BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

In the Matter of	)	
	)	
Presubscribed Interexchange Carrier	)	CC Docket No. 02-53
Charges.	)	CCB/CPD File No. 0112
	)	RM 10131

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

The incumbent local exchange carriers ("ILECs") are the only parties who want to retain the $5.00 "safe harbor" standard rate for switching presubscribed interexchange carriers ("IXCs") that was enacted more than 18 years ago by the Federal Communications Commission ("Commission").[1] The ILECs' reasons for retaining the safe harbor are inadequate to justify continuing this antiquated rate.[2]

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[1] *Investigation of Access and Divestiture Related Tariffs*, CC Docket No. 83-1145, Phase I, Memorandum Opinion and Order, 55 Rad. Reg.2d (P&F) 1422, App. B, 13-5 (April 27, 1984) ("*1984 Access Tariff Order*"). The charge is often referred to as a presubscribed interexchange carrier ("PIC") change charge.

[2] ILECs or ILEC representatives filing comments include Beacon Telecommunications Advisors, LLC ("Beacon"); BellSouth Corporation ("BellSouth"); Cincinnati Bell Telephone Company ("CBT"); Hot Springs Telephone Company ("Hot Springs"); National Exchange Carrier Association, Inc. and Organization for the Preservation and Advancement of Small Telephone Companies ("NECA/OPASTCO"); National Telecommunications Cooperative Association ("NTCA"); SBC Communications Inc. ("SBC"); Sprint Corporation ("Sprint"); and Verizon. In addition to NASUCA's comments, comments supporting the reduction of the PIC change charge were filed by Association of Communications Enterprises ("ASCENT"); Association for Telecommunications Professionals in Higher Education ("ACUTA"); AT&T Corp. ("AT&T"); Joseph Friedman; the Office of the Attorney General of the State of Texas ("Tex AG"); and WorldCom.

The National Association of State Utility Consumer Advocates ("NASUCA") submits that, based on the comments filed, the Commission should adopt a $1.49 "safe harbor." This will adequately reimburse the ILECs for their costs incurred to switch customers' presubscribed IXCs without recovering other costs. Easing the cost to customers of switching IXCs will enhance the level of competition in the interexchange market.

The Commission stated in the Order and Notice of Proposed Rulemaking ("NPRM"), released March 20, 2002, that

> [t]he current safe harbor was established based on the difficulty of assessing actual costs by carrier for this service, what was known generally about the costs of providing this service, and a determination that it was good public policy to discourage excessive switching of carriers. All three of these factors are now ripe for reexamination.

NPRM, ¶ 8 (footnote omitted). The various comments demonstrate the need for a change.

With regard to the issue of "excessive" switching and the current level of the PIC change charge, SBC states: "There is absolutely no evidence that customers are hesitant to switch IXCs because of the PIC-change charge. Indeed the proliferation of PIC changes belies any claim that the PIC-change charge is unreasonable." SBC at 2; see also Sprint at 4.[3] Clearly, SBC would not find the current level of switching to be excessive. Yet the fact that customers are willing to pay $5.00 to change IXCs and take advantage of competition in the interexchange market says more about the benefits of long distance

[3] Sprint also points to the existence of "no-PIC" and non-telephone options as an indication of the reasonableness of the current safe harbor. *Id*.

competition than it does about the reasonableness of this bottleneck charge. Surely PIC changes would "proliferate" even more if the cost of switching were lowered.[4]

Verizon asserts that the $5.00 safe harbor has "served to promote the rate averaging goal of section 254(g) of the Act by giving the interexchange carriers a uniform charge … If PIC change charges varied by carrier, it could complicate the carriers' efforts to develop uniform nationwide pricing plans." Verizon at 4. Yet an examination of the PIC change charges imposed by Verizon companies in the various states shows little uniformity. See Verizon Attachment B.[5]

From the consumer and consumer advocate perspective, the ability to switch IXCs freely is one key benefit of the last twenty years of telephone regulation.[6] The existence of a multitude of carriers with differing rates, rate structures and rate plans and other variations on long distance service provides consumers with the choice that is the very essence of a competitive market. As the Commission stated, "Today the long distance market is highly competitive, and we believe the ability of end users to change carriers easily has contributed to the competitiveness of that market." NPRM, ¶ 8.

