

Before the
Federal Communications Commission
Washington, D.C. 20554

Petition For Declaratory Ruling and/or Rulemaking Filed)
by Ameritel Corporation and Joint Petition for)
Rulemaking To Implement Mandatory Minimum) CG Docket No. 02-386
Customer Account Record Exchange Obligations on All)
Local and Interexchange Carriers Filed by AT&T Corp.,)
Sprint Corporation, and WorldCom Inc.)
)

REPLY COMMENTS OF AMERICATEL CORPORATION

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February 4, 2003

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I. INTRODUCTION AND SUMMARY

Americatel Corporation (“Americatel”),¹ through counsel, respectfully submits its reply comments in the above-captioned proceeding.² Americatel is filing these reply comments to emphasize its position on two key issues that have been raised by several commenting parties: (1) the Federal Communications Commission (“FCC” or “Commission”) should grant special consideration to the impact of any new billing rules on small, rural incumbent local exchange

¹ Americatel, a Delaware corporation that is a subsidiary of ENTEL Chile, is a common carrier providing domestic and international telecommunications services. ENTEL Chile is the largest provider of long distance services in Chile. Americatel also operates as an Internet Service Provider (“ISP”). Americatel specializes in serving Hispanic communities throughout the United States, offering presubscribed (1+), dial-around, and prepaid long distance services, as well as private line and other high-speed services to its business customers. The majority of traffic carried by Americatel is dial-around in nature.

² *Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking Filed by Americatel Corporation and Pleading Cycle Established for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on all Local And Interexchange Carriers Filed by AT&T Corp., Sprint Corporation, and WorldCom, Inc.*, Public Notice, CG Docket No. 02-386, DA 02-3550 (rel. Dec. 20, 2002) (“Notice”).

carriers (“ILECs”); and (2) the details and mechanics of the interchange of end user customer billing information should be developed in industry fora, such as the Ordering and Billing Forum (“OBF”), which is sponsored by the Alliance of Telecommunications Industry Solutions (“ATIS”). However, the Commission should set a deadline for the industry, working through the OBF, to reach agreement on these details and require that all carriers (unless exempted by the FCC) follow those industry-developed solutions or to implement some other reasonable alternative.

Additionally, Americatel responds herein to several comments and criticisms of its petition for declaratory ruling. Americatel demonstrates below that, because the relief that it seeks would merely clarify existing FCC rules and policies, it is appropriate for the Commission to issue a declaratory ruling in this case. Next, Americatel explains that the arguments concerning its request and the laws governing Customer Proprietary Network Information (“CPNI”) are incorrect, but that the lack of customer billing information from some LECs is threatening the viability of dial-around calling services. Finally, Americatel argues that advent of service package competition should not be an excuse to eliminate ala carte competition in the telecommunications market. LECs that offer their customers bundles of services should not be able to foreclose competition for specific services by refusing to provide their competitors with access to information that is necessary for customer billing.

II. SPECIAL CONSIDERATION SHOULD BE GIVEN TO RURAL ILECS

As Americatel stated in its comments, “[i]t may well be reasonable for the FCC to give special consideration to rural incumbent local exchange carriers that may not have the resources to implement a mechanized solution, such as the CARE Plan, to billing problems or

might not even have any significant dial-around traffic in their exchanges.”³ Therefore, Americatele is in basic agreement with commenting parties, such as the National Exchange Carrier Association (“NECA”) and the Small Incumbent Local Exchange Carriers (“Small ILECs”), that have urged the Commission to recognize the unique situation faced by rural ILECs in terms of resources.⁴

III. WHILE OBF MIGHT BE THE PROPER FORUM TO DEVELOP THE DETAILS FOR THE EXCHANGE OF END USER BILLING INFORMATION, THE FCC MUST ESTABLISH A FIRM DEADLINE FOR COMPLETION OF THIS WORK AND REQUIRE CARRIERS TO FOLLOW THE OBF PLAN

Similarly, Americatele’s comments indicated its belief that the details for the exchange of end user customer billing information among carriers should be developed in industry fora, such as the OBF.⁵ Therefore, Americatele is in basic agreement with parties, such as Intrado, Inc. (“Intrado”),⁶ that have made such a recommendation to the Commission, provided that the Commission set a firm deadline for the completion of this work. Otherwise, Americatele must oppose the suggestion of Intrado and others. Without a firm deadline from the FCC, it would be too easy for this issue to lay fallow at the OBF while dial-around carriers continue to suffer from millions of dollars of unbillable calls because they cannot get access to timely and accurate customer billing data.

