

ORIGINAL

EX PARTE OR LATE FILED

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

RECEIVED & INSPECTED
APR 12 2002
FCC - MAILROOM

In the Matter of)	
)	CC Docket No. 96-61
Joint Petition for Expedited Rulemaking)	
Establishing Minimum Notice Requirements)	
For Detariffed Services)	
)	
Policy and Rules Concerning the Interstate,)	
Interexchange Marketplace, Implementation)	
of Section 254(g) of the Communications)	CI Docket No. 02-22
Act of 1934, as Amended)	

**REPLY COMMENTS OF
TEXAS OFFICE OF PUBLIC UTILITY COUNSEL**

The Office of Public Utility Counsel ("OPC")¹ offers the following reply to comments filed pursuant to a request by the Federal Communications Commission ("FCC") to comment on a Joint Petition² filed by several consumer groups.³

OPC agrees with the petition's call for an IXC advance, written notice to its subscribers of material changes in the subscribers' rates, terms, and conditions of the IXC's service offerings. OPC also agrees that a minimum number of days' notice should be thirty to correspond with normal billing cycles. In a competitive marketplace, the most significant consumer tool to protect

¹ OPC is a state agency representing the interests of Texas residential and small business consumers on telephone and electric issues. TEX. UTILITIES CODE ANN. Ch. 13 (Vernon 1998 and 2002).

² Joint Petition for Expedited Rulemaking Establishing Minimum Notice Requirements for Detariffed Services (CC Docket No. 96-61) filed October 29, 2001 ("petition").

³ AARP, Consumers Action, Consumer Federation of America, Consumers Union, the Massachusetts Union on Public Housing Tenants, the National Association of Regulatory Commissioners, the National Association of Consumer Agency Administrators, the National Association of State Utility Associates, and the National Consumers League.

against unreasonable or unjust rates, or unwanted services is meaningful notice. In order to be *meaningful, the notice must be provided in a timely manner to ensure a subscriber's decision is an informed one.* In addition, notice must be provided in a manner to ensure the subscriber's ability to be informed, and notice must be related to the consumer's concerns. The petition's request is for nothing more than meaningful notice, a prerequisite to a fully functioning competitive market. The Commission should initiate a rulemaking proceeding to establish minimum subscriber notice requirements involving an IXC's change in rates, terms and conditions.

Several entities including state utility regulatory agencies and IXCs filed initial comments. OPC will respond to the following comments:

- required notice should be less than thirty days;
- required notice should be allowed by e-mail, by placing the notice on the customer's bill, or by phone;
- required notice should be limited to "1+" domestic calls;
- required notice should be restricted to residential customers; and
- required notice should be required only for rate increases.

At least one IXC⁴ and two state regulatory agencies⁵ comments concur that advanced notice be provided IXC's subscribers involving changes in rate, terms or condition. The IXCs took issue with the required days of notice providing alternative lengths of time ranging from 0 to 15 days. OPC disagrees with any notice time period less than thirty days. Thirty days matches normal IXC billing cycles ensuring subscribers will be able to terminate service without additional charges.

⁴ See AT&T comments.

⁵ See comments filed by the Public Service Commission of the State of Missouri and the Alabama Public Service Commission.

Commentors provided several alternatives to the petition's required use of a bill insert, postcard or letter for IXC notice to subscriber of rates, terms or condition charges. These alternatives ranged from none⁶ to e-mail notice,⁷ to phone notice⁸ and to notice provided on the subscriber's bill.⁹ OPC first takes issue with commentator's concern that bill inserts would be burdensome. The FCC has already concluded that "it would not be unduly burdensome for nondominant interexchange carriers to provide customers advance notice of the changes through billing inserts . . ."¹⁰ OPC agrees that notice on the subscriber's bill may be adequate so long as the notice can easily be identified by the subscribers. The FCC has acknowledged that most consumers use their monthly telephone bills as their primary source of information.¹¹ OPC also agrees that IXC notice via e-mail may be appropriate so long as the subscriber agrees in writing to this notice. For many IXC subscribers, e-mail may very well be their preferred form of communication. OPC does not agree, however, that notification by phone is appropriate. This method would not ensure the subscriber receives the message. It would also not provide subscribers with proof that notice was provided.

Several commentators recommended that the required notice be limited to "1+" domestic calls and that notice be required only for rate increases. OPC agrees that both of these limitations may be appropriate so long as notice be also required for changes in terms or conditions as well. There is no need to notify a subscriber of rate decreases.

⁶See comments of the Association of Communications Enterprise.

⁷ See AT&T comments and WorldCom comments.

⁸ See WorldCom comments.

⁹See AT&T comments.

¹⁰ See In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace, CC Docket No. 96-61 "Second Report and Order" at Paragraph 56 (October 29, 1996) (FCC 96-424).

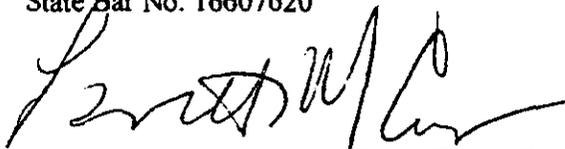
Several commentators recommended that required notice be restricted to residential subscribers. OPC disagrees. Consumers contracting with IXCs for service will be provided a form contract to sign. Little or no room is left to negotiate. These contracts are in the nature of adhesion contracts. There should be no exemption from an IXC's obligation to provide advance notice to its subscribers concerning its rate, term or condition changes except in cases when the subscriber was represented by counsel at the execution of the contract.

