

Attachment Concerning Decree Court Decisions

AT&T mentions a number of decisions by the court administering the AT&T consent decree in AT&T's effort to show that the decree equal access and nondiscrimination requirements — and, therefore, section 251(g) — are broad and have continuing vitality. None of these cases prove that point. In fact, they are all consistent with Verizon's reading of the decree (and section 251(g)) obligations merely required the implementation of equal access and “relieve[d], to the extent reasonably possible, the lingering effects that AT&T's pre-reorganization structure may have on the BOCs' future operations”¹ — both of which tasks were complete long ago.

AT&T claims that a 1983 decision shows that the decree “barred ‘favoritism . . . to any particular carrier’ whenever a customer phoned a BOC to obtain service and required each BOC to provide impartial and ‘reasonably detailed data’ to the customer about his choices for long distance service.”² However, as Verizon explained in its comments, the court in that decision³ did not find that the decree itself required these activities. Rather, the court adopted these practices as a condition of allowing BOCs to continue to default to AT&T calls from customers who failed to select a presubscribed carrier. When the Commission ended the practice of defaulting customers to AT&T, any decree-based obligation to provide information ended as well.

Moreover, in its discussion of this decision, AT&T wrenches two sentence fragments out of context in its effort to make the courts' decision seem to be more than it really was. The

¹ Competitive Impact Statement, 47 Fed Reg. 7170, 7175 (1982).

² AT&T at 11 (citation omitted).

³ *United States v. Western Elec. Co.*, 578 F. Supp. 668, 676-77 (1983).

snippet “favoritism . . . to any particular carrier” was lifted from a sentence that said, “The Operating Company may instead refer the caller to a recorded announcement advising him of the availability of interexchange carriers, or it may otherwise assist him in locating such a carrier, provided that no favoritism is shown to any particular carrier.” And the snippet “reasonably detailed data” described some of what had to be included in bill inserts that announced the initial availability of equal access.

The discrimination that the decree court found in connection with the BOCs’ calling card and payphones was discrimination in favor of AT&T that resulted from the continuation of certain pre-divestiture arrangements among AT&T and its former affiliates.⁴

AT&T refers to a 1984 opinion, holding, it says, “that Pacific Bell had violated the MFJ by refusing to grant AT&T access to its lines for calls originating from AT&T’s coinless public telephones.”⁵ Although that opinion does refer to discriminatory conduct, the decree violation found was that the BOC involved had failed to file tariffs for the provision of exchange access, “including the provision by each [Operating Company] of exchange access for AT&T interexchange telecommunications.”⁶

The *FTS* case cited by AT&T⁷ involved the one BOC’s “discriminat[ing] between AT&T . . . and other persons . . . in the interconnection and use of the BOC’s telecommunications service

⁴ *E.g., United States v. Western Elec. Co.*, 698 F. Supp. 348, 355 (D.D.C. 1988) (“the court is ordering the Regional Companies to cease discriminating in favor of AT&T in the provision of validation data”).

⁵ AT&T at 12, citing *United States v. Western Elec. Co.*, 583 F. Supp. 1257 (1984).

⁶ *United States v. Western Elec. Co.*, 583 F. Supp. 1257, 1259 (1984).

⁷ AT&T at 12-13.

and facilities or in the charges for each element of service...,” in violation of section II(B)(3) of the decree.⁸

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United States v. Western Elec. Co., 846 F. 2d 1422, 1427 (1988).

“Getting the Customer Out of the Middle”
Examining Problems the Carrier Change Process
NECPUC Consumer Affairs Staff Committee

History

In response to a large number of consumer complaints surrounding changes of preferred toll carriers, the NECPUC Consumer Affairs Staff Committee convened a workshop on July 14, 2000 in Boston, Massachusetts. Active inter-exchange carriers, intra-exchange carriers, local exchange carriers and competitive local exchange carriers in the New England states were invited to participate. The purposes of the workshop were to:

- 1) Develop a shared understanding of the causes of unauthorized billing resulting from carrier changes.
- 2) Identify process changes that may be necessary to reduce significantly the number of unauthorized billing complaints resulting from carrier changes.
- 3) Begin to establish protocols concerning advice to consumers concerning steps to take when making a carrier change.

