

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the matter of:

Rules and Regulations Implementing
Minimum Customer Account Record
Exchange Obligations on All Local and
Interexchange Carriers

CG Docket No. 02-386

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION
AND OF THE PEOPLE OF THE STATE OF CALIFORNIA**

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit these comments in response to the Notice of Proposed Rulemaking (NRPM) on mandatory minimum Customer Account Record Exchange (CARE) obligations. The exchange of information between carriers must be carried out in a way that ensures: (i) timely and efficient execution of customers' requests and accurate billing, (ii) effective review by state commissions seeking to enforce consumer protection rules, and (iii) the use of customer information only for the purpose or providing service, as required by law. The CPUC supports the establishment of a nationwide standard that meets these criteria. Importantly, the standard must require each carrier that originates a request to be identified in the request. Otherwise resellers who slam and cram customers will continue to avoid

detection by having their requests transmitted in the name of other carriers.¹ The Commission has set forth a number of issues for comment in this NPRM, and the CPUC comments only on some of these issues. Silence on the other issues connotes neither agreement nor disagreement with these proposals.

I. BACKGROUND

In its NPRM, the FCC notes that the CARE system provides a uniform method for the exchange of information between interexchange carriers and local exchange carriers (LECs). CARE allows carriers to exchange the information they need to establish and maintain customer accounts, to bill customers, and to execute and confirm customer orders, such as a change of carrier. The industry developed the CARE process at a time when incumbent LECs did not provide long distance service and did not face competition for the provision of local service. (NPRM at p. 2.) Currently, the CARE process is voluntary.

Before the FCC issued the NPRM in this docket, parties commented on two petitions asking² the FCC, in essence, to establish certain generally applicable nationwide standards for the exchange of customer information. The petitions outlined the problems that are caused when inadequate customer information is available to

¹ In these comments the term “carriers” includes resellers.

² Petition for Rulemaking of AT&T Corp., Sprint Corporation, and WorldCom Inc., filed November 22, 2002 (AT&T/Sprint/Worldcom Petition), Americatel Petition for Declaratory Relief, filed September 5, 2002 (Americatel Petition).

certain carriers, or when customer information is exchanged slowly, or in a format that is difficult to process. The Comments pointed out that some carriers would face cost burdens if national standards were adopted. Some incumbent LECs argued that since competitive LECs appear to be the source of the most difficulty, only competitive LECs should be made subject to mandatory standards.

The National Association of Regulatory Commissioners (NARUC) has prepared a model rule (Model Rule) on the carrier change process. The Model Rule addresses some of the issues covered in the NPRM,³ and attempts to achieve some of the same goals. The Model Rule is designed to ensure that the exchange of information is made in a manner that allows for timely and efficient execution by carriers, and also ensures proper notification and billing of customers. (NARUC Model Rule at p. 7.)

The experience of the CPUC's enforcement arm, the Consumer Protection and Safety Division (CPSD), has been that the lack of a uniform, mandatory customer account record exchange system, with unique identifiers for every reseller and/or carrier, has created confusion where none need exist. For instance, facilities-based

³ *Standards Relative to the Exchange of Customer Account Information Between InterExchange Carriers, Local Exchange Carriers and Competitive Local Exchange Carriers*, adopted by the Board of Directors of the National Association of Regulatory Utility Commissioners at its March 2004 Winter Meeting in Washington, D.C., available at <http://www.naruc.org/associations/1773/files/customeracctinfo04.pdf> (viewed May 27, 2004). These Model Rules are attached to this comment.

carriers like Qwest and WorldCom have claimed that PIC disputes⁴ appearing on LEC reports as ttributable to Qwest or WorldCom were not, in fact, attributable to them but rather to their resellers. Conversely, the CPUC has often been at pains to identify precisely which PIC disputes are attributable to a given reseller, as many of the resellers do not use a unique identifier--either a carrier identification code (CIC code) or a State regulatory registration number (RRN)--in forwarding (directly or indirectly) switch orders to the LEC.

