

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

In the Matter of

Presubscribed Interexchange Carrier Charges )  
 ) CC Docket No. 02-53  
 ) CCB/CPD File No. 01-12  
 ) RM-10131

AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R.

§ 1.415, AT&T Corp. ("AT&T") submits this reply in response to the comments of other parties on the NPRM in this proceeding regarding the Commission's regulation of presubscribed interexchange carrier ("PIC") change charges assessed by incumbent local exchange carriers ("ILECs").<sup>1</sup>

Commenters from a wide spectrum of interests, including carrier trade

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<sup>1</sup> Presubscribed Interexchange Carrier Charges, CC Docket No. 02-53, CCB/CPD File No. 01-12, and RM-10131, Order and Notice of Proposed Rulemaking, released March 20, 2002 ("Order" and "NPRM"), 67 FR 34665 (May 15, 2002). Comments were filed by the Association of Communications Enterprises ("ASCENT"); the Association for Telecommunications Professionals in Higher Education ("ACUTA"); Beacon Telecommunications Advisors, LLC ("Beacon"); BellSouth Corporation ("BellSouth"); Cincinnati Bell Telephone Company ("CBT"); Hot Springs Telephone Company ("HSTC"); the National Association of State Utility Consumer Advocates ("NASUCA"); the National Exchange Carrier Association and the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed jointly ("NECA/OPASTCO"); the National Telecommunications Cooperative Association ("NTCA"); SBC Communications, Inc. ("SBC"); Sprint Corporation ("Sprint"); the Office of the Attorney General of the State of Texas ("Texas AG"); Verizon; and WorldCom.

associations,<sup>2</sup> individual IXCs,<sup>3</sup> public agencies,<sup>4</sup> and representatives of numerous customers<sup>5</sup> all support the Commission's recognition in this proceeding that the current non-cost based \$5.00 "safe harbor" for PIC change charges is an outmoded relic of the immediate post-divestiture era that can no longer be permitted to continue in the current, intensely competitive telecommunications marketplace. Like AT&T, these other commenters also recognize that the Commission should require ILECs to establish PIC change charges at a cost-based level that eliminate the anticompetitive subsidy inherent in the current safe harbor mechanism, create appropriate incentives for ILECs to perform PIC changes in an efficient manner, and avoid creating artificial economic deterrents to customers' exercise of choice among telecommunications providers.<sup>6</sup>

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<sup>2</sup> See ASCENT, p. 1 and n.1.

<sup>3</sup> See AT&T, pp 1-2; WorldCom, pp. 1-2.

<sup>4</sup> See NASUCA, pp.2-3; Texas AG, pp. 1-2.

<sup>5</sup> See ACUTA, pp. 1, 3.

<sup>6</sup> AT&T also showed (pp. 7-8) that establishing a new safe harbor level for PIC change charges would effectively immunize such ILEC rates from further revision absent another rulemaking like this proceeding, and thereby undermine the Commission's objective "to establish a standard that does not require continuous revision as technology evolves." NPRM, ¶ 16. Some ILEC commenters erroneously assert that such a safe harbor must be maintained to avoid the need for agency review of individual carriers' cost-supported tariffs for PIC change charges. See, e.g., Sprint p. 11. But the Commission staff, in its discretion, may permit carrier initiated rates that fall below a general cost-based guideline established in this rulemaking to take effect, and scrutinize only those tariffs that exceed that threshold, without creating the de facto immunity from further regulatory scrutiny that a safe harbor would necessarily create.

Predictably, the sole opposition to elimination of the current safe harbor comes from the ILECs. However, rather than complying with the Commission's request (NPRM, ¶ 16) for specific cost information that is exclusively within those carriers' control, the ILECS rely virtually entirely on the same threadbare arguments that the Commission has already twice rejected, first in the MCI Complaint Order<sup>7</sup> and again in its Order granting CompTel's petition to initiate this rulemaking.<sup>8</sup> To the very limited extent that any ILEC even purports to submit cost data, however, that information only confirms that the current safe harbor mechanism perpetuates PIC change charges at levels that far exceed any measure of forward-looking incremental cost of implementing those carrier changes efficiently.

For example, ILEC commenters raise anew their disreputable claim that the current safe harbor should be retained (or even that the level should be raised) as a deterrent to "excessive" PIC changes by customers.<sup>9</sup> The Commission has already concluded, however, that such a rationale is facially inadequate to justify retention of the current safe harbor level.<sup>10</sup> Moreover, as the Texas AG correctly notes (p. 2), in

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<sup>7</sup> MCI Telecommunications Corp. v. U S WEST Communications, Inc., 15 FCC Rcd 9328 (2000) ("MCI Complaint Order").

<sup>8</sup> See CompTel Files Petition for Rulemaking Re: Presubscribed Interexchange Carrier Charges, RM No. 10131, CCB/CPD File No. 01-12, Public Notice, 16 FCC Rcd 11085 (2001)("CompTel Petition").

<sup>9</sup> See, e.g., BellSouth, p. 2 (arguing that PIC change charge should be permitted "to deviate from cost [] to discourage excessive amounts of shifting back and forth between and among interexchange carriers").

<sup>10</sup> The Commission noted in the Order granting CompTel's rulemaking petition that discouraging "excessive" switching by customers has been "called into

the current highly competitive long distance market, “the idea of preventing excessive switching simply has no place.”<sup>11</sup> There is no policy basis for the Commission to substitute its regulatory fiat for decisions by subscribers regarding the number of PIC changes that those customers may decide to make; there is even less basis for the ILECs to arrogate such a determination to themselves.

Indeed, the ILECs should be indifferent to the number of times that customers avail themselves of the option to change their PIC under cost-based rates for that service. NASUCA correctly points out (p. 2) that “so long as LECs are reimbursed for the incremental cost of switching customers from one IXC to another, the level of switching – whatever that level may be – cannot be deemed excessive.” The fact that the ILECs continue to raise the bogus argument that customers must be deterred from switching carriers too frequently speaks volumes about their real motives in opposing adoption of cost-based PIC change charges.

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(Footnote continued from preceding page)

question” by the changes to the competitive landscape since the safe harbor was adopted.” As stated there, “[t]his Commission relies on the fiercely competitive nature of the long distance market to ensure reasonable prices for consumers,” and “the ability of end users to change carriers easily has contributed to the competitiveness of that market.” Order, ¶¶ 8, 12.

<sup>11</sup> See also ASCENT, p. 15 n. 35 (“[I]n light of the Commission’s commitment to safeguarding the right of consumers to configure their telecommunications service relationships as they see fit, there can be no such thing as an ‘excessive’ PIC change”).

Equally bankrupt is the ILEC's argument that the present safe harbor should be retained or expanded as a deterrent to slamming.<sup>12</sup> The short – and dispositive – answer to this claim is that the Commission has already prescribed the process for enforcing the prohibitions against unauthorized carrier changes and redressing customer allegations of slamming.<sup>13</sup> PIC change charges have no role to play in that enforcement and remedial mechanism.

The ILECS also assert that marketplace forces are sufficient to constrain PIC charge rates to reasonable levels or, in the alternative, that those rates should be placed under price cap regulation in lieu of cost of service pricing.<sup>14</sup> Both claims lack merit. As AT&T showed (p. 2 n.5), because PIC changes can only be implemented by a subscriber's local service provider, the emerging competition in the local services market provides no effective constraint on current PIC change charge levels. Moreover, as NASUCA (p. 6) correctly points out, "[e]ven where there is local

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<sup>12</sup> SBC, p. 3, (“Lower PIC-change charges could encourage more slamming activity on the part of IXCs”); *id.*, p. 11 (“A reduction in the \$5.00 safe harbor could actually result in increased slamming activity, since the associated PIC-change fees would be lower”).

<sup>13</sup> See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers, 14 FCC 1508 (1998)(“Slamming Order”), recon. 15 FCC\_Rcd 8050 (2000)(“Slamming Reconsideration Order”).

<sup>14</sup> See Sprint, pp. 4-5 (arguing that “competitive market” demonstrates reasonableness of current safe harbor level); BellSouth, p. 2 (claiming “the Commission should adopt a more market-based approach to PIC change charges”); *id.*, p. 3 (asserting that “price cap regulation affords sufficient regulatory oversight to insure reasonable charges”).

competition, market forces are unlikely to discipline the carrier change charge” since the carrier change “is hardly a prominent feature of a local carrier’s rates” and, thus, the proposition that it would affect a customer’s choice of local provider is “fundamentally far-fetched.”<sup>15</sup>

Price cap regulation of PIC change charges is equally impermissible. When the Commission adopted price cap regulation of the major ILECs, it excluded the PIC change charge from the application of the caps because these assessments “represent a direct charge to end users,” rather than on carriers, and that these charges are “very different from the broader system of interstate access tariff offerings” to which incentive regulation could be applied.<sup>16</sup> For these reasons, the Commission held that PIC change charges should “continue to be regulated under a traditional approach” based on the cost of those services.<sup>17</sup> Nothing that has occurred in more than a decade since the Commission issued those rulings provides any basis for disturbing these conclusions. To the contrary, despite the Commission’s finding in the MCI Complaint Order that ILEC PIC change costs have markedly decreased during this period, applying price caps to PIC change charges would allow the ILECs to substantially

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<sup>15</sup> As AT&T also showed (pp. 7-8 & n.13), and as NASUCA confirms (p. 4 n.10), the formal complaint process is likewise inadequate to assure just and reasonable PIC change charges due to the evidentiary and procedural burdens of that process.

<sup>16</sup> See Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786, 6810 (1990), recon. 6 FCC Rcd 2637, 2715 (1991).

<sup>17</sup> See 6 FCC Rcd at 2716.

increase PIC change charges to end users, subject only to making offsetting adjustments in carrier access charges.

The ILECs further contend that they should be able to recover through their PIC change charges a host of purported costs that have no place in determining the rate level for that service. In particular, these carriers assert that the PIC change safe harbor should be retained at its current level to allow them to recover the costs of investigating slamming allegations.<sup>18</sup> As ASCENT (pp. 10-15) and NASUCA (p. 4 n.8 and pp. 8-9) demonstrate, however, the Commission has obviated any legitimate role by ILECs in “investigating” slamming allegations, and has instead allocated that obligation among the authorized and unauthorized carriers and public agencies.<sup>19</sup> Accordingly, none of these purported investigative expenses should be taken into account in computing a cost-based PIC change charge.

Similarly, the ILECs claim that their PIC change charges should be allowed to recover all manual processing required on working telephone numbers for

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<sup>18</sup> See NTCA, p. 3 (claiming that current safe harbor is “needed to recover the costs associated with responding to the increased number of customer slamming complaints and inquiries as well as the cost of slamming investigations conducted by ILECs”); Verizon, p. 7 (stating that PIC change charge “also should include the costs incurred by the [LEC] in resolving slamming complaints”); Sprint, pp. 9-10 (arguing that “relevant costs” of PIC change charge include activities “to investigate and respond to slamming complaints”); SBC, p. 9 (“Costs borne by executing ILECs to process slamming allegations involving interstate toll accounts should be recovered through the PIC-change charge”)

<sup>19</sup> See ASCENT, pp. 10-11 (citing Slamming Order and Slamming Reconsideration Order). Moreover, as ASCENT also points out (p. 11), there is no policy justification for allowing only the ILECs to recover such investigative costs where those expenses are also borne by IXCs.

which a PIC freeze has been implemented.<sup>20</sup> As a threshold matter, this “problem” is largely one of the ILECs own creation, because as NASUCA points out (p. 8) “there appear to be numerous instances where the ILEC has placed a PIC freeze on a customer’s account without the customer’s consent.” Moreover, the record in this proceeding demonstrates that the ILECs’ rhetoric greatly overstates the extent to which PIC freezes contribute to manual processing of PIC changes; as CBT (p. 4) is constrained to admit, such freezes resulted in rejection of mechanized PIC changes for only 9.4 percent of its total carrier changes. Finally, including the manual processing costs associated with PIC freezes by the minority of customers who have in fact elected that option through charges assessed on all customers who change their IXC is squarely at odds with the Commission’s longstanding regulatory policy that access ratepayers should only be charged for the service elements that they actually use.<sup>21</sup>

The ILECs’ comments generally fail to provide any factual cost showings, relying instead almost exclusively on narrative descriptions of their PIC change procedures in an effort to demonstrate that these services necessarily entail

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<sup>20</sup> See BellSouth, p. 6 n.2 (asserting that PIC freeze costs “are associated with the PIC change function and therefore properly recoverable through the PIC change charge”); SBC, p. 6 (“costs associated with the placement or removal of PIC freezes should be recovered via the PIC-change charge”); Verizon, p. 6 (“the PIC charge should recover the costs of administering PIC freezes, including the cost of entering the PIC freeze and removing it when a customer changes [IXC]”). See also CBT, p. 4 (discussing PIC changes submitted by IXCs that are rejected, and thereafter manually processed, due to PIC freezes); Sprint, pp. 6-7 (same).