[4] Verizon asserts that IXCs "routinely absorb" PIC change charges. Verizon at 3; see also Beacon at 3. Yet Sprint says that it absorbed PIC change charges for only about one-third of the customers that switched to Sprint in 2001. Sprint at 4, n. 6.

[5] The safe harbor may, in fact, be a benefit in that the IXCs know their maximum exposure for a PIC change.

[6] This is one of the reasons that it is crucial for the Commission to retain the equal access and nondiscrimination policies that are currently being evaluated in CC Docket No. 02-39.

By initiating this rulemaking, the Commission has rejected the ILECs' arguments that a rulemaking is not needed.

In paragraphs 8-13 of the NPRM, the Commission discussed in detail its reasons for initiating this rulemaking. SBC, among others, rejects that Commission finding: "This proceeding is completely unnecessary and a waste of the Commission's and carriers' resources." SBC at 2. Clearly, the Commission did not think so.

The Commission should set a substantially lower safe harbor for switching fees.

The ILECs' arguments that the safe harbor should be retained at $5.00 depend in large part on the inclusion of costs for PIC freezes and slamming. See, e.g., SBC at 3, 10.[7] As discussed below, such costs are not properly part of a charge for changing carriers.

The ILECs' actual PIC change cost claims are feeble at best. SBC states, "Over time, inflation has reduced the value of $5.00." *Id*. at 3. This is true. Yet the cost decreases resulting from the increased productivity of the telephone industry have far outstripped inflation, as the Commission well knows.

BellSouth states that, contrary to CompTel's argument in the original Petition, its $1.49 charge is not evidence that PIC costs have decreased. BellSouth at 2. Yet in the company's own words, "BellSouth's charge reflected a market response by BellSouth to develop a lower cost mechanized approach to PIC changes." *Id*. Clearly, BellSouth's

[7] Expanding the range of costs to be recovered by the PIC change charge also makes the task of identifying those costs more "difficult and burdensome," of course. See *id*. at 3.

costs were low enough in 1990 to justify adopting the $1.49 charge. The other LECs have not shown that their costs are higher than BellSouth's.

On the other hand, BellSouth also says that the fact that it has kept its PIC change charge at $1.49 for the last 12 years does not mean that its costs have not increased since then. *Id*. at 4. BellSouth says that the "substantial dedication of resources" required to "assemble relevant costs" has kept it from filing for an increase. *Id*. Yet the purpose of the $5.00 safe harbor is to allow tariff filings that do not exceed $5.00 without the filing of cost studies. BellSouth could have raised its PIC change charge without much effort.

Verizon favorably compares the Commission's interLATA PIC change charge to the intraLATA PIC change charge set by the states. Verizon at 3. Yet Verizon's chart (Verizon Attachment B) shows that in the majority of states the intraLATA PIC change charge is identical to the interLATA charge. One doubts whether any of the intraLATA charges were based on any more of an examination of costs than the interLATA charge.[8]

Notably, none of the major ILECs provide estimates of their actual costs of implementing PIC changes.[9] The Commission is left with conclusory statements. See, e.g., BellSouth at 5. Verizon states that "if the Commission believes that a new safe harbor is necessary because costs have changed since the PIC change charge was first prescribed, it should base a new safe harbor on actual current cost data." Verizon at 8.

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[8] Verizon's chart also undercuts NTCA's citation to two state orders approving a $5.00 interLATA PIC change charge for Verizon. See NTCA at 2.

[9] This is true whether or not slamming and PIC freeze costs are included. Sprint's assertion that its "PIC-related costs are $4.96 per PIC change" (Sprint at 11) clearly includes slamming and PIC freeze costs as "relevant" to the cost of PIC changes. As discussed separately below, on the other hand, Hot Springs's cost estimates are not credible.

Under the circumstances of this docket, if the ILECs had costs to justify the $5.00, it was incumbent on them to submit them. In the absence of such estimates, the Commission's selection of $1.49 as a safe harbor would be as reasonable now as the selection of $5.00 was in 1984.