Based on consumer input, the staff committee articulated at the outset a services of desired outcomes it sought from the workshop and any subsequent meetings or initiatives:

- 1) Preferred carrier changes are seamless to the customer.
- 2) Preferred carrier changes occur in a timely manner.
- 3) Carriers (both new and prior) are aware of preferred carrier changes and take steps to ensure customers are billed appropriately.
- 4) Customers are not billed by previous carrier after preferred carrier change (i.e. "casual calling" rates, non-usage fees).
- 5) Underlying carriers do not bill reseller's customers.
- 6) Problems arising out of preferred carrier changes are resolved in a timely manner, regardless of which carrier the customer calls.
- 7) Customers are informed as to when a preferred carrier change will take place.
- 8) Customers need only make one telephone call to implement a preferred carrier change or to choose to not have a preferred toll carrier.
- 9) Customers who choose to not have a preferred toll carrier are not billed for charges by the toll carrier after the customer is un-PICed from that carrier.

During the course of the July 14 meeting and follow-up meetings, industry stakeholders acknowledged that the carrier change process was flawed. Industry representatives estimated that twenty percent of carrier changes fail to flow through seamlessly. There were two views concerning the nature of the problems and the potential solutions. The local exchange carriers generally espoused the view that the existing carrier change process - the Customer Account

Record Exchange (CARE) process – would be effective if it were modified to reflect changes within the industry and made mandatory for use by all carriers, rather than remaining a voluntary industry-recommended procedure. The toll carriers supported the view that improvement in the CARE process was necessary but by itself was an insufficient solution to carrier change process breakdowns. This group asserted that only the establishment of a neutral third party administrator to administer the carrier change process would accomplish the objectives the Consumer Affairs Staff Committee had identified.

The two working groups developed competing proposals and presented them in a joint meeting with the Staff Committee in April 2001. In October 2001, the Staff Committee reconvened the group again for the purpose of providing the two working groups the opportunity to debate the relative merits of the two proposals and attempting to define a solution all participants could agree to. A listing of the companies participating on each working group is provided in Attachment A.

Summary of the Proposals

CARE working group proposal: The proposal put forward by the CARE working group argued that the breakdowns in the carrier change process were not caused by the CARE process. Instead, the working group stated that the problems resulted from untimely or incorrect processing, by one or more of the carriers, of the information contained in the CARE record or failure of a carrier to use CARE. The CARE group recommended the following:

- The New England states adopt rules requiring all carriers of intrastate toll or local exchange service within each state exchange a mandatory set of information elements in processing any change in a customer's intrastate or local exchange provider. The rules adopted would not require carriers to use CARE, a specific industry designed protocol. A carrier using CARE in accordance with industry standards would, however, be presumed to have complied with the rules. In this case, CARE would be considered a "safe harbor". (See Attachment B.)
- For interstate carriers, NECPUC should support a similar process whereby carriers could use CARE or develop an alternative method for exchanging carrier change information in a timely manner. Again, CARE would be provide safe harbor.

The CARE working group also addressed customer education as a method of solving some of the billing issues that had been identified. The CARE group recommended:

- All customers be given a realistic time period for implementation of PIC/LPIC changes and be advised as to how to verify that the change had been completion through the use of industry PIC/LPIC verification numbers.
- All toll carriers should inform their new customers at the point of sale if another carrier (the underlying carrier for a reseller) will appear on the customer's bill as the provider of the service or services.
- All LECs should clearly explain to a customer who is placing a PIC freeze that before they can effectuate a subsequent change in carriers the freeze must be removed.
- All LECS should identify the existence of a PIC freeze on the customer bill. Where the bill is for multiple lines, PIC freeze information would be provided for each line.