Moreover, it remains critical that every LEC, including CLECs, provide BNA service and, unless exempted by the Commission because of its status as a small rural LEC, also

³ Comments of Americatele, at 2, n.4.

⁴ Comments of NECA, at 3-4; Comments of the Small ILECs, at 13.

⁵ Comments of Americatele, at 2, n.4.

⁶ Comments of Intrado, at 7-8.

offer CARE-type information to other carriers as recommended by the industry through the OBF and otherwise respond to reasonable requests for customer billing information, as discussed herein.

IV. THE CLARIFICATION OF EXISTING RULES IS APPROPRIATE FOR A DECLARATORY RULING

Allegiance Telecom, Inc. (“Allegiance”) argues⁷ that Americatel is seeking to have the Commission adopt new rules in response to Americatel’s request for a declaratory ruling and that such a request is inappropriate. This argument is wrong. Americatel is merely seeking to have the Commission clarify its existing policies and rules. Such a request has been determined to be an appropriate subject for a declaratory ruling proceeding, as recently as last month, by the U.S. Court of Appeals for the District of Columbia Circuit in the *Sprint* case.⁸ In that case, the Court reaffirmed the principle that a regulatory agency may clarify its original rule without first engaging in a new rulemaking proceeding.

As Americatel demonstrated in its September 5, 2002 petition for declaratory ruling, the FCC has already specifically held that all “LECs should be required to tariff BNA information to interstate communications service providers.”⁹ Needless to say, when the FCC made its 1993 policy statement, there were no competitive LECs (“CLECs”) in full operation.

⁷ Comments of Allegiance, at 3-4. *See also*, Comments of BellSouth, at 2.

⁸ *Sprint Corp. v. FCC*, No. 01-1266, slip op. at 7-8 (D.C. Cir. Jan. 21, 2003).

⁹ Americatel’s Petition, at 10, *citing Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Second Report and Order, 8 FCC Rcd 4478, at ¶16 (1993) (“*BNA Second Report*”). *See also*, *Detariffing of Billing and Collection Services*, Memorandum Opinion and Order, 1 FCC Rcd 445 (1986) In that order, the FCC stated as follows: “We fully expect local exchange carriers to make BNA information readily available at reasonable prices, and we will not hesitate to take appropriate action if these concerns are not met.” *Id.*, at ¶13.

Yet, it is clear that the Commission's reasoning supporting its 1993 conclusion applies equally well to CLECs today. The FCC stated, when comparing LECs' access to customer billing information versus that of long distance carriers: "only the LECs can provide BNA in accurate, up-to-date form. BNA is generated exclusively by LECs as a byproduct of their provision of exchange access service, and only LECs have the capacity to keep this information current."¹⁰ Nothing has changed to warrant a conclusion that CLECs should be treated differently from ILECs on the issue of BNA.

While some CLECs, including Allegiance, are complying with this requirement by providing BNA service to long distance carriers, many others are not in compliance. Many CLECs simply do not make available the information solely in their possession.¹¹ Hence, Americatel's petition seeks clarification of the FCC's policies on BNA such that all LECs, including CLECs, must understand that it is their obligation to offer BNA service to long distance carriers. A declaratory ruling by the Commission would clarify the obligations of CLECs and would be appropriate relief under the law.

