

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Joint Petition for Expedited)
Rulemaking Filed by AARP, Consumer)
Action, Consumer Federation of) CI Docket No. 02-22
America, Consumers Union, the)
Massachusetts Union on Public)
Housing Tenants, the National)
Association of Regulatory Utility)
Commissioners, the National Association)
of Consumer Agency Administrators,)
the National Association of State)
Utility Consumer Advocates, and the)
National Consumers League)

**COMMENTS OF NCTC LONG DISTANCE, CLARKS LONG DISTANCE
AND NNTC LONG DISTANCE**

Nebraska Central Telecom, Inc. dba NCTC Long Distance,
Clarks Long Distance, and CenCom, Inc. dba NNTC Long Distance
(collectively, the Nebraska IXCs), by their attorney,
respectfully submit these comments in response to the petition
for rulemaking filed in the captioned proceeding (Petition). The
Nebraska IXCs question the need for the proposed rules given the
plethora of interexchange carriers (IXCs) available to consumers,
and the ease with which consumers can switch to other IXCs.
Nevertheless, if the Commission were to propose to adopt notice
requirements for IXCs, the Nebraska IXCs request that notices be
required only for rate increases, and that the IXCs be given more
flexibility in the methods that they may use to provide such
notice. These issues are discussed in turn below.

DISCUSSION

I. AN IXC NOTICE REQUIREMENT IS NOT NEEDED DUE TO THE COMPETITIVE NATURE OF THE INTEREXCHANGE INDUSTRY

The Commission has acknowledged that the interexchange industry is competitive.¹ Indeed, there are about 800 IXCs providing interstate service.² If a customer is unhappy with one IXC, the customer can readily switch to another IXC.

Before customers select an IXC, they should ask questions about the service provided by that IXC. If the customer wants to use an IXC that provides notices about rate changes, the customer should ask the IXC what its policy is for providing such notifications. If the customer does not like the notice policies for one particular IXC, the customer can select a different IXC. The Petition dismisses this "take it or leave it" option without explaining what is wrong with customers shopping for IXCs. Customers investigate other purchases, such as by reading labels on food, checking the size, fabric content and care instructions on clothing, and reviewing the features list and warranty for a

¹ Policy and Rules Concerning the Interstate Interexchange Marketplace, Report and Order, 16 FCC Rcd. 7418 para. 20 (2001) (stating that the "interstate, domestic, interexchange [market is] substantially competitive and that nondominant interexchange carriers do not possess market power in the interstate, interexchange market").

² 2000 Telecommunications Provider Locator tbl. 3 (released Nov. 2001) (228 interexchange carriers plus 575 toll resellers), available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/lec.html.

major appliance. There is no reason for customers to treat interexchange service differently.

The Petition focuses on the notice policies of Sprint, Qwest and AT&T, as if they were the only IXCs available. The Petition ignores the 800 other IXCs that customers can choose from. Although the Petition initially names MCI as one of the offending IXCs, the Petition admits that MCI's agreements clearly state that MCI will provide notice to its customers.³ With so many alternatives available, any customer who dislikes the notice policies of Sprint, Qwest and AT&T, should let their fingers do the walking to another IXC. Indeed, detariffing has helped consumers by making the IXCs' rates, terms and conditions more readily available via web postings and contracts provided to customers. Never before has shopping for an IXC been so easy.

Any concerns that the Petitioners may have about the services of Sprint, Qwest and AT&T can be addressed through the FCC's complaint proceedings, or pursuant to relevant state laws – as noted in the Petition.⁴ But the Petition does not mention one instance where customers have attempted to use these other remedies, and the Petition does not explain why these other remedies are inadequate.

Instead, the Petition's solution is to impose new regulatory requirements on 800 IXCs simply because 3 IXCs have notice

³ Petition at 4 & n.9.

⁴ Id. at 3-4.

requirements that some customers apparently do not like. And who would pay for compliance? The customers of the 800 IXCs, or the IXCs themselves. Neither outcome is justified.