NTP working group proposal: The neutral third party (NTP) proposal was designed to resolve customer PIC change and billing issues and to provide a single point of contact for customers making a carrier change. It was designed in three modules to provide carriers with flexibility. Only module one would be mandatory for all carriers. The NTP working group believed that by breaking it into modules, the carriers could have better control over the services that they used the NTP and thus better control over the cost. The NTP proposal assumes mandatory industry use of the existing CARE process and supports the changes to CARE recommended by the CARE working group.

The NTP group recommended Module I of their proposal be mandatory for all carriers. It would establish a centralized database containing customer account information for real time queries during sales calls. The database would be created by a one time data transfer of customer account information from all local service providers to the NTP. Local service providers would continue to provide daily updates to the data elements as the customer's account is updated. The data that would be stored includes:

- the billing telephone number
- the working telephone numbers under the billing telephone number
- a line status indicator (active, disconnected, blocked, etc.)
- billing name and address
- residence/business indicator
- PIC freeze indicator for each level of service (local, in state, out of state)
- the date of the most recent record update
- reseller indicator
- local service provider identification

The NTP would alert the carrier making the sale to any problems prior to the CARE record being sent and would lift the PIC freeze, after properly verifying with the customer, to accomplish the carrier change for the winning carrier. The NTP would provide daily updates of PIC freeze status changes to the affected local service provider on a daily basis to enable the LEC to keep its customer account information current.

The working group estimated an initial load of 9 million access line accounts, across New England, and a daily record exchange of 20,000 records.

Module II of the NTP proposal would allow carriers to use the NTP as the CARE data exchange administrator. The NTP would act as a filter and allow those companies that don't have electronic systems to still use paper form or to go to the NTP website to process a carrier change request. If desired by the carrier, the NTP could also provide third party verification of the carrier change. Module II would be optional for carriers.

Module III proposes that the NTP centrally store customer service records for all carriers. The local provider would provide its customer service records to the NTP along with updates of the customer service records to the NTP. This would help to avoid the problem that customers experience of losing some of their services when they migrate between carriers. The NTP group argues that Module III would greatly foster local competition because of the ability of the winning LEC/CLEC to access complete customer information and migrate all of the customer's services. Additionally, the NTP group believes that implementation of Module III would allow the NTP to serve as an inexpensive alternative for smaller companies that do not have the technical

and/or financial ability to maintain their own customer service records. Module III would also be optional for carriers.

Cost Estimates

CARE proposal: The CARE working group provided the following information regarding cost to implement:

The setup and production costs for establishing the recommended standard paper format should be minimal. However, the ongoing production and administration of the records will incur costs that the team has been able to identify but not quantify. These costs include, but are not limited to, the establishment or enhancement of an internal process for handling records, receiving, verifying, creating service orders, training, faxing and archiving of records.

As a point of reference to assist the Commission in examining the issue of compensation to carriers for producing CARE records, the CARE working group provided a copy of the NECA BNA tariff. (See Attachment C.) The BNA (billing name and address) tariff, which is approved by the FCC, sets out compensation rates for the gathering and transmitting of customer information to carriers

The CARE group also noted that carriers currently using electronic exchange may need to implement enhancements as well.

NTP proposal: The NTP working group provided the following estimated costs:

Module I - monthly set up	\$1,000 - \$1,500 per carrier	
transaction fee:	up to 500,000 transactions	\$0.03 to 0.06
	500,001 – 1,500,000	\$0.02 to 0.05
	over 1,500,000	\$0.01 – 0.04
third party verification	(optional service)	\$2.00 – 4.00 per transaction

Module II – transaction fee
for LECS/CLECS \$2,000 – 50,000 per month to cover costs of reports, 90 days online data storage, 2 years of data archiving, PIC order validation edits, and the interfaces to all the sending IXCs.

transaction fee
for IXC \$0.30 - 3.00 per transaction

These are incremental over Module I. Under this pricing structure, the NTP group argues that the IXC would bear more of the costs than the LEC/CLEC.

Module III – monthly set up	\$1,000 - \$1,500 per carrier	
fee		
transaction fee	up to 500,000 transactions	\$0.04 to 0.07
	500,001 – 1,500,000	\$0.03 to 0.06
	Over \$1,500,000	\$0.02 to 0.05

These are incremental costs over Module I and Module II.

Recommendations

The NECPUC Staff Committee on Consumer Affairs recommends that NECPUC:

- 1) Adopt model rules for the New England states using the language proposed by the CARE group as a starting point for the development of a model rule.
- 2) Work through NARUC to explore the NTP proposal more fully.
- 3) Following the completion of the NARUC effort and an analysis of the impact of the implementation of "CARE" rules on complaint levels in New England, consider requesting the FCC initiate a proceeding on the national introduction of the NTP proposal.

Attachment A

CARE Working Group Members

ATT
ATT Broadband
WinStar
Oxford Telephone
RCN
WCVT
Excel
Granite State Telephone
Verizon
NeuStar
Union Telephone
MCI Worldcom
MCT Telecom
Telephone Association of Maine

NTP Working Group Members

ATT
ATT Broadband
RCN
Excel
NeuStar
Sprint
MCI Worldcom
Telephone Association of Maine

Attachment B

LANGUAGE PROVIDED BY CARE GROUP FOR PROPOSED RULE

- (1) Telecommunications carriers shall be required to exchange information with regard to any change in a customer's intrastate toll carrier or local service provider. The exchange of information shall be processed in a timely manner and shall contain any necessary information to effectuate the customers desired carrier change.
- (2) Carriers shall establish reasonable methods for the exchange of information pursuant to this section including the manner of exchange of information, the timeliness of the exchange and the information included in the exchange. In determining whether methods established by a carrier are reasonable, the Commission shall consider any industry standards for CARE including but not limited to those which have been established by the Ordering and Billing Forum Subscription Committee.
- (3) In order to facilitate implementation of this section, the Commission establishes the following "safe harbor" provisions, which shall be deemed to be reasonable.
 - (A) A CARE record shall be generated by any intrastate local or toll service carrier who initiates or processes any change in a subscriber's account which may affect any other carrier from whom the customer subscribes to any telecommunications service.
 - (B) If CARE is processed electronically, transmission of all required fields in a CARE transaction, as set forth by the OBF Subscription Committee shall be provided.
 - (C) Where electronic transmission of CARE records is not feasible, utilization of at a minimum a standardized paper CARE format containing the following fields shall be required:
 - (1) TCSI Code;
 - (2) BTN;
 - (3) WTN;
 - (4) Jurisdictional Indicator;
 - (5) Date;
 - (6) Type;
 - (7) Bill Name/Address;
 - (8) Order #;
 - (9) Effective;
 - (10) LSP ID;
 - (11) Freeze;
 - (12) PTN indicator; and
 - (13) PTN#

- (D) Whether transmitted electronically or in a paper format, the exchange of information shall include an identification of the local exchange carrier to whom the customer is currently subscribed.
 - (E) Any carrier receiving a CARE document for a residential customer must process the CARE document within 3 business days, and shall forward any necessary information on to any other appropriate carriers within that time.
- (4) Nothing in subsection (3) precludes any carrier from establishing any other reasonable method for exchanging necessary information pursuant to this Rule, provided that such other method is deemed reasonable by the Commission.
 - (5) Provisioning of sufficient information to facilitate customer changes in local or intrastate toll service is a requirement of providing reliable telecommunications service. Any intrastate carrier, or any carrier authorized to do intrastate business in the State, shall be held responsible for the exchange of this information in a reasonable fashion.
 - (6) Upon request from a carrier, or on its own motion, the Commission may waive any portion of the Rule for good cause.



Tariff No. 5

Notice

The NECA Access Service Tariff F.C.C. No. 5 on file with the Federal Communications Commission (FCC) is the official reference for NECA access tariff information. For your convenience, NECA has posted Tariff F.C.C. No. 5 on our website. Although precautions have been taken to insure that this material is identical to the filed version, undetected production errors may cause discrepancies to occur. In the case of any discrepancies, the official tariff on file with the FCC will prevail.