SBC states: "Contrary to CompTel's assertions, the majority of the PIC-change requests received by SBC -- an average of 55% -- are processed manually. Thus SBC's costs have not been reduced substantially, as CompTel alleges." SBC at 4. The $5.00 safe harbor was created in 1984, at a time when, it is safe to say, *close to 100%* of the PIC change requests were processed manually. Even if the ILECs' other costs had not also been reduced, this alone would justify a significant reduction in the PIC change charge.[10] SBC also identifies four main cost components of manual PIC changes (*id*. at 5), yet two of the four are themselves "mechanical." CBT gives a detailed description of its PIC change process (CBT at 3-4) yet never actually asserts that its incremental cost of performing a PIC change is above $5.00, below $5.00, or above $1.49, for that matter. See also Sprint at 7-9; Verizon at 5 and Attachment D.[11]

As noted in NASUCA's initial comments, any claims of the difficulty of calculating costs ring false given that carriers, the Commission and consumer advocates alike have vastly more experience with cost analysis, particularly forward-looking incremental cost analysis, today than in 1984. Verizon's PIC-change task list fairly begs

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[10] BellSouth asserts that its manual PIC changes are 34% of all PIC changes. BellSouth at 5.

[11] Verizon's Attachment D shows clearly the extent of automation of the PIC change process.

for a cost study. Verizon Attachment E.[12] On the other hand, Verizon's comparison to unbundled network element nonrecurring charges (*id*. at 3-4 and Attachment C) is not accompanied by any showing that the activities involved are at all similar.

CBT asserts that the current $5.00 safe harbor is cost-based (CBT at 2) but quotes the Commission's language from the *1984 Access Tariff Order* that the $5.00 charge reflects "some" cost recovery. *Id*.; see also Sprint at 4. This is in stark contrast to the view of BellSouth and SBC that the PIC change charge must recover *all* costs remotely related to carrier charges from the PIC change charge.[13] Given that it was acceptable in 1984 for the PIC change charge to recover only some of the PIC change costs, it is hard to see why the ILECs now insist on full (and more than full) recovery of PIC change costs through the change charge.

Sprint states: "Given the absence of any evidence of a market failure resulting from the current PIC-change charges, Sprint sees little benefit in undertaking time and resource consuming reviews of each LEC's existing tariff rates." Sprint at 2.[14] The establishment of the $5.00 safe harbor in 1984 did not result from a review of each of the ILECs' costs and tariffs; neither would the establishment of a $1.49 safe harbor today.

In the end, the ILECs' arguments on the costs of PIC changes fail to rebut

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[12] NASUCA agrees with WorldCom (at 7) that the appropriate pricing for PIC change charges would be based on the cost of the most technologically efficient system.

[13] BellSouth, SBC and Verizon also say that PIC-change charges should pick up a share of common costs. BellSouth at 6; SBC at 6; Verizon at 6.

[14] Sprint's attempt to claim that it is "uniquely qualified" to balance the interests of LECs and IXCs minimizes the extent of interexchange operations of all the major LECs, including the RBOCs that are gaining § 271 authority with increasing frequency.

> the Commission's previous finding in the MCI Complaint Order -- entered after providing the ILEC defendants a full opportunity to develop a record -- that those carriers "have, in fact, realized substantial cost savings from the automation of their PIC change processes over the past fifteen years."

AT&T at 4, citing and quoting *MCI Telecommunications Corp. v U S West Communications, Inc.*, 15 FCC Rcd 9328 (2000); see also ASCENT at 5-6. Once again, in the current proceeding, the ILECs have been given the opportunity to develop a record, and have failed to do so.

Placing PIC change charges under the price cap is unnecessary.

BellSouth supports placing PIC change charges within the Commission's price cap structure.[15] BellSouth at 3. BellSouth states:

> Not only is this limited flexibility fair in the current market environment, but it also affords incumbent LECs the ability to adjust rates quickly to ensure that there is not excessive switching between and among interexchange carriers -- a pricing opportunity that is even more important since only ILECs have the obligation to provide for interexchange carrier preselection.

