incumbent LECs from fully satisfying the streamlined advance notice rules will confront any carrier acquiring a customer base from a carrier which is exiting the market. These exigencies will be particularly acute when the customer base will be acquired from a carrier in the midst of bankruptcy proceedings.

As the Commission notes, under the waiver paradigm, the Common Carrier Bureau 'routinely granted [waiver] requests" in large measure "because a limited waiver of these rules may prevent service disruptions."[10] Prevention of service disruptions remains a very real concern in situations where the present carrier is exiting the market. If that carrier is without the financial ability to continue providing service to end users for a full 30 day period, an acquiring carrier would of necessity be prevented from fully complying with the streamlined advance notice obligation. Absent a "case-by-case resolution" by the Common Carrier Bureau, customers which a carrier is prohibited from transferring within a somewhat shorter time frame would lose service.

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[9] Id.

[10] Id., ¶ 4.

This result would follow regardless of whether the acquiring carrier is an incumbent LEC or a competitive LEC,[11] and no supportable rationale exists for differentiating between the two situations. To the extent Paragraph 20 would fail to provide similar relief to competitive LECs it is not merely too narrow; it is actually in conflict with the Commission's generally-applicable pro-competitive policies. It would, in application, competitively disadvantage competitive LECs and ultimately harm consumers by constricting the universe of carriers which could prevent potential service outages to those consumers. ASCENT thus urges the Commission, in order to facilitate the transfer of customers from a carrier which may be incapable of serving those customers for the full duration of the 30-day advance notice period, to interpret its directive that the Common Carrier Bureau resolve on a case-by-case all requests for relief from the obligation to "comply precisely with the requirements set forth in this Order" regardless of whether such requests emanate from incumbent LECs, competitive LECs or, in appropriate circumstances, interexchange carriers.

The Incumbent LEC Petitioners also seek relief from the *Fourth Report and Order*'s holding that acquiring carriers will be responsible for carrier change charges, if any, associated with a customer base transfer.[12] ASCENT opposes this attempt to obtain additional relief for incumbent LECs which will remain unavailable to other carriers. As set forth below, the reasoning of the *Fourth Report and Order* is clear and logically sound. Any deviation from the Commission's reasoned policy would only secure for incumbent LECs a windfall in addition to that already presented in the form of customers (and revenues) acquired without the expenditure of marketing

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[11] Indeed, this would also be the result if the customer transfer were to an interexchange carrier, where absent a waiver of the streamlined rules to allow transfer to the acquiring carrier, business customers with sophisticated or dedicated service arrangements might also have difficulty replicating those service arrangements without suffering a period of service interruption.

or other costs.

[12] *Fourth Report and Order*, ¶ 25.

The *Fourth Report and Order* reiterates the Commission's philosophy that as an equitable matter, consumers should not incur a financial burden as a result of a carrier change resulting from a customer base transfer.[13] As the Commission also correctly observes, "the acquiring carrier is in the best position to cover carrier change charges because it has the billing relationship with the customer after the transfer."[14] The Incumbent LEC Petitioners naturally downplay the revenue aspect; however, there is no denying that even in cases where incumbent LECs are acquiring customers by default as a matter of state law, the revenues from those customers following the transfer will flow to the incumbent LECs.

The Commission should also remain mindful that unlike interexchange carriers, which may not be able to prevent carrier change charges from appearing on subscriber bills,[15] incumbent LECs will always be positioned to refrain from imposition of such charges. As a matter of basic equity, under the circumstances described by the Incumbent LEC Petitioners, they should do so. It is the height of petty overreaching for such gargantuan carriers, having received a block of customers (and associated revenues) without the necessity of expending even one dollar in marketing costs, to suggest that they are unwilling to bring such customers onto their networks without imposing a carrier change charge on either (i) a carrier which is already in seriously distressed financial straits, potentially embroiled in bankruptcy proceedings and, as a result, exiting the market, or (ii) the consumer, who has neither initiated nor caused the carrier change charge to

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[13] Id., ¶ 1. ("Our new procedures . . . will protect the interests of the affected subscribers, consistent with section 258 and our rules, by . . . ensuring that the change will not cause them financial harm.")

[14] Id., ¶ 25.

[15] Id. ([S]ome acquiring carriers may not be able to prevent the assessment of a carrier change charge. We recognize that acquiring carrier may need the flexibility to credit or reimburse affected subscribers for such charges, if such charges are imposed outside of the acquiring carrier's control.")

be incurred. ASCENT therefore urges the Commission to refrain from granting the particularized relief sought by the Incumbent LEC Petitioners.

Consistent with the foregoing, the Association of Communications Enterprises urges the Commission to confirm (i) that carriers will indeed be deemed to have satisfied the streamlined advanced disclosure requirements by providing the same degree of detail concerning services as would have sufficed under the waiver paradigm; and (ii) that competitive LECs may seek Common Carrier Bureau case-by-case resolution of situations where full compliance with the streamlined rules would otherwise result in loss of service to consumers. ASCENT also urges the Commission to refrain from exempting incumbent LECs from responsibility for carrier change charges, if any, arising from customer base transfers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine M. Hannan, do hereby certify that a true a correct copy of the foregoing Comments of the Association of Communications Enterprises has been served by the First Class Mail, postage prepaid, on the individuals listed below, on this 26th day of July, 2001:

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