

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

In the Matter of)
)
Rules and Regulations Implementing) CG Docket No. 02-386
Minimum Customer Account Record)
Exchange Obligations on All Local and)
Interexchange Carriers)

COMMENTS OF TIME WARNER TELECOM

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Time Warner Telecom, Inc. ("TWTC"), by its attorneys, hereby submits these comments in response to the Notice of Proposed Rulemaking¹ in the above-referenced proceeding.

DISCUSSION

In the NPRM, the Commission seeks comment on whether it should make the current voluntary industry standard process governing the exchange of customer account record exchange or "CARE" information mandatory for all local exchange and long distance carriers. As the Commission points out, the competitive environment made possible by the 1996 Act differs substantially from the one in which the voluntary CARE system adequately served the needs of the industry. NPRM ¶ 2. Prior to 1996, the only part of the telecommunications industry that was subject to significant competition was long distance. The incumbent LECs did not face significant competition in the local exchange or exchange access businesses (with the exception of isolated competitive access providers), and BOCs were precluded from competing in the long distance business. In that context, the incumbent LECs, which managed the flow of

¹ See *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Notice of Proposed Rulemaking, CG Dkt. No. 02-386 (rel. Mar. 25, 2004) ("NPRM").

customer information, had little incentive to delay or otherwise undermine the exchange of CARE information among competitors (*i.e.*, interexchange service providers). A voluntary CARE exchange system administered by the incumbent LECs therefore adequately served the needs of the industry.

Since 1996, however, incumbent and competitive LECs have competed with each other in the provision of local exchange and exchange access services and all LECs, including the BOCs, now compete in the long distance market. Obviously, LECs' incentives today with regard to the exchange of CARE are more complex and probably less wholesome than was the case with LECs prior to 1996. Moreover, as the Commission points out, a LEC's failure to comply with the CARE standards can impose liability on interexchange carriers for, among other things, slamming and cramming regulations that are themselves in part an outgrowth of the competition that the 1996 Act encouraged. *See id.* ¶ 5.

In order to ensure the smooth and predictable exchange of customer information needed for competition to continue to develop, it is now time for the Commission to mandate minimum CARE standards applicable to all incumbent and competitive LECs and long distance carriers. Specifically, TWTC currently complies with all of the Transaction Code Status Indicators ("TCSIs") listed in paragraph 11 of the NPRM. Mandatory compliance with the enumerated TCSIs should be adequate by itself to ensure an efficient exchange of customer information among carriers.

TWTC has found that some carriers do not comply with these requirements. A carrier's failure to do so makes the transition of customers from one carrier to another unnecessarily confusing to the customers and costly to carriers (especially in terms of the time needed to obtain the necessary information from the carrier that does not comply with the CARE standards). In

the absence of mandatory rules governing CARE compliance, neither the customer nor the harmed carrier has any ability to seek remedies for such harm, and the noncompliant carrier has little incentive to comply in the future. Mandatory CARE rules are therefore necessary.

In the NPRM, the Commission discusses the possibility that such regulations should be imposed solely on competitive LECs. *See id.* ¶¶ 8, 12. This approach must be rejected for two fundamental reasons. First, imposing mandatory CARE requirements on all competitive LECs because of the failure of only certain competitive LECs to follow the relevant industry standards is utterly arbitrary. As explained, TWTC complies with the CARE standards and is therefore in precisely the same position as an incumbent LEC that has complied with the relevant standards. It is simply illogical to impose mandatory regulations on TWTC, and not incumbent LECs, because a competitive carrier with whom TWTC has no affiliation has failed to comply with CARE standards in the past.

Second, the selective application of mandatory CARE requirements only on competitive LECs is especially incoherent because incumbents may have especially strong incentives and abundant opportunities to undermine the smooth exchange of customer information in the future. The incumbents appear to have a strong incentive to undermine the CARE process because doing so grants them a competitive advantage in the long distance marketplace vis a vis non-LEC long distance carriers trying to compete in the incumbent's region. Moreover, an "investment" in anticompetitive behavior with regard to the CARE process by an incumbent LEC, and the resulting reputational harm to competing long distance carriers, would seem to promise significant potential returns across the incumbent's region. This does not mean the incumbents will act on this incentive in the short term, but the obvious risk that they will do so at some point in the future remains. Thus, the Commission must be at least as concerned that incumbent LECs

will refuse or fail to comply with CARE standards in the future as it is that competitive LECs would do so. This counsels in favor of applying minimal CARE standards requirements to all carriers.²

It would be counterproductive, however, to require any carrier to comply with CARE-related performance measurements, as the Joint Petitioners suggest. TWTC and other carriers have already invested significant amounts of money and resources in complying with the CARE standards. There is no point in forcing them to incur the extra expense of complying with performance measurements. The source of the current problems associated with the exchange of customer information is the failure of some carriers to incur the expense to comply with the existing CARE requirements. It is TWTC's experience that carriers that have made that investment have generally remained in compliance. The problems have *not* arisen because of the absence of performance measurements. The sensible approach, therefore, is to require that carriers comply with the CARE standards listed in paragraph 11 and to determine in the future whether (as seems highly likely) that requirement alone adequately addresses the concerns that have prompted the instant NPRM.

The Commission also seeks comment on wireline-to-wireless number porting concerns expressed by the Joint Petitioners, specifically the concern that there are no procedures currently in place requiring notification of interexchange carriers that the customer has selected a wireless carrier to provide long distance. The Commission should look to the OBF to identify problems with wireline-to-wireless porting and develop, as necessary, appropriate modifications or additions to the existing minimum CARE standards to address these concerns.

² In any event, as Cox has pointed out, requiring compliance with CARE standards should not be burdensome for incumbents that are already complying with these requirements. *See* Cox Reply Comments at 2.

Finally, as the Joint Petitioners point out, it is premature for the Commission to consider the creation of an industry-wide, line-level database to address all billing concerns. A national database should only be established if its benefits outweigh its costs. But it is impossible to conduct an informed cost-benefit analysis at this time.

First, the implementation costs are currently unknown. TWTC is aware of only one vendor that has thus far established a national line-level database. Pursuant to the recommendation of the OBF, some carriers (including TWTC) are working with the vendor to test the database, along with other capabilities built into the vendor's solution. Although some promising progress has been made in the testing process, that process is far from complete. It is therefore far too early to reliably estimate the money and time needed to fully implement this type of undertaking. As the experience with the local number portability database illustrated, however, it is possible that the costs will be substantial and will include both upfront costs to build the database and systems interfaces as well as ongoing costs to update the database each time a customer changes carriers. But again, nothing close to a precise measure of these costs is available right now.

Second, it is impossible to assess the potential benefits of a national database right now. It is entirely possible that mandatory compliance with CARE standards will resolve the vast majority of the problems associated with the exchange of customer information (including, as the Joint Petitioners contend, those associated with dial-around customers).³ If this is the case, it is hard to see how the benefits of a national database would outweigh the costs. In all events,

³ See Letter from Michael B. Fingerhut et al to Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, CG Docket No. 02-386, at 2 (June 19, 2003).

however, no conclusions can be reached as to the benefits of a national database until the industry has operated subject to mandatory CARE standards for a significant period of time.

CONCLUSION

For the reasons described herein, the Commission should require all carriers to comply with the mandatory minimum CARE standards described in paragraph 11 of the NPRM, but the Commission should not require any carrier to comply with CARE-related performance measurements and it should not mandate the establishment of an industry-wide line level database.

Respectfully submitted,

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