Id. at 4. According to BellSouth, excessive PIC switching will place the ILECs at a competitive disadvantage compared to the CLECs that do not allow switching. BellSouth's position ignores the fact that the CLECs that do not allow PIC changes --

[15] Verizon asserts that if the PIC change charge is reduced, the price caps will have to be "re-initialized" to recognize the lost revenues. Verizon at 1-2. This is untenable, especially given the restructuring of interstate access charges that has occurred with the CALLS and MAG Orders. See *In the Matter of Cost Review Proceeding for Residential and Single-Line Subscriber Line Charge (SLC) Caps/Access Charge Reform*, CC Docket No. 96-262, Order (June 5, 2002), ¶¶ 1, 14.

whoever they are -- are at a competitive disadvantage compared to the ILEC and to the CLECs that do allow customers to change their long distance carriers.[16]

Under BellSouth's scenario, an ILEC would notice that there are excessive PIC changes occurring, and would raise the PIC change charge to discourage the excessive switching. Just how the determination that switching is "excessive" would be made is unexplained.[17] It seems more likely that the ILEC would decide it needs more revenue, and would increase the charge for that reason.

BellSouth's proposal could also have an adverse impact on local and long distance competition. An ILEC, for example a Bell Operating Company that has been awarded § 271 authority and then gained a substantial share of the long distance market could then increase the PIC change charge to discourage its local customers from switching to another IXC.

The Commission should not allow a higher charge for consumers who have a "PIC freeze."

"PIC freeze" is a service provided by the LEC that prevents a carrier change based solely on an automated submission by the IXC. NPRM, ¶ 17. Previously, SBC suggested that, because customers with PIC freezes require more manual intervention by the LEC when they do change carriers, the change charge for customers with PIC freezes

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[16] In comments filed in CC Docket No. 02-39, NASUCA has argued that equal access and nondiscrimination policies should apply to CLECs as well as ILECs. Wireless carriers should also have equal access obligations. See NTCA at 4.

[17] Would "excessive" switching occur if an IXC began a new attractive offer in BellSouth's markets, and customers responded to the offer?

should be higher. *Id.* Now, however, SBC would roll those costs into the general PIC change charge. SBC at 3, 6-8; see also Sprint at 13.[18] Since PIC freezes substantially reduce unauthorized carrier changes, it could be argued that customers who have opted for PIC freezes have, overall, reduced costs for the ILECs.

Verizon states that "[t]hese costs [of PIC freezes] would not be incurred unless unscrupulous or careless carriers took advantage of their ability to initiate PIC changes through the local exchange carrier's systems to carry out unwanted changes in the customers' choices." Verizon at 7. Hence it is appropriate for ILECs to impose the costs of PIC freezes -- made necessary by IXCs' propensity to perform unauthorized carrier changes -- upon the IXCs who slam, rather than on the customers who seek protection. Further, as WorldCom notes, "[t]he inclusion of PIC freeze costs in the carrier change charge is even more unjust since those that do *not* subscribe to the freeze service are more apt to be the ones to change their service and incur the fee." WorldCom at 5.

The Commission should include in the PIC change charge only the incremental costs of switching carriers. Other costs, such as costs associated with slamming, should not be included in the PIC change charge.

The Commission noted that, when arguing that the $5 change charge safe harbor is reasonable, the ILECs

> rely on costs associated with responding to allegations by end users of unauthorized PIC changes, commonly known as "slamming," as evidence that costs related to PIC changes have not been reduced by automation. …

[18] BellSouth says that its current PIC change charge does not include PIC freeze related costs, but that such costs are properly included within the PIC change charge. BellSouth at 6, n. 2. Despite the non-recovery of its PIC freeze costs, BellSouth does not threaten to withdraw its PIC freeze service, as SBC speculated could be the case. See SBC at 7.

> The LECs' argument would expand the types of costs to be recovered through the PIC-change charge.

NPRM, ¶ 10. The ILECs have done so again.[19] SBC describes the costs that it incurs to address slamming -- of course, without putting any dollar amount on the per-transaction cost. SBC at 9.

Yet SBC's statement that "these carrier obligations are a direct result of correcting an unauthorized PIC change" (*id.*) does not provide a reason why the costs of investigating unauthorized carrier changes should be imposed on customers whose carrier changes *are* authorized. As previously stated by NASUCA, the costs of slamming, like PIC freeze costs, should be imposed upon the carriers that make such investigation necessary, the slammers themselves, as an additional disincentive to order a carrier change without proper authorization.

To the extent that changing a customer's interLATA carrier and intraLATA carrier simultaneously impacts the cost of switching, this should be recognized.

The Commission noted that "end users may change both their interLATA and intraLATA carriers simultaneously to a single carrier…." and that ILECs may impose two carrier change charges for the transaction. NPRM, ¶ 18. SBC attempts to justify this practice by stating that "there are no material differences in processing an interLATA versus an intraLATA PIC." SBC at 4, n. 5. Yet SBC acknowledges that "there is no sensible method for determining the cost impact of each subsequent change request

[19] SBC states, without explaining, that "[l]ower PIC-change charges could encourage more slamming activity on the part of IXCs." SBC at 3.

where more than one change is requested in a single transaction." *Id*. This argues for a single charge for two changes requested at the same time. See WorldCom at 6-7.

Indeed, Sprint acknowledges that its charge for changing a customer's inter- and intraLATA PIC at the same time is the same as the charge for changing only the interLATA PIC. Sprint at 13. And the chart provided by Verizon (Verizon Attachment B) shows that, for 19 of the Verizon local companies, the charge for changing both PICs at once is no more than the charge for changing a single PIC.

The Commission should separately review the PIC change charge for small carriers.

In its comments,

> CBT reiterates its contention that the Commission should take into account the differences among LECs in reviewing the reasonableness of the $5 safe harbor. Carriers such as CBT do not have the economies of scale and the broad subscriber bases of the largest ILECs. … [E]ven if the Commission determines that the $5 safe harbor is unreasonable for the largest ILECs, CBT urges the Commission to reaffirm the reasonableness of the $5 safe harbor with respect to small and mid-sized carriers.

CBT at 5; see also Sprint at 14. CBT's attempt to lump itself -- with almost a million access lines in a compact, mostly urban service territory -- together with the smallest carriers, should be rejected. Sprint in Ohio has well over 600,000 access lines.[20] CBT and Sprint have much more in common with SBC Ameritech Ohio, for example, than they do with Ohio's Pattersonville Telephone Company, with just over 400 access lines.

One of those small ILECs, Hot Springs, has presented a cost study that purports to show that its costs are $23.65 per switch. Hot Springs, Attachment A. On its face, Hot

Springs' PIC change process is far from mechanized. See NECA/OPASTCO at 2. Hot Spring's front desk persons spend, on average, 14 minutes on every PIC change; the technician takes 11 and 1/3 minutes to change the switch for each change; and Hot Springs spends an incredible 1 hour and 10 minutes of other office time for every PIC change. One can only sympathize with Hot Springs. One hopes that Hot Springs is not typical of small LECs. Perhaps NECA could put together a cost-based PIC change tariff for these companies.[21]

Conclusion

SBC states:

> [C]arriers not subject to the FCC's tariffing requirements charge $5.00 for PIC-change charges. These carriers certainly have the ability to charge higher prices for PIC-change services. Their decision to charge $5.00 demonstrates that $5.00 is reasonable and likely cost-based.

SBC at 11. From another perspective, the fact that none of these carriers charges *more* than $5.00 demonstrates that their costs are likely lower than $5.00. These carriers, like the ILECs, charge $5.00 because customers are used to the charge and will pay it as a cost of obtaining a better deal on long distance calling. This is hardly a public interest argument in favor of retaining the $5.00 safe harbor.

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[20] Despite the rural nature of much of its service territory, Sprint acknowledges the national scope of its customer care operations. Sprint at 10.

[21] It would appear that such substantial differences in cost between these rural companies and urban companies would be an appropriate subject for universal service funding, if it is not already included in the $426,000 in support that Hot Springs receives. Universal Service Monitoring Report (October 2001). See also NTCA at 5.

For the reasons stated herein and in NASUCA's initial comments, the Commission should adopt, after investigation, a $1.49 safe harbor PIC-change charge that reflects the current costs of changing carriers. The Commission should also adopt positions consistent with these comments on the other issues addressed.

Respectfully submitted,

ROBERT S. TONGREN
CONSUMERS' COUNSEL

____
David C. Bergmann
Assistant Consumers' Counsel
Bergmann@occ.state.oh.us

Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
Phone (614) 466-8574
Fax (614) 466-9475

____
Michael J. Travieso
Chair, NASUCA Telecommunications
Committee

NASUCA
8300 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone (301) 589-6313
Fax (301) 589-6380