While the adoption of a national standard will likely impose some additional costs on carriers and resellers, particularly those not now using the CARE system, there is cost inherent in *any* mechanism designed to communicate switch orders between long-distance carriers and resellers on the one hand, and LECs and CLECs on the other hand. It is reasonable to expect that such a standard must provide concrete benefits to the industry, to enforcement efforts, and to end use customers. California's practical experience with enforcing consumer protection rules in the CARE environment is illustrative of problems state commissions have encountered with the existing system. The CPUC believes that any national standard must be judged by its ability to adhere to three important criteria, discussed in turn, below.

⁴ PIC or Primary Interexchange Carrier disputes are typically recorded when a customer calls reports to a LEC on that he or she never authorized service by a particular carrier after a change request was made. (The customer may also request a change back to the original carrier. The LEC translates this information into a CARE record, and the CARE records become the basis of PIC dispute reports provided on request by the LECs to the CPUC. The CPUC uses these reports to monitor trends in the industry.

II. IF A NATIONAL STANDARD IS ADOPTED IT MUST ENSURE THAT CUSTOMER REQUESTS ARE EXECUTED QUICKLY, AND THAT APPROPRIATE INFORMATION IS PROVIDED TO ALL CARRIERS INVOLVED IN A SPECIFIC ACTIVITY

The record already compiled in this proceeding, and the development of a NARUC Model Rule, show that the creation of standards for the exchange of information between carriers is likely to benefit customers. California supports efforts to ensure that customers' requests are executed in a timely manner, and generally supports the Model Rule.⁵ California also supports efforts to ensure that customers' bills are accurate.

The NARUC resolution adopting the Model Rule points out that an increase in customer complaints has resulted from carriers' failure to use a universally applicable system of data exchange or to "act on data received in a complete and/or timely manner...." (NARUC Resolution at p. 1.) The NARUC resolution points out two concerns. First, carriers requesting changes on behalf of a customer may not provide complete information, or may not provide information in a format that is easy to receive or act upon. The CPUC believes mandatory national standards, if adopted, should ensure that sufficient information is provided, and should standardize the ways in which carriers communicate with each other. Second, while sufficient information may be provided to one carrier involved in an activity, it may not be provided to all carriers

⁵ California does note, however, that the Model Rule allows for certain deviations from industry standards. To the extent that deviations from industry standards result in delays in processing customer

involved. Similarly, the AT&T/Sprint/Worldcom Petition points out that carriers who do not have sufficient information about a customer's request must often wait for more information to arrive. Any mandatory national standard should require sufficient information to be provided to all carriers involved in a transaction, i.e., sufficient to effect customer choice and accurate carrier billing.⁶

The AT&T/Sprint/Worldcom Petition also discusses another problem arising from the exchange of insufficient information: inaccurate billing. The petition claims that billing problems arise when an interexchange carrier is not fully informed of a customer's decision to switch between local exchange carriers. According to AT&T/Sprint/ Worldcom, if a customer switches between LECs, the interexchange carrier often does not know if it should continue to provide service, or if the customer wants to change interexchange carriers as well. As a result, interexchange carriers are faced with the option of either waiting for further instructions (and running the risk that the customer will be billed for recurring charges that are no longer appropriate) or assuming the customer no longer wants service (and running the risk that the customer

requests, inaccurate billing, or interfere with the enforcement of rules against cramming and slamming they should not be adopted.

⁶ It is worth noting that this goal can be accomplished without actually providing all information to every carrier involved in a transaction. The Model Rule proposes that when a customer changes its LEC the customer's existing interexchange carrier will be notified of the change within three business days. Subsequently, the interexchange carrier selected for the new service at the new LEC must also be notified within three business days. The interexchange carrier is not actually notified of the customer's decision about which interexchange carrier it selected, but knows that it will be informed within three days if it is to continue service. (Model Rule at p. 13.)

will not be able to enjoy the lower rates associated with any calling plan the customer has selected.) (AT&T/Sprint/Worldcom Petition, at p. 4.)

