

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

In the Matter of )  
 )  
Joint Petition For Expedited Rulemaking ) CI Docket No. 02-22  
Establishing Minimum Notice Requirements )  
For Detariffed Services )

**REPLY COMMENTS OF THE IOWA UTILITIES BOARD**

Pursuant to the Commission's Public Notice (DA 02-271, released February 6, 2002), the Iowa Utilities Board (Iowa) submits the following Reply Comments in response to the initial comments filed on or about March 11, 2002.

**SUMMARY OF COMMENTS**

Many of the initial comments support the request that the Commission initiate a rulemaking proceeding to establish minimum notice requirements for detariffed services, although some commentators quibble with the particulars of the initial proposal. The Commission should initiate the rulemaking and the proposed rules should require that telecommunications service providers give consumers adequate notice of any and all changes that are likely to result in increased customer bills. The burden should be on the carriers to show that applying the notice requirements in any particular situation will impose costs that outweigh the benefits of adequate customer notice.

The proposed rules should establish a single, uniform national standard, but only if that standard is reasonable and adequate to give customers a realistic

opportunity to change carriers before the proposed changes in terms and conditions become effective.

The notice requirement should be limited to rate increases and to other changes in the terms and conditions of service that are likely to result in higher bills for customers for the same level of service.

Notice should be given in written form, by bill message, bill stuffer, postcard or other mailing, or email. The rules should not allow use of any means of notification that puts the burden on consumers to verify the price of a common service before using it. The minimum actual notice period should be the greater of 15 days or the normal time required for a customer to initiate and complete a change in the customer's designated preferred interexchange carrier.

The notice requirement should apply to interstate, presubscribed, 1+ and 0+ services offered to residential and business customers that do not negotiate individual service agreements. Operator-assisted services (0+ services) may be excluded from the notice requirement only if carriers are required to provide rate information on each call before any charges are incurred.

## COMMENTS

### 1. The Commission should initiate a rulemaking proceeding

A surprising number of commentators support initiation of a rulemaking proceeding to establish minimum customer notification requirements for detariffed telecommunications services, including the Alabama Public Service Commission, AT&T Corporation, the Montana Public Service Commission, the Public Service Commission of the State of Missouri, Qwest Communications International, Inc., WorldCom, Inc., and comments provided by a number of individual customers through the services of the operator of a telephone rate comparison service, 10-10PhoneRates.com. Some of these commentators quibble with the specifics of the proposal in the Petition, but they all see the benefit of a single, reasonable, national customer notification requirement. Even the commentators who opposed the Petition appear to recognize that this is an idea whose time has come, as they all express their opposition but then proceed to comment on the specifics of the rules the Commission should consider. It is clear that the Commission should propose minimum customer notification rules for detariffed services.

The Commission issued the original notice in this proceeding to determine whether to initiate a rule making proceeding. The filed comments make it clear that the Commission should do so. Moreover, the proposed rules should be based on the principles set out in the Petition, and not on some inferior set of principles that offer reduced protection to consumers. The proposed rules should be drafted with the idea that consumers are entitled to reasonable advance

notice of material adverse changes in the terms and conditions applicable to the telecommunications services they purchase. Some of the opposition commentators have argued that adequate notice requirements may be too expensive or that the notice costs may exceed the resulting customer benefits, but they offer no evidence to support those claims. The Commission should propose rules with reasonable and sufficient notice requirements and place the burden squarely on the opposition to prove that the costs of adequate notice exceed the benefits in particular situations, if they can.

It seems likely that they will be unable to meet this burden, because their own actions already demonstrate that the costs of customer notification are not out of line with the benefits. The opposition commentators argue that customer notification requirements are excessively costly and unnecessary because customers are not demanding notice (according to them), but at the same time many of them congratulate themselves for already providing allegedly-adequate customer notice of material changes in the terms and conditions of service. (Verizon telephone companies at page 3; SBC Communications, Inc., at pages 3-4; WorldCom comments at page 4; and Qwest Communications International, Inc., at page 3.) They cannot have it both ways; clearly, they would not provide customer notice if (a) customers did not want it and (b) the costs exceeded the benefits.

In fact, if the carriers would commit, in their service agreements, to provide customers with adequate advance notice of service changes, a Commission rule might be unnecessary. However, the carriers have refused to do so. Instead, as

described in the Petition in this matter, the customer service agreements offered by the major carriers (and many others) consistently reserve the right to change the terms and conditions of service without adequate advance notice. For example, AT&T reserves the right to increase prices or charges 15 days after the increases are posted on AT&T's web site. Thus, AT&T's customers have to visit and search AT&T's labyrinthine web site every 14 days in order to be certain that they are, in fact, receiving the services they ordered at the price they agreed to. Of course, this is impossible for millions of customers who lack realistic access to the Internet, yet AT&T's service agreement makes no provision for those customers. The fact that AT&T currently chooses to provide better notice to its customers does not justify the unconscionable practices available to AT&T at any time; the AT&T service agreement attempts to reserve to AT&T the right to increase rates after 15 days' posted notice, and customers have to assume that AT&T may exercise that right at any time.

The point is that the opposition argument (that customer notice is too expensive for the degree of benefit conferred) is completely undercut by the fact that many, if not all, of the carriers currently give customers advance written notice of material changes in terms and conditions. For this reason, the proposed rules should start with the presumption that advance customer notification is required, and exempt carriers only in special circumstances where they are able to prove that the costs of customer notice exceed the benefits.

**2. The rules should establish a single, national standard**

The Commission's rules should establish a single, national standard for customer notification regarding interstate services, but only if that standard provides adequate notice to customers. Adequate notice requires that customers receive the notice, without having to seek it out, sufficiently in advance of the change to allow the customer to change his or her preferred interexchange carrier and to complete that change.

**3. The notice requirement should be limited to rate increases and other changes that are likely to result in higher bills**

In the initial round of comments, some parties comment that if advance notice is required for all price changes, then price decreases will be unnecessarily delayed, with adverse consequences for competition. This problem is easily addressed. The advance notice requirement should be limited to rate increases and other changes to terms and conditions that are likely to result in increased customer bills for the same level of service. Thus, if a carrier proposes to reduce rates in order to meet competition, even if only on a promotional basis, no advance notice is necessary. If, however, the carrier proposes to increase rates or to reduce the availability of a particular rate (by reducing the number of reduced-rate "weekend" hours in a particular service plan, for example), advance customer notification would be required. In this way, the Commission can strike an appropriate balance between promoting competition and protecting reasonable consumer expectations.

**4. Written notice should be required, sufficiently in advance of any adverse changes to allow the customer to complete a switch to another carrier**

The proposed rules should require that customers be given written notice of proposed rate increases and other adverse changes. In this context, written notice should be defined as including bill messages, bill stuffers, postcards or other separately-mailed notices (bulk mail or otherwise), and electronic mail (to customers who provide an email address to their service provider and agree to this form of notice). The proposed rules should not allow carriers to satisfy the notice requirement by posting on a web site, use of a recording on a toll-free number, or other mechanisms that put the burden on customers to verify the price of their service each time they use it. Consumers have a reasonable expectation that the terms of the service they selected will not be changed by the carrier in a manner adverse to the consumer without active notice efforts by the carrier.

The carriers may argue that web site posting or toll-free recordings are adequate, but they create an unfair mismatch between the manner in which customers are attracted to a service and the carrier's ability to change the terms of that service. Carriers use national, comprehensive advertising campaigns to attract customers to their services, typically based on a particular rate per minute of service. It is not unreasonable to expect the carrier to take affirmative steps to notify its customers when the carrier chooses to change that rate (or make other changes adverse to the customer). Instead, it is unreasonable to expect the

customer to search a web site or call a toll-free number and listen to a recording prior to placing each and every interstate telephone call.

