BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C.

In the Matter of	)	
	)	CC Docket No. 02-53
Presubscribed Interexchange Carrier	)	CCB/CPD File No. 0112
Charges.	)	RM 10131

COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

Two years ago, the National Association of State Utility Consumer Advocates ("NASUCA")[1] commented in this docket,

> In 1984 -- **more than 18 years ago** -- the Federal Communications Commission ("Commission") created a $5 "safe harbor" standard rate that could be charged to consumers by their local exchange carrier ("LEC") when consumers changed their presubscribed interexchange carrier ("IXC"). In the current rulemaking, the Commission is reexamining that safe harbor. As the Commission stated in the current Order and Notice of Proposed Rulemaking ("NPRM") released March 20, 2002,
>
> "The current safe harbor was established based on the difficulty of assessing actual costs by carrier for this service, what was known generally about the costs of providing this service, and a determination

[1] NASUCA is a non-profit corporation incorporated in the State of Florida. NASUCA is an association of 44 advocate offices in 42 states and the District of Columbia. NASUCA's members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. NASUCA member offices operate independently from the regulatory commissions in their states. Some are separately established utility advocate organizations, while others are divisions of larger departments, such as the Office of Attorney General. NASUCA associate and affiliate member offices also serve utility consumers, but have not been created by state law or do not have statewide authority.

> that it was good public policy to discourage excessive switching of carriers. All three of these factors are now ripe for reexamination."
>
> NPRM, ¶ 8 (footnote omitted). … For the reasons recognized by the Commission, the current incremental cost must be well below $5.00.[2]

So now it has been 20 years that the $5.00 safe harbor has been in effect. The need for the Commission to reduce or eliminate the safe harbor has grown.

Much of the controversy in the initial NPRM[3] arose from the fact that BellSouth charged $1.49 for its presubscribed interexchange carrier ("PIC") change charge based on a cost study, which called into question the Commission's $5.00 safe harbor. BellSouth was apparently unique among incumbent local exchange carriers ("ILECs") in basing its charge on a cost study. Indeed, as NASUCA noted in reply comments, none of the other large ILECs had submitted cost studies, even in the face of this Commission inquiry.[4]

In the interim since the comments were filed in response to the NPRM, BellSouth has filed another cost study purporting to show that its costs for a PIC change charges are now $3.07. The Commission, in the FNPRM,[5] requests additional comment based on the newer BellSouth study.

At this time, NASUCA's principle comment is as follows:

After twenty years of allowing customers to be overcharged for changing long distance carriers, it is well past time for this Commission to correct that error. The Commission should immediately reduce the safe harbor PIC change charge to

---

[2] NASUCA Initial Comments (filed June 14, 2002) at 1 (footnote omitted) (emphasis added).

[3] Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002) ("NPRM").

[4] NASUCA Reply Comments (filed July 1, 2002) at 4-8.

[5] Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445 (2004) ("FNPRM").

$3.00, and require additional cost filings with a view to adopting further decreases in the charge.[6]

In the FNPRM, the Commission focuses on BellSouth's most-recent cost study that shows a substantial difference between the costs of manual and electronic processing.[7] But that issue is secondary to the fact that the long-standing $5.00 nationwide safe harbor charge has again been shown to be excessive. The Commission states, "BellSouth's filing indicates that the costs of manual PIC changes are cross-subsidized to some degree by the lower cost mechanized PIC changes because end users pay a single rate regardless of how the PIC-change request is submitted."[8] This statement ignores the real subsidy here, a subsidy of the ILECs' bottom line by a uniform national charge set at a level far in excess of the only cost studies that have been submitted to the Commission.

This "bottom line" issue is brought into sharp focus by the fact that SBC Communications has just begun assessing an end user universal service charge on its PIC change charge.[9] Assuming that SBC previously paid the contribution out of the $5.00 fee, this change effectively results in an increase to the PIC-change charge, one unjustified by any cost study.