OPC thanks the FCC for the opportunity to provide these reply comments.

Signed this 26th day of March, 2002.

Respectfully submitted,

SUZI RAY MCCLELLAN
Public Counsel
State Bar No. 16607620



LANETTA COOPER
Assistant Public Counsel
State Bar No. 04780660

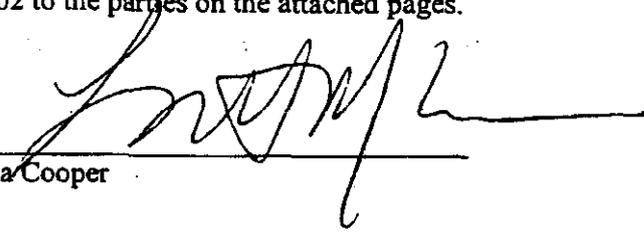
1701 N. Congress Avenue, Suite 9-180
P.O. Box 12397
Austin, Texas 78711-2397
512/936-7500
512/936-7520 (Facsimile)

ATTORNEYS FOR THE
OFFICE OF PUBLIC UTILITY COUNSEL

¹¹ See In the Matter of Truth-In-Billing and Billing Format, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, Paragraph 3, April 15, 1999) (FCC No. 99-72).

CERTIFICATE OF SERVICE

I hereby certify a copy of the foregoing **Reply Comments of OPC** was sent by United States first class mail, on this 26th day of March 2002 to the parties on the attached pages.



Lanetta Cooper

March 26, 2002

CERTIFICATE OF SERVICE

CI Docket No. 02-22

Karen Reidy, Esq.
MCI Corporation
1133 19th Street, NW
Washington, DC 20036

K Dane Snowden, Chief
Consumer Information Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Ken McEldowney
Executive Director
Consumer Action
Suite 310
717 Market Street
San Francisco, CA 94103

Gene Kimmelman
Co-Director, Washington Office
Consumers Union
Suite 310
1666 Connecticut Ave., NW
Washington, DC 20009

Wendy J. Weinberg
Executive Director
National Association of Consumer
Agency Administrators
1010 Vermont Ave., NW, Suite 514
Washington, DC 20005

Martin A. Corry, Director
AARP
601 E Street, NW
Washington, DC 20049

Jean Ann Fox
Director of Consumer Protection
Consumer Federation of America
Suite 604
1424 16th Street, NW
Washington, DC 20036

Charlie Harak
Staff Attorney
Massachusetts Union on Public Housing
Tenants
National Consumer Law Center
77 Summer Street, 10th Floor
Boston, MA 02110

Michael J Travieso, Chair
Telecommunications Committee
National Assoc of State Utility Consumer
Advocates
800 Colesville Road
Suite 101
Silver Spring, MD 20910

James Bradford Ramsay, General Counsel
Sharla Barklind, Assistant Counsel
National Association of Regulatory Utility
Commissioners
1101 Vermont Ave, NW
Suite 2001
Washington, DC 20005

Qualex Duplicating Company
Room CY-B402
445 12th Street, SW
Washington, DC 20554

Margaret Egler, Esq.
Consumer Information Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Susan Grant
Vice President for Public Policy
National Consumers League
Suite 1200
1701 K Street, NW
Washington, DC 20006

Renee Owens, Esq.
Consumer Information Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Loretta J Garcia
Irwin Campbell & Tannewald
1730 Rhode Island Avenue, NW
Washington, DC 20036

Michael B Fingerhut
401 9th Street NW
Suite 400
Washington, DC 20004

Heather M Wilson
Kelley Drye & Warren LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Carl Wolf Billek
IDT Corporation
520 Broad Street
7th Floor, Legal Department
Newark, NJ 07102-3111

Mary E Newmeyer, Federal Affairs
RSA Union, 100 North Union Street
P.O. Box 304260
Montgomery, AL 36130

Catherine M Hannan
Hunter Communications Law Group
1424 Sixteenth Street, NW
Suite 105
Washington, DC 20036

Robert B McKenna
Quest Communications Int'l Inc.
Suite 700
1020 19th Street, NW
Washington, DC 20046

Susan Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089

Karen Reidy
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Davida Grant
SBC Communications
1401 I Street NW
4th Floor
Washington, DC 20005

Joseph DiBella
Verizon
1515 North Courthouse Road
Suite 500
Arlington, VA 22201-2909

Richard H Rubin
AT&T Corporation
295 North Maple Avenue
Room 1127M1
Basking Ridge, NJ 07920

Robert H Jackson
Reed Smith LLP
1301 K Street, NW
Suite 1100 - East Tower
Washington, DC 20005-3373

Richard C Sayers
PMB #119
1125-B Arnold Dr.
Martinez, CA 94553

Monica Tranel
Montana Public Service Commission
1701 Prospect Avenue
P.O. Box 202601
Helena, MT 59601-2601

Marc D Poston
Missouri Public Service Commission
P.O. Box 360
Suite 800
Jefferson City, MO 65101

Alvin Lavoie
303 Abbey Lane
Lansdale, PA 19446

Renee Osusu
FCC
The Portals
445 12th Street SW
Washington, DC 20554