The proposal in the Petition was for a minimum of 30 days' notice to customers. Several of the carriers comment that 30 days is too much, particularly if they use bill messages to provide notice, since billing cycles may mean that some customers would receive as much as 60 days' notice. This is not a reason to shorten the required notification period; however, it may be reasonable to adopt a different measure of the minimum necessary notification period.

First, the Commission should recognize there is nothing inherently wrong with giving customers more notice; if a carrier chooses to use a bill message to provide notice, then the carrier must accept the time delays associated with that choice. If the carrier wants to provide only the minimum required notice, then the carrier will have to choose a notification method that offers that ability, such as direct mail.

Second, the goal of the notice requirement is to tell customers of rate increases and other adverse changes sufficiently in advance of the change to allow them time to seek out and change to another provider, if they choose to do so. This is not the instantaneous process that many carriers describe; a customer receiving a notice of a rate increase might be able to select a new carrier within a day or two (although this is not much time to review and evaluate the details of the various offerings), but many local exchange and interexchange carriers are unable to complete the process of changing the customer's preferred

interexchange carrier in less than 10 or 12 days. This is the period that the Commission must consider when deciding how much advance notice is required. The proposed rules should offer the customer a reasonable amount of time to receive the notice, choose a new carrier, **and complete the switch** before the changed terms and conditions become effective.

Assuming that most carriers are able to complete the re-assignment of the customer within 12 days (an assumption that has not been proven), then a 15-day notice period may be adequate, measured from the date the customer can be expected to receive the notice. However, this depends upon the assumption regarding the time required to change carriers; the Commission's proposed rules should be based on actual time requirements, if possible.

**5. The notice requirement should apply to all customers and services that are not individually-negotiated or otherwise subject to adequate rate notification measures**

The Commission's proposed rules should apply to all customers and services that are not the subject of individually-negotiated contracts or otherwise subject to other adequate rate notification measures. At a minimum, this includes interstate, presubscribed, 1+ and 0+ services offered to residential and many small business customers. It should also include international services with respect to customers who have purchased an international calling plan or who have made international calls in the six months prior to the proposed change.

Some of the commentators protest that giving notice of changes in international calling rates would be too difficult because of the frequency of

changes in the circumstances applicable to international calling. The Commission should not allow the carriers to shift these risks to their customers, especially when the carriers are in a much better position to monitor changes in international calling requirements. The carriers should be required to give notice of adverse changes to those customers most likely to be affected, including customers who purchase specific international calling plans and customers who have recently (within the last six months) made an international call.

As to operator-assisted calls, a recent complaint received by the Iowa Utilities Board graphically demonstrates the nature of this particular problem. A residential customer is accustomed to paying about \$3 to talk to her sister for one hour. During a recent call they were disconnected for no apparent reason in the middle of the call, so she dialed the operator to determine whether there was a problem and to have the call reconnected. The operator reconnected the call and, the following month, the woman got a bill from AT&T for \$47 for the call that normally costs \$3. She called AT&T to inquire about the bill, and AT&T assures her that the bill was correctly calculated at \$.89 per minute and she owes it.

This customer had no realistic way to know that rates for operator-assisted calls had been drastically increased and would apply to her good-faith response to a telephone company problem. When the long distance call was disconnected for no apparent reason, the customer dialed "0" to determine whether there was a problem, and the result is that she will pay over 15 times the appropriate (and agreed-upon) amount for this call. Clearly, 0+ calls should not be exempted from

the proposed customer notification requirements unless other, reasonable and effective customer notification measures are put in place.

### **CONCLUSION**

For all of the reasons given in the Petition and described above, the Commission should grant the Petition and initiate rulemaking proceedings to require interexchange carriers to provide their customers with advance written notice of material adverse (to the customer) changes in their rates, terms, and conditions. The notice period should be sufficient to allow a customer a reasonable time to change carriers, if they choose to, before the new or changed rates, terms, or conditions are placed in effect.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I, David J. Lynch, hereby certify that copies of the foregoing Reply Comments of the Iowa Utilities Board were sent by first-class mail, postage prepaid, to the following this 26th day of March, 2002:

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