If the FCC adopts a mandatory national standard it must ensure that all carriers affected by a particular activity receive sufficient information to bill the customer accurately. This is the standard upon which the NARUC Model Rule is based, and it must be the standard on which a nationally applicable rule is based as well.⁷

Similarly, a national standard should also support wireline to wireless number portability. As the NPRM points out, both local and inter-exchange long-distance service is often provided by a single wireless carrier. Any standard adopted by the FCC should ensure that all carriers are provided with an appropriate indication when a customer moves his or her number to a wireless carrier.

Finally, the timely execution of customer requests is important for a more basic reason. Carriers should follow customer's instructions promptly. If a customer decides to change carriers, the customer is likely to be either dissatisfied with the old carrier's service or expecting advantages from the new carrier. A customer should not have to wait any longer than necessary to leave a disliked carrier or to join a carrier that offers the customer advantages. If the FCC adopts a national standard it should require "timely and efficient execution" of customer instructions. (Cf., Model Rule at p. 7.) As

⁷ The FCC should also take this opportunity address the problem now caused when IXCs do not take action in response to a customer's request for termination of service. Some IXCs merely advise the customer to call the LEC to make such a request and continue to bill the customer. In some situations the IXC will bill the customer at the more expensive "casual calling" rate. If the FCC adopts a mandatory national standard it should require the IXCs to initiate a terminating CARE order, terminating its own inter- or intra-LATA service, on the customer's request. The CPUC is informed and believes that an existing carrier initiated "DPIC" CARE Code could accomplish this.

competition increases in the industry, and as LECs and interexchange carriers begin to compete directly, it will be even more important to require that customer requests be acted upon promptly and efficiently. The AT&T/Sprint/ Worldcom Petition points out that interexchange carriers are dependent on LECs to execute changes in an unbiased manner. If the FCC adopts mandatory national standards those standards should ensure timely response to customer requests.

The CARE standards recommended by the petitioners differ from the NARUC Model Rules in some instances. Specifically, the AT&T/Sprint/WorldCom Petition for Rulemaking suggests that up to five business days be allowed for processing some forms of change requests under CARE (Appendix A at 7-8), depending on the media in which submitted, while NARUC suggests a maximum of three business days (Model Rules at §§ 3, 4, 6). Because carriers should execute customer requests promptly, the CPUC supports the NARUC proposal in this regard. The Petitioners to the FCC also recommend different time periods for processing different modes of CARE transactions such as paper, FAX, E-mail, etc. Notably, the petitioners recommend a 12-hour time limit on transactions processed electronically in real time. The CPUC supports this recommendation as long as a maximum three business day standard applies to all transactions.

However, the CPUC does not support the level of flexibility contained in the NARUC Model Rule. NARUC suggests for certain types of notices (see §§ 3, 5, 6) that either “a CARE or non-CARE process” may be used. CPUC believes that much of the

value of a national standard will be lost if there is this apparent opt-out process. While not all carriers or resellers will be able to use the electronic “real-time processing” referenced in the Joint Proposal, even those using email, fax, or paper processing should be required to use the CARE format. *Compare* Joint Petition, App. A, at p. 8.

Finally, CPUC takes no position at this point on the limited subset of TCSI codes, which the Joint Proposal supports. (Joint Proposal, Appendix at p. 9 et seq.) While clarity may be gained by the *de facto* consolidation of existing TCSI codes, clarity may also be lost by such a consolidation. This matter requires further study.