ACCESS SERVICE

13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont'd)13.9 Billing Name and Address Service13.9.1 General Description

- (A) Billing Name and Address (BNA) Service is the provision by the Telephone Company to an interstate service provider who is a customer of the Telephone Company of the complete billing name, street address, city or town, state and zip code for a telephone number or calling card account number assigned by the Telephone Company. An interstate service provider is defined as an interexchange carrier, an operator service provider, an enhanced service provider or any other provider of interstate telecommunications services.
- (B) BNA Service is provided only for the purposes of allowing customers to bill their end users for telephone services provided by the customer, order entry and customer service information, fraud prevention identification of end users who have moved to a new address, any purpose associated with equal access requirement, and information associated with Local Exchange Carrier (LEC) calling calls card calls, collect and third party calls.
- BNA information may not be resold or used for any other purpose including, but not limited to, marketing or merchandising activities.
- (C) BNA information associated with listed/published telephone numbers will be provided. Requests for BNA information associated with nonpublished and unlisted telephone numbers will be provided, unless the subscriber to a nonpublished or unlisted telephone number has affirmatively that requested its BNA not be disclosed.

13.9.2 Undertaking of the Telephone Company

- (A) A standard format for the receipt of BNA requests and the provision of BNA information will be established by the Telephone Company.
- (B) Standard response to BNA requests will be by First Class Mail. Standard format will be on paper. Optional Magnetic Tape formatting will be offered where available.
- (C) Where facilities are available, the customer may request an optional specialized output format required to meet a specific customer need.

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NATIONAL EXCHANGE CARRIER ASSOCIATION, INC.

TARIFF F.C.C. NO. 5

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ACCESS SERVICE

13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont'd)

13.9 Billing Name and Address Service (Cont'd)

13.9.2 Undertaking of the Telephone Company (Cont'd)

- (D) The Telephone Company will make every effort to provide accurate and complete BNA data. The Telephone Company makes no warranties, expressed or implied, as to the accuracy or completeness of this information.
- (E) The Telephone Company will not disclose BNA information to parties other than interstate service providers and their authorized billing agents as defined in 13.9.1(A) preceding. BNA disclosure is limited to those purposes as defined in 13.9.1(B) preceding.
- (F) The Telephone Company reserves the right to request from an interstate service provider who has placed an order for BNA service, the source data upon which the interexchange carrier has based the order. This request is made to ensure that the BNA information is to be used only for purposes as described in 13.9.1(B) preceding. The Telephone Company will not process the order until such time as the interstate service provider supplies the requested data.

13.9.3 Obligations of the Customer

- (A) The customer shall order BNA Service on a separate BNA Order. The order must identify both the customer's authorized representative and the address to which the information is to be sent.
- (B) The customer shall treat all BNA information as confidential. The customer shall insure that BNA information is used only for the purposes as described in 13.9.1(B) preceding.
- (C) The customer shall not publicize or represent to others that the Telephone Company jointly participates with the customer in the development of the customer's end user records it assembles through the use of BNA Service.
- (D) Upon request, the customer will provide to the Telephone Company the source data upon which the customer has based an order for BNA service. The Telephone Company will not process the order until such time as the customer provides the requested data.

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TARIFF F.C.C. NO. 5

6th Revised Page 13-23

(x)

Cancels 5th Revised Page 13-23

ACCESS SERVICE

13. Additional Engineering, Additional Labor and Miscellaneous Services (Cont'd)

13.9 Billing Name and Address Service (Cont'd)

13.9.4 Rate Regulations

- (A) For each order for BNA information received by the Telephone Company, a BNA Order Charge applies. In addition, a charge applies for each customer specific record provided. The BNA Order Charge and the Per Record Charge are specified in 17.4.4 following.
- (B) Where available, the customer may order the response formatted on Magnetic Tape. The Optional Magnetic Tape Charge is specified in 17.4.4 following and is in addition to the BNA Order Charge and the BNA Record Charge.
- (C) Where available, the customer may order an output format other than a standard paper format in order to meet a customer's specific requirement. This option is subject to an hourly programming charge as specified in 17.4.4 following and is in addition to the BNA Order Charge and the BNA Record Charge.