Similarly, a declaratory ruling on the issue of a carrier's duty to provide other customer billing information upon the request of a dial-around carrier is also appropriate. The Commission has often issued declaratory rulings that have directed carriers to make notifications

¹⁰ *Id.*

¹¹ Americatel continues each month to suffer from significant numbers of unbillable calls originated from ANI listings for which no BNA information can be obtained from a serving CLEC. Americatel attempts to obtain BNA-like information for these calls from other non-telecommunications industry sources, but has determined that more than 90% of such BNA-like information is simply wrong. Americatel expects that it will ultimately be required to write off a minimum of 50% of the dial-around calls made from phone numbers (ANIs) for which Americatel cannot obtain accurate BNA from the serving CLEC. This result would not only be unfair and unreasonable, but also will threaten the very existence of all but the largest competitive long distance carriers.

or provide information as a part of a larger, overall regulatory scheme. For example, in the *Inmate Calling Services Order*,¹² the Commission directed carriers providing specialized payphones for inmate-only calling services to take a variety of actions, including the notification of customers that the specialized carrier-provided payphones would be treated as unregulated customer premises equipment (“CPE”). The Commission reasoned that it was merely interpreting its rules and policies concerning the provision of CPE by regulated carriers and not devising a brand new regulatory plan. More important, it stands to reason that, for the market to work, customers (prisons, jails and other correctional institutions) had to be made aware that they had a choice of payphone equipment providers. Therefore, the FCC directed the carriers providing inmate service to inform their customers that they now could chose other equipment suppliers. Americatel’s request to have a LEC disclose, upon request, the identity of the carrier to which the LEC ported its former customer’s telephone number is simply a reasonable outgrowth of the Commission’s existing regulation of BNA information.

While Americatel does not object *per se* to the Commission’s institution of a new rulemaking proceeding to address inter-carrier exchange of billing information, such a proceeding is not necessary to grant the relief requested by Americatel. Allegiance’s argument is not correct and should, therefore, be rejected.

¹² *Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, Declaratory Ruling, 11 FCC Rcd 7362 (1996) (“*Inmate Calling Services Order*”). See also, *Administration of the North American Numbering Plan – Carrier Identification Codes*, Declaratory Ruling, 13 FCC Rcd 8687 (1998) (granting, in part, the request of VarTec Telecom, Inc. for the Commission to declare that all LECs were required to use an automatic intercept message in each of its exchanges in connection with the transition from three-digit to four-digit carrier identification codes). Cf. *AIRCELL, INC.; Petition, Pursuant to Section 7 of the Act, For a Waiver of the Airborne Cellular Rule, or, in the Alternative, for a Declaratory Ruling*, Order on Reconsideration, 14 FCC Rcd 18430 (1999) (modifying the grant of a waiver of a Commission rule on the licensee notifying other carriers within 151 kilometers of the licensee’s proposed base station of certain radio engineering information).

V. CPNI IS NOT AT ISSUE

SBC Corporation (“SBC”) argues¹³ that information about an end user customer’s selection of a new local carrier constitutes “proprietary information,” the disclosure of which to another carrier is barred by Section 222 of the Communications Act of 1934, as amended (“Act”).¹⁴ SBC is wrong. The statute makes clear that the mere association of a specific carrier’s customer’s name, address and telephone number constitutes “Subscriber List Information,” which does not constitute CPNI.¹⁵ This information, therefore, can be lawfully shared among carriers.

Moreover, even if this information were to constitute CPNI, its disclosure by a customer’s former LEC to a dial-around carrier would be permitted under the law (Section 222(d)(2)). Indeed, the Commission has stated as follows:

We agree that section 222(d)(2)’s exception for the disclosure of CPNI “to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services” includes the use and disclosure of CPNI by carriers to prevent fraud. Sections 222(d)(1) and (2) establish that the carrier and public’s interest in accurate billing and collecting for telecommunications services and in preventing fraud and abuse outweigh any privacy interests of those who might attempt to avoid payment of their bills or perpetrate a fraud.¹⁶

¹³ Comments of SBC, at 1-2.

¹⁴ 47 U.S.C. §222.

¹⁵ *Id.*, at §222(h).

¹⁶ *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, Second Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, at ¶83 (1998).

From its comments, SBC does not appear to understand the dynamics of the impact of local competition on the dial-around long distance market. With dial-around service, users simply dial a long distance carrier's Carrier Access Code (1010123, in the case of Americatele) and place their calls. The dial-around carrier has no information about the identity of its customers, but merely receives a report of their ANI listings, *i.e.*, telephone numbers from which the calls were dialed. In a local service monopoly environment, the dial-around carrier could simply take this ANI information and its call billing records to the serving ILEC, which, in turn, would provide BNA service or even billing and collection services for the dial-around carrier. As both the industry and the Commission are well aware, this simple situation no longer exists in most areas of the country.

As previously explained by Americatele,¹⁷ in a market where customers can and do change LECs, Americatele has been receiving a rapidly increasing number of returned call billing records marked "Return Code 50" or "RC50." As SBC is well aware, an RC50 marking indicates that the ILEC, in this instance, no longer provides local service to the ANI listing from which the dial-around toll calls were placed. Since the ILEC no longer serves the ANI at issue, it has no ability to identify which customer to bill for those calls on behalf of the dial-around carrier. Likewise, unless and until the dial-around carrier can identify which LEC is now serving the telephone number from which the calls were made (ANI) in order to request the associated BNA information, the dial-around carrier cannot even bill for its own calls. The result is unbillable calls and, ultimately, financial write-offs for dial-around carriers.

¹⁷ Petition of Americatele, at 6-7.

In most markets where Americatel operates, it would be impracticable for Americatel to identify which LEC is providing local service to the users of Americatel's dial-around service. For example, one of Americatel's largest markets is California. According to the Internet web site of the California Public Utilities Commission,¹⁸ there are more than 400 carriers licensed to provide local service in California. It would be folly for Americatel (or any other long distance carrier, for that matter) to call every CLEC operating in California each time Americatel receives an RC50 notice until it finds a CLEC that confirms that it is providing local service to the telephone number from which dial-around calls were placed over Americatel's network. Yet, left to SBC's devices, Americatel would be forced to take such action—unless it is willing either to provide free services to customer or to exit the dial-around long distance market.

The only reasonable solution for a dial-around carrier that has received an RC50 notification is to contact the LEC providing the RC50 notification and request that it identify the other carrier to which the LEC ported the telephone number associated with the RC50 notification. The dial-around carrier's only contact with the customer is through the LEC that formerly provided service. Moreover, since the LEC that sent the RC50 notice successfully ported the customer's telephone number to another LEC, it (the first LEC) obviously has business records that can identify the second LEC.¹⁹ Since the first LEC (the number-porting

¹⁸ <http://telweb1.cpuc.ca.gov/carriers/CarrierInfoShort.asp>. (visited January 30, 2003).

¹⁹ Obviously, as suggested by Cox Communications (at 3-4), if a customer has simply disconnected local service, rather than had his or her telephone number ported to another LEC, the original LEC would not be able to satisfy the dial-around carrier's request for information. However, in all other instances involving number portability, the affected LEC has business records that indicate to which other carrier it ported the customer's telephone number. It would be absurd for Cox to argue that it does not know the identity of the LEC to which Cox only recently ported its former customer's telephone number.

ILEC or CLEC) has the information and constitutes the only reasonable source of such information, it should be required, upon request, to provide customer billing information to a dial-around carrier.²⁰

Just as access to BNA service from LECs was determined by the FCC to be essential to long distance carriers and enhanced service providers,²¹ access to information about the identity of the carrier to which the LEC has ported a telephone number is essential to the continued viability of the dial-around long distance market.

VI. THE ADVENT OF SERVICE PACKAGE COMPETITION SHOULD NOT BE AN EXCUSE TO ELIMINATE ALA CARTE COMPETITION

As the Bell Operating Companies (“BOCs”) reenter the long distance market and other carriers, such as AT&T, WorldCom, and Cox, continue to enter the local service market, they all tend to offer customers bundled packages of service. Some of these service packages may provide customers with value. However, the bundling of services at one price also generally requires purchasing customers to pay for the entire bundle of services in order to gain advantageous prices for those individual services that are important to the customer. For example, many Spanish-speaking residents of the United States are especially interested in low-priced calls to Central and South America, along with Mexico. Yet, many of these same

²⁰ To the extent that they were to incur additional costs for providing this inquiry service, LECs should be free to institute a reasonable charge therefor. Thus, Americatel agrees with the Comments of Creative Support Solutions (at 3) that long distance carriers must expect to pay rates or charges for services received. To the extent that a long distance carrier believes that a LEC’s rates for its services are unreasonable, the Act offers various remedies. However, those remedies do not include a right to refuse to pay for services received. Americatel has paid and will continue to pay fair and reasonable rates to all LECs for billing-related services.

²¹ *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, Report and Order, 7 FCC Rcd 3528, at ¶38 (1992) (subsequent history omitted).

customers may not be interested in purchasing large bundles of service from an ILEC or CLEC simply to gain favorable long-distance rates for international calls.²² They may prefer to purchase only basic local service, with or without added features, and to make their international calls on a dial-around basis or even to use prepaid phone cards for international calls to friends and relatives.

The purpose of competition is to give consumers more choices for all services, not just more choices of service bundles. Access to dial-around carriers is an important market check on the prices for bundled services and, of course, for presubscribed (1+) long distance services. However, for dial-around carriers to remain viable, they must be able to bill for their services.²³ This requires that: (1) dial-around carriers must be able to determine which LEC is providing service to the ANI associated with the dial-around calls; and (2) the serving LEC

²² For example, BellSouth offers its Miami, Florida customers who subscribe to its Complete Choice® or Area Plus® local calling plans an additional 10% discount on BellSouth's international calling plans. According to BellSouth's Internet web site (<http://www.bellsouth.com>, (visited January 31, 2003)), the monthly rate for its Complete Choice® calling plan is \$30.00 versus \$11.00 for its basic flat-rated local service with Touchtone® service. BellSouth's monthly rate for its Area Plus® local calling plan is \$32.00. While these calling bundles may well be attractive to many consumers, others may be able to meet their calling needs more inexpensively with a combination of BellSouth's basic local service and dial-around long distance service from Americatel or some other dial-around carrier.

²³ Americatel continues to experience unbillable calls at the rate of hundreds of thousands of dollars per month because of its inability to get accurate billing information about many of its dial-around customers. This situation cannot continue indefinitely. Moreover, the inability of dial-around carriers to send bills for their services in an increasing number of instances could also result in problems reporting their results under federal financial accounting standards. For example, the Securities and Exchange Commission ("SEC") has issued a staff accounting bulletin that states that a business cannot recognize revenue from a sale unless its "collectibility is reasonably assured." SEC Staff Accounting Bulletin: No. 101, Revenue Recognition in Financial Statements, 64 Fed. Reg. 68936 (Dec. 9, 1999). In situations where a long distance carrier cannot even bill its dial-around customers because it cannot identify them due to a lack of information from its customers' LECs, it is unlikely that the carrier could argue successfully that it was reasonably assured that its charges for calls were reasonably assured of collection.

either provide billing and collection services for dial-around carriers or BNA services, so that the dial-around carrier can issue its own bills for service.

Americatel submits that it is anti-competitive for any LEC—be it an ILEC or a CLEC—that offers long distance services or bundles of services to its local customers to refuse to provide information necessary for a competing dial-around carrier to bill for its calls. Just as it is important for ILECs to provide facilities, services and information that enable CLECs to compete for end user customers, so too is it essential for all LECs to provide information necessary for dial-around carriers to compete for their end user customers' long distance dollars. CLECs certainly have little power in the local exchange market *vis a vis* ILECs, but CLECs do have monopoly power over access to those end user customers that they serve. If they refuse to provide BNA service, they are simply foreclosing ala carte competition from dial-around carriers. (The same principle applies equally to ILECs.) Such a result is simply contrary to the intent of Congress when it opened the local market to competition. It must be rejected by the FCC.

VII. CONCLUSION

Accordingly, the Commission should also grant the relief requested by Americatel in its September 5, 2002 Petition for Declaratory Ruling.

Respectfully submitted,
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I, Lila A. Myers, do hereby certify that the foregoing **COMMENTS OF AMERICATEL CORPORATION** was served on this 4th day of February, 2003 upon the following in the fashion indicated:

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