<sup>21</sup> See, e.g., Investigation of Access and Divestiture Related Tariffs, 97 F.C.C.2d 1082 (1984); MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, FCC 82-579 (released February 28, 1983).

costs at, or even above, the current safe harbor level.<sup>22</sup> These purported justifications are little more than process flows that provide no insight into the amount of work actually involved in performing those functions, or the related costs.<sup>23</sup>

To the limited extent that they provide any cost information, moreover, those data appear to be overstated when compared to other available information about the costs of even more complex customer migrations.<sup>24</sup> But in all events, the ILEC filings lay bare that their claimed costs are not based on forward looking, incremental

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<sup>22</sup> See BellSouth, pp. 5-6; CBT, pp. 3-5 and Appendix A; HSTC, Attachment A; Verizon, Attachments A-F.

<sup>23</sup> In many cases, the ILEC filings are transparently calculated to embellish the amount of work necessary to implement a PIC change. For example, in Verizon's filing the transfer of records or requests from one system to another for Verizon West (the former GTE) is described as two discrete steps, one for "sending" and another for "receiving" those data. Similarly, the "switch interface" is identified as a separate entity from the switch itself, so that when PIC changes are sent from the switch to the Subscription Services ("SS") system, a total of four separate steps are described. As a result, the description indicates that Verizon West requires 26 steps to process an IXC-initiated PIC change, while the same process requires only 13 steps for Verizon East (the former Bell Atlantic).

<sup>24</sup> For example, Verizon's Attachment C indicates the applicable rates for various "conversion as is" functions allegedly analogous to a PIC change range up to \$34.71 in Massachusetts; \$24.70 in Maryland; \$58.56 in New Jersey; \$ 35.90 in New York; and \$27.25 in Pennsylvania. But the unbundled network element ("UNE") non-recurring charges ("NRCs") in those states for totally migrating existing local customers from Verizon to a competing local carrier range from a low of \$1.06 (in Pennsylvania) to a high of \$6.70 (in Maryland). Discrepancies of this magnitude between Verizon's alleged costs of implementing PIC changes and the far more complex customer migration process point to serious overstatement by Verizon of the costs underlying PIC change charges.

costing methods that rely on the most efficient available technology.<sup>25</sup> As both NASUCA (p. 5) and WorldCom (p. 7) underscore in their comments, reliance on the most technologically efficient methodology is necessary to assure consistency with the Commission's policies, in particular with respect to implementation of PIC changes.<sup>26</sup> Mandating that ILECs adhere to this standard will eliminate the current anticompetitive subsidy inherent in the current safe harbor rate level, and provide appropriate efficiency incentives for ILECs when those carriers effectuate PIC changes.

WHEREFORE, for the reasons stated above and in AT&T's Comments, the Commission should require ILECs to refile their tariffs for PIC change charges with full cost support pursuant to Section 61.38 of the Commission's Rules (47 C.F.R. § 61.38) and should adopt guidelines for review of those proposed rate levels that reflect forward looking incremental costs and the most technologically efficient process for implementing PIC changes.

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<sup>25</sup> See, e.g., SBC, p. 6 ("the overall costs for processing PIC changes should include not only costs directly incremental to provisioning a PIC change, but also a reasonable percentage of a carrier's total company common costs"); Sprint, p. 14 (claiming need to recover fixed system costs).

<sup>26</sup> See Slamming Order, 14 FCC Rcd at 1572 (¶ 105)(stating that the Commission expects carriers executing PIC changes to "us[e] the most technologically efficient means available to implement changes to subscribers' telecommunications services").

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July 1, 2002

**CERTIFICATE OF SERVICE**

I, Theresa Donatiello Neidich, do hereby certify that on this 1st day of July, 2002 a copy of the foregoing AT&T Reply Comments was served by US first class mail, postage prepaid, on the parties named below.

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