III. IF A NATIONAL STANDARD IS ADOPTED IT MUST PROVIDE A MEANS TO IDENTIFY THE CARRIER WHO INITIATES EACH REQUEST

The CPUC uses the records of communication between carriers in its investigations of slamming and cramming complaints. It is very difficult for state enforcement agencies to track slamming and cramming complaints back to the actual perpetrator when each reseller does not have a unique code. Many resellers "ride the CIC" of the underlying facilities-based carrier, or some intermediary. In several instances, the Commission has been forced to undertake a difficult and tedious process of tracing requests on a case by case basis because the CARE system did not accurately reflect which carrier was the original source of a request. For example, the CPUC has found that PIC disputes against WorldCom, as reported by the LECs, include many disputes which actually belong to WorldCom's resellers. In order to determine which carriers' requests produce PIC disputes, the CPUC must go through a time-consuming

process of working with the underlying carrier to determine which reseller is engaged in these disputes. Sometimes such a determination cannot be made definitive

If the FCC adopts mandatory national standards, those standards must provide a mechanism allowing state commissions to identify which carrier has originated a request. There are a number of ways in which this could be accomplished. If the FCC requires all carriers to use a sub-set of the CARE standard, it should, in addition, require that one field of the mandated standard be devoted to identifying the carrier who originated any particular request, even if the carrier is a reseller and the request is sent to the LEC via another carrier. Submitting carriers should be required to obtain and use a unique identifier on every change order submitted to an executing carrier. The mechanism for this is already in place. CIC codes are provided by the North American Numbering Plan Administration (NANPA) in order “to route and bill calls in the public switched telephone network.”⁸

The CPUC believes that the use of some national identifier for both facilities based carriers and switchless resellers should be mandatory, as it has observed resellers who have their own CIC codes but prefer to “ride the CIC” code of the underlying facilities based provider. In general, the CPUC looks to the FCC to develop some minimum rules on which the States can build as appropriate. For example, the FCC could require that one field of the mandated standard CARE format be reserved for uses

⁸ See NANPA website, http://www.nanpa.com/number_resource_info/carrier_id_codes.html, particularly the section related to “switchless resellers.” The provision of CIC codes is made pursuant

to be determined by state commissions. In that case California, which assigns each carrier a unique “U Number” (also referred to as the RRN number mentioned above) - could require carriers who originate requests to identify themselves by U Number in the instructions sent to LECs.

IV. IF A NATIONAL STANDARD IS ADOPTED IT MUST REFLECT THE REQUIREMENT THAT CARRIERS USE CUSTOMER INFORMATION ONLY FOR PURPOSES RELATED TO THE PROVISION OF SERVICE

The NPRM suggests that only a limited sub-set of the CARE system be required if the FCC determines to create a mandatory national standard for communication among carriers. With the reservations noted above, the CPUC supports such an approach. The FCC should ensure that only the information that is required for effecting customer choice and accurate billing will be exchanged by carriers. The Telecommunications Act provides, at section 222(b), that carriers who “receive[] or obtain [] information from another carrier for purposes of providing any telecommunications service” must only use that information for the purpose of providing service and may not use the information for marketing purposes. (47 U.S.C. 222(b).) The FCC should reflect this directive in any mandatory national standard for the exchange of information among carriers in two ways. First, it should limit the types of information that must be exchanged to the information that is necessary to allow for timely and efficient execution of customer requests and the proper billing of the

to guidelines developed by ATIS: <http://www.atis.org/pub/clc/inc/cic/CIC-Final-Docment-3-23-04.doc>.

customer. The use of CARE information to support win-back or other marketing efforts is not appropriate. Second, the FCC should, in the course of establishing mandatory national standards, re-iterate that information exchanged by carriers must only be used for the purposes of providing telecommunications service.

V. CONCLUSION

If the FCC establishes a mandatory national standard covering the exchange of information between carriers, the Commission must ensure that such a standard meets at least three criteria. First, the standard must ensure timely and efficient execution of customers' requests for changes in service and facilitate accurate billing. Second, the standard must allow state commissions to enforce consumer protection rules, such as the prohibitions against cramming and slamming. Importantly, the standard must require the request to identify the carrier originating the request. Third, any mandatory national standard must recognize that the information exchanged can only be used for purposes relating to the provision of service. Observance of these criteria for a CARE system should promote transparency and accountability in the telecommunications marketplace.

The CPUC supports the establishment of a nationwide standard that meets these criteria.

Respectfully submitted,

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