---

[6] In Reply Comments, NASUCA stated: "For the reasons stated herein and in NASUCA's initial comments, the Commission should adopt, after investigation, a $1.49 safe harbor PIC-change charge that reflects the current costs of changing carriers." NASUCA Reply Comments at 13-14. The current proposal of $3.00 is made in order to provoke some action by this Commission to reduce this longstanding fleecing of consumers.

[7] FNPRM, ¶ 4. At this point, NASUCA is unable to comment on the merits of BellSouth's "new" cost study.

[8] Id.

[9] See attached consumer bill.

Even if there were an inter-customer "subsidy" between manual and mechanized requests, one way to eliminate the subsidy would indeed be to have different PIC-change charges for manual and for electronic transfers.[10] Yet the Commission identifies many of the policy reasons for not establishing such separate charges.[11]

It should be noted that much of the motivation for manual processing appears to be the need to meet the Commission's regulations designed to prevent slamming.[12] As NASUCA previously argued, these are not costs that should be paid by consumers;[13] these are costs that should be internalized by all the carriers that benefit from customer traffic.[14] The Commission should not establish incentives for ILECs to eliminate, or for consumers to avoid, these protections. On the whole, then, having different PIC-change charges for manual vs. electronic processing makes little sense.

The Commission also states that the fact that the PIC-change charge has been assessed on end users "removes, to some extent, the incentives for IXCs to reduce the costs of PIC changes because the cost is passed on to end users."[15] More accurately, the fact that the PIC-change charge is passed on to end users reduces, or eliminates, the incentives of **ILECs** to reduce the costs of PIC change charges, except that the use of an excessive nation-wide safe harbor allows them to profit from such cost reductions

---

[10] Without a detailed review of BellSouth's cost study, it would not be possible to determine whether there was any intercustomer subsidy here at all (in the economically-correct sense).

[11] Id., ¶ 6.

[12] Id., ¶ 3, n. 10.

[13] See Initial Comments at 8-9; Reply Comments at 10-11.

[14] As also argued by NASUCA (Initial Comments at 7-8; Reply Comments at 9-10), the costs of PIC freezes should not be built in to the PIC-change charge. The FNPRM's repeat of the request for comment on this issue (at ¶ 10) brings nothing new to the discussion.

[15] Id., ¶ 5.

without passing through any of those cost reductions to consumers.[16] And because all end users pay an identical charge, the IXCs have little incentive to require the ILECs to reduce any of their costs.

This is especially true with a nationwide safe harbor that is demonstrably excessive. The Commission should adopt a substantially-reduced safe harbor that will be fair to consumers and will encourage more efficient levels of switching.

Some examples of how this excessive charge is applied show the impact on consumers. Consumers who are switching both inter- and intraLATA carriers will often be required to pay a double fee, making it twice as unjust. And in the recently-seen instance where consumers are billed a newly-instituted monthly charge by the IXC after having supposedly dropped the IXC (where the ILEC still thinks the customer is presubscribed to the IXC due to lack of communication between the IXC and the ILEC), the consumer will be charged $5.00 when contacting the ILEC to ensure that the presubscription (and the monthly charge) is finally eliminated.

Finally, a significant immediate decrease in the PIC-change charge is justified by the variance between the twenty-year-old $5.00 safe harbor and both of BellSouth's cost studies. It also appears likely that 1) a detailed review of BellSouth's study would produce lower actual costs for BellSouth; and 2) other ILECs' costs might be even lower.[17] Thus the Commission should 1) set the safe harbor lower than BellSouth's $3.07 figure; and 2) require other major ILECs to file cost studies, with view toward further

---

[16] In this respect, the continuing excessive PIC-change charge is the poster-child for the flaws in price cap rate regulation where the "going-in" rates were set under other forms of regulation.

[17] NASUCA expects that costs of smaller ILECs might be higher, but probably not as high as the smaller ILECs claim. See NASUCA Reply Comments at 12-13.

reducing the safe harbor. The reluctance of the ILECs to provide individual cost support indicates that their costs must be lower than the current safe harbor. This, in turn, supports requiring each ILEC to individually justify its PIC-change charge, thus doing away with the safe harbