

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

In the Matter of)	
)	
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 Corp., and)	
WorldCom Inc.)	
)	
Petition for Declaratory Ruling and/or)	
Rulemaking Filed by Americatel Corp.)	

REPLY COMMENTS OF JOINT PETITIONERS

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Pursuant to the Commission’s Public Notice, DA No. 02-3550, regarding the Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers (“Joint Petition”), AT&T Corp. (“AT&T”), Sprint Corporation (“Sprint”), and WorldCom, Inc. (“WorldCom”), submit these reply comments in response to the opening comments filed in this matter. *See* 47 C.F.R. § 1.405.

INTRODUCTION AND SUMMARY

In their Joint Petition, AT&T, Sprint, and WorldCom (collectively, “Joint Petitioners”) requested that the Commission initiate a rulemaking proceeding designed to establish rules that would require all local and interexchange carriers to meet minimum obligations to provide Customer Account Record Exchange (“CARE”). The opening comments filed in this matter confirm that the Commission should issue a notice of proposed rulemaking to address whether these obligations should be adopted.

As the Joint Petition demonstrated, the need for some minimum CARE obligations is a byproduct, albeit an unintended one, of Congress' goal of eliminating the legal barriers to local telephone competition as set forth in the Telecommunications Act of 1996. *See* Joint Petition at 2-3. The need for mandatory minimum CARE has been documented both by the Joint Petitioners and through the actions of state public utility commissions. *Id.* at 3-5 & n.3, 7 n.6. Simply put, without a mandatory process for ensuring timely and accurate exchange of basic customer information, interexchange carriers are increasingly presented with situations in which it is difficult, if not impossible, for them to maintain accurate billing records and thus to deliver the high quality service that their customers demand. *Id.* at 4-5, 9. Moreover, without the assurance of accurate and timely billing, end user customers are subject to what is perceived as “slamming” and “cramming” incidences as demonstrated by the Joint Petition. *Id.* at 4.

The Joint Petition further demonstrated that the CARE guidelines already developed by the industry through the Ordering and Billing Forum — and already in extensive use — are the logical source for these mandatory standards, and that, by implementing only a small fraction of them, the Commission can protect long-distance consumers and facilitate long-distance competition while imposing only a minimal requirement on local exchange carriers. *See* Joint Petition at 2, 7-10; *see id.* at 13-16. Finally, the Joint Petition demonstrated that the Commission has ample authority to implement these minimum industry standards. *Id.* at 10-16.

The overwhelming majority of comments responding to the Joint Petition support a mandatory minimum standard governing information exchange, and none seriously questions the need for Commission action to address the problems that the Joint Petition identifies.¹

¹ *See* Comments of Americatel at 2; Comments of Creative Support Solutions at 4; Comments of

Likewise, no commenter provides a legitimate basis for questioning the Commission's authority to address these significant problems. The comments that do object to the adoption of mandatory CARE requirements chiefly raise issues relating to the cost of such a rule. These and other possible objections, however, are premature and should be addressed only *after* the Commission has issued a notice of proposed rulemaking. In that way, these and other issues that inevitably will arise during the course of the rulemaking process can be assessed against a complete administrative record, including, for example, data that reflect the important economic alternatives for cost-savings as detailed in the Joint Petitioners' proposal.

In all events, there can be no question that the Joint Petitioners, bolstered by the comments submitted, have demonstrated "sufficient reasons in support of the action requested to justify the institution of a rulemaking proceeding." 47 C.F.R. § 1.407.

ARGUMENT

I. THE COMMENTS CONFIRM THE PRESSING NEED FOR THE COMMISSION TO INITIATE A PROPOSED RULEMAKING REGARDING THE MANDATORY MINIMUM CARE PROPOSAL.

The majority of comments concur with the Joint Petition's showing that Commission action is necessary to guarantee accurate, timely exchange of critical customer information. For example, Americatel concludes that the mandatory minimum that the Joint Petition proposes "would resolve many billing-related issues for presubscribed traffic," and "supports" the proposal at least for most markets. Comments of Americatel at 2. Creative

Intrado at 3; Comments of BellSouth at 1-3; Comments of NECA at 2-3; Comments of Allegiance at 2; *see also* Comments of Verizon at 2-4, 8; Comments of Cox Communications at 7.

Support Solutions “believes that an effective exchange of customer account record information would help resolve some of the billing problems that are plaguing carriers and customers.” Comments of Creative Support Solutions at 4. And Intrado “concur[s] with the Joint Petition’s identified shortcomings of CARE data provisioning . . . and believes that new processes are needed to provide seamless migration for customers among all carriers.” Comments of Intrado at 3. Indeed, Americatel and Intrado’s only objection is that the Joint Petition “doesn’t go far enough.” *Id.*

Other commenters similarly acknowledge the pressing problems facing IXC[s] and simply identify issues for the Commission to consider in crafting its rule. BellSouth emphasizes that “the exchange of information is needed to maintain customer accounts and for proper billing” and that a segment of local carriers “are in fact not engaging in the CARE process.” Comments of BellSouth at 1. Because “IXCs are having difficulty in obtaining information that they need to bill their services,” BellSouth agrees that mandatory “obligations for all carriers” are needed. *Id.* at 2, 3.² The National Exchange Carrier Association likewise essentially acknowledges the problem as to CLECs and simply seeks to alert the Commission to special concerns of rural independent ILECs. Comments of NECA at 2-3. And Allegiance acknowledges that billing issues “are complicated and may merit consideration in a rulemaking proceeding.” Comments of Allegiance at 2.

² Although BellSouth argues that it is “premature” to adopt “specific performance metrics,” *id.* at 4, the metrics that the Joint Petition proposes are already well established in the industry, and, in all events, such issues properly should be considered based upon a full administrative record *after* the Commission institutes a proposed rulemaking proceeding.

Even the few commenters who purport to oppose the Joint Petition recognize the magnitude of the problems facing IXCs and admit that resolution of those problems is a matter that warrants the Commission's attention. Thus, although Verizon opposes any mandatory minimum requirements for ILECs, it acknowledges that (other) LECs are failing to provide adequate customer information to IXCs and concurs that the Commission should require such LECs to provide CARE. Comments of Verizon at 2-4, 8. Although Verizon suggests that it should be free from such requirements, it ignores that application of these standards to only a patchwork of LECs would be of little practical use to IXCs. In this regard, although one of the two commenters representing rural ILECs also argue that mandatory minimum CARE obligations should not apply to them, Comments of the Small ILECs at 2, even they agree, in contrast to Verizon, that any rule adopted by the Commission should be uniform. *Id.* at 11-12.

In the same way, although Cox Communications opposes the specific Joint Petition proposal, it acknowledges "that there are laudable objectives that could be met through FCC action" and that the petition's "general approach" is reasonable. Comments of Cox Communications at 7. Cox's chief objection is not a claim that IXCs do not need the requested customer information, but rather that IXCs sometimes make mistakes with the information they actually receive. *See id.* at 7-9; Comments of Creative Support Solutions at 4; Comments of Small ILECs at 14-15; *cf.* Comments of Okla. Rural Tel. Cos. at 4-5. That argument is beside the point. The Joint Petition does not suggest that implementation of mandatory minimum CARE is a cure-all for all possible problems; rather, the purpose of imposing mandatory minimum CARE obligations is to implement a process designed to eliminate or minimize the incidence of errors caused by IXCs' lack of accurate and timely customer information. *See* Joint Petition at 9. Put another way, although it will not solve all problems, implementation of

mandatory minimum CARE obligations is necessary to any meaningful effort to address the information vacuum with which IXCs increasingly are faced.

Finally, against the weight of all other commenters, the Small ILECs contend that the proposal in the Joint Petition (1) would violate the Regulatory Flexibility Act to the extent it applied to them, and (2) would violate the First Amendment. Any claim that the First Amendment prohibits implementation of mandatory minimum CARE obligations is frivolous because the proposal in the Joint Petition in no way restricts free speech. Further, their argument that implementation of mandatory minimum CARE standards would violate the Regulatory Flexibility Act is wrong for two reasons. First, that argument is premature because the Regulatory Flexibility Act does not even apply until after an agency concludes that a rulemaking is appropriate — the very question at issue. *See* 5 U.S.C. § 603(a). Second, on the merits, the objection is also erroneous, for reasons explained below.

Peculiarly, the Oklahoma Rural Telephone Companies contend that the Joint Petitioners are simply seeking to have another carrier perform their “customer service work,” and that this is a matter that should be addressed in a Billing and Collection Agreement between the IXC and the LECs, or through the IXC’s direct business relationship with its long distance customer. Comments of Okla. Rural Tel. Cos. at 2 and 5. Contrary to the assertions of the Oklahoma Rural Telephone Companies, the Joint Petition is not addressing typical “customer service work.” As explained in the Joint Petition, IXCs and consumers are dependent on LECs for the execution in the local switch of customer changes in telephone providers and locations. Accordingly, IXCs are dependent on LECs for all the information that flows from such executions. It cannot be obtained through the IXC’s direct business relationship with their

customer.³ Moreover, IXC's should not be forced to enter into Billing and Collection Agreements with the LEC to obtain this crucial information. Such an outcome would force IXCs to hire LECs to perform customer account service functions that the IXC could otherwise perform if provided the necessary CARE information from the LEC. Additionally, CARE provides a means to confirm that consumers' requests for changes are performed accurately and provide a complete account of the change process, which will assist in the administration and adjudication of complaints.

In sum, the comments confirm that the Commission should issue a notice of proposed rulemaking to address whether to adopt mandatory minimum CARE standards applicable to all LECs.

II. CHALLENGES TO THE COST OF THE PROPOSED MANDATORY MINIMUM CARE STANDARDS ARE PREMATURE AND, IN ANY EVENT, ERRONEOUS.

The commenters who oppose adoption of mandatory minimum CARE as proposed in the Joint Petition make two related arguments: (i) that mandatory minimum CARE obligations would be too costly, and (ii) that IXCs should pay LECs to comply with these obligations. These arguments are premature and erroneous.

First, the objections are premature because questions of cost do not undermine the Joint Petition's demonstration that the Commission should issue a notice of proposed rulemaking to address whether it should adopt a rule requiring all LECs to comply with mandatory minimum CARE obligations. As explained above, the comments offer no significant quarrel with the

³ In fact, in some instances, the LEC's failure to send CARE prevents the establishment of a business relationship between the IXC and the customer, i.e., when the LEC places the new presubscribed customer on the IXC's network and then fails to notify the IXC.

showing that IXCs need accurate and timely customer information that mandatory minimum CARE would facilitate. As such, the Joint Petition therefore provides “sufficient reasons in support of” the proposed rule “to justify the institution of a rulemaking proceeding.” 47 C.F.R. § 1.407. In the event that a commenter, in good faith, believes that the costs of the proposed rule would exceed their benefits, or that the rule merits additional flexibility, such issues can and should be raised and resolved based upon the record developed during the comment period.⁴

Second, these objections disregard and minimize the numerous ways in which adoption of the mandatory minimum CARE proposal set forth in the Joint Petition anticipates and addresses those concerns. Specifically, the Joint Petitioners crafted a proposal that is “most beneficial to consumers and least burdensome to carriers.” Joint Petition at 7; *see id.* at 10, App. A § 2. In particular, the proposal set forth in the Joint Petition mitigates unnecessary costs in at least four ways.⁵ Initially, by drawing from pre-existing and well established industry guidelines, the Joint Petitioners propose a standard with which a number of LECs and IXCs in the industry already comply or at least are well acquainted. *See id.* at 13-16. Further, the proposed minimum standards comprise only a small subset of the existing CARE standards and focus on approximately 5% of those standards that are most critical to IXCs. *Id.* at 7-8, 14. In

⁴ Many of the comments of the Oklahoma Rural Telephone Companies, although cloaked as challenges to the Commission’s authority, simply raise arguments regarding cost. *See* Comments of Okla. Rural Tel. Cos. at 3-5. In any event, their argument regarding 47 U.S.C. § 258 overlooks that, as the Joint Petition explained, one significant goal of the proposed rule is to incorporate procedures to avoid allegations of slamming and related market maladies. *See* Joint Petition at 10-12; *id.* at 4-5.

⁵ It is not surprising that the Joint Petitioners have balanced the costs and benefits of the proposed rule, as they will experience both. Joint Petitioners AT&T and WorldCom, for example, are both large IXCs and large CLECs. The argument that the proposed rule will “result in an anti-competitive opportunity for IXCs that have a CLEC affiliate” is nonsensical. Comments of Okla. Rural Tel. Cos. at 7.

addition, the proposed rule enables LECs to transmit CARE data through numerous means. *Id.* at 8. As even the Small ILECs acknowledge, this flexibility benefits small providers. Comments of Small ILECs at 13. Finally, the proposed minimum CARE standards permit carriers “to utilize alternate codes for certain transactions, minimizing potential development costs for carriers that cannot or are not already providing a full compliment of the industry CARE codes.” *Id.* at 8.

III. THE COMMISSION SHOULD CONSIDER AMERICATEL’S PETITION IN A SEPARATE RULEMAKING PROCEEDING

The petition of Americatel Corp. for a declaratory ruling and/or rulemaking regarding the information exchange for dial-around services raises an issue separate and discrete from that of the Joint Petition. The Joint Petition requests the Commission to initiate a rulemaking proceeding designed to establish rules for governing the exchange of information regarding presubscribed services. Dial-around service providers like Americatel do not have established business relationships with their casual customers. The Joint Petitioners’ proposal did not contemplate the exchange of CARE for dial-around services. Even Americatel acknowledges that “the CARE plan is not designed to address additional problems associated with dial-around traffic.” Comments of Americatel at 2. Therefore, to the extent that Americatel’s Petition implicates procedural issues not present in the Joint Petition, Joint Petitioners submit that the Commission could, to simplify consideration of the Joint Petition, address the Americatel Petition in a separate proceeding.

CONCLUSION

For all of the reasons set forth above and in the Joint Petitioners' initial Petition for Rulemaking, filed November 22, 2002, the Joint Petitioners urge the Commission, as soon as practicable, to grant the Joint Petition for Rulemaking to establish mandatory minimum CARE standards.

Respectfully submitted,

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