On the one hand, the customers of the 800 IXCs are obviously satisfied with their IXCs' rates, terms and conditions. If they were not satisfied, they would switch to a different IXC. The notice requirement proposed in the Petition would result in satisfied customers of the 800 IXCs having to pay for other customers' dissatisfaction with the notice policies of Sprint, Qwest and AT&T. This mismatch of notice requirements and IXCs does not justify the requested regulation.

On the other hand, if the 800 IXCs were to absorb the cost of compliance in order to keep their rates low in this highly competitive industry, that cost would decrease the IXCs' margins which already are low. Consider the Nebraska IXCs, which are affiliates of local exchange carriers (LECs) serving rural areas of Nebraska. The LECs established their IXC affiliates in order to provide their rural customers with the quality customer service that was lacking from some of the other IXCs. Among other things, each of the Nebraska IXCs provides written notice to its customers for rate increases. No one has complained that the Nebraska IXCs have changed their rates, terms and conditions without giving sufficient notice to the customers. With profit margins being small, the Nebraska IXCs would not want to absorb additional expenses to comply with federal notice requirements

that are meant to solve a problem that is not affecting their customers. Indeed, the Commission has stated that one of its goals is to "help consumers in rural areas by fostering greater competition and choice of interexchange services in these areas."⁵ The Commission therefore should not impose unnecessary regulations on IXCs in rural areas.

In sum, if the notice policies of Sprint, Qwest and AT&T are unsatisfactory, customers should avail themselves of non-regulatory remedies and select one of the other 800 IXCs. The imposition of new regulatory requirements on small, rural IXCs is not warranted.

II. THE NOTICE REQUIREMENT IS OVERLY BROAD

While the Nebraska IXCs oppose any federal notice rules, if the Commission were to propose a notice requirement, the rule should be much more limited in scope.

A. The Notice Requirement Should Be More Flexible

The Petition proposes a rule which requires --

Notice:

- (1) of changes to rates, terms or conditions;
- (2) where the changes are material;

⁵ Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd. 19,613 para. 190 (2001).

and where the notice is provided to the presubscribed customers:

- (3) by bill insert, postcard or letter;
- (4) at least 30 days before the change takes effect.

There are several ways that this proposal should be changed to address the issues raised in the Petition while providing additional flexibility to IXCs.

First, the proposal requires notice of changes to "rates, terms or conditions." But the Petition focuses on rate changes.⁶ If rate changes are the concern of consumers, then notices should be required only for rate changes -- not for changes to terms and conditions. It is not unusual for IXCs to make changes to their terms and conditions to update the language used or to comply with a regulatory requirement -- where such changes do not have a detrimental effect on the customer. If an IXC were required to send out notices about such administrative changes, the notices potentially could generate customer confusion and result in many more telephone calls to the IXCs, state commissions and the FCC -- contrary to NARUC's goal of preventing any increase in the number of complaints handled by state offices.⁷ Any notice requirement therefore should focus on the key issue of interest to consumers: rates.

Second, the Petition does not explain what would constitute a "material" change. As a result, it would be difficult for IXCs

⁶ Petition at 5-6 (referring to "price increases," carriers "chang[ing] rates" and prices going up).

⁷ See id. at 2.

to determine which changes are material and therefore necessitate notification. To solve this problem, notices should be required only for rate increases. Indeed, rate increases are the focus of the Petitioners' concern.⁸ By comparison, when customers are not notified in advance of a rate decrease, the customers are not harmed. Thus, any requirement to send written notices about rate changes should be limited to rate increases.

Third, the requirement to send the notice by "bill insert, postcard or letter" is unnecessarily restrictive. Regulatory commissions have sanctioned many other methods for notifying customers of rate changes. These methods include the use of messages on customers' bills (known as "bill messages") as an alternative to bill inserts, which are pieces of paper that are separate from the bill itself and are placed in the same envelope as the bill.⁹ There is no reason why federal notice requirements

⁸ Id. at 5-6 (referring to "price increases," carriers "chang[ing] rates" and prices going up).

⁹ E.g., 2001-24 Wash. St. Reg. 124 (Dec. 19, 2001) (amending Wash. Admin. Code § 480-120-196 to permit companies to provide notice of rate increases by using bill inserts, bill messages, printing on the billing envelope, and other means); Investigation of the Petition of Wisconsin Bell, Inc., 1996 Wis. PUC LEXIS 25 (Dec. 3, 1996) (requiring Ameritech to provide notice of price increases for MTS by bill message or bill insert); ALLTEL Communications, Inc. Tariff Filing to Revise Current Tariff, 2001 W. Va. PUC LEXIS 4741 (Nov. 27, 2001) (holding that bill messages concerning rate increases for calling card service were sufficient notice); Commission Investigation Relative to the Establishment of Local Exchange Competition and Other Competitive Issues, 173 P.U.R.4th 80 (Nov. 7, 1996) (requiring carriers to provide notice of rate increases by bill insert, bill message or direct mail).

should preclude notice methods that are permitted by the states. Bill messages therefore should be one of the permissible methods for providing written notice.

Fourth, a requirement to give customers 30 days' advance notice is unnecessary. Several states have determined that much shorter notice periods, such as 10 days, are sufficient for carriers to notify customers of a rate change.¹⁰ Petitioners have not provided any justification for federal notice periods that are longer than those prescribed by the states. Indeed, in today's competitive marketplace where customers can change IXCs very quickly, there is no need for a notice period longer than 10 days.

In sum, the proposed notice requirement should be changed to apply only to rate increases, to permit IXCs to use bill messages, and to provide for only 10 days' notice.

B. Nebraska Regulations Can Be Used as a Model for Any Federal Notification Requirement

The Nebraska IXCs are already subject to state-level notification requirements for their intrastate interexchange services. The Nebraska regulations are less restrictive, while they still provide adequate notice to customers. The regulations state:

¹⁰ Wash. Rev. Code Ann. § 80.36.320 (2001) (10 days' notice to customers); Mo. Rev. Stat. § 392.500 (2001) (10 days' notice for rate increases); see also Code Me. R. § 65-407-280 (2001) (15 days' notice for rate increases of 20% or more).

003.13 Notice of a Change in a Rate List other than for Basic Local Exchange Service: Any change in a rate list under Nebraska Revised Statute § 86-803 (1) (1986 Supp.) shall be effective after ten days notice to the Commission.

003.14 Effective Notice to Customers: In addition to the notice to the Commission, each telecommunications company shall notify the customers affected by an increase in a rate list. Notice to affected customers may be in any of the following forms:

003.14A Publication in a statewide or local newspaper in the area.

003.14B Included in the latest Bill.

003.14C Separate letters notifying customers of increases.

003.14D Press Release.¹¹

Thus, the Nebraska regulations limit the notice requirement to:

(a) changes only to rates; and (b) only if the rate increases.

The Nebraska regulations therefore satisfy Petitioners' concerns that customers have written notice of rate increases, while providing carriers with more flexibility in the methods that they can use for providing notice.

CONCLUSION

For the foregoing reasons, the Nebraska IXCs respectfully submit that there is no need to adopt notice requirements for the 800 IXCs which operate in a very competitive interstate interexchange market. A customer can ask an IXC about its notice

¹¹ Neb. Admin. Code tit. 291, ch. 4, § 003.13-.14 (2001).

policies before subscribing to that IXC. If a customer is unhappy with a subsequent rate increase, the customer can readily change IXCs before the rate increase goes into effect. The Petition provides no justification for imposing regulations on 800 IXCs simply because some customers are unhappy with the notice policies of 3 IXCs.

Nevertheless, if the Commission were to propose a rule for IXC notices, the Nebraska IXCs request the Commission to develop a more narrowly tailored rule whereby customers receive notice only for rate increases, while IXCs have more flexibility in providing the notice, such as by use of bill messages 10 days before the rate increases.

Respectfully submitted,
**NEBRASKA CENTRAL TELECOM, INC. DBA NCTC LONG
DISTANCE, CLARKS LONG DISTANCE, AND CENCOM,
INC. DBA NNTC LONG DISTANCE**



By

Susan Bahr
Their Attorney

Law Offices of Susan Bahr, PC
PO BOX 86089
Montgomery Village, MD 20886-6089
(301) 258-8947
sbahr@bahrlaw.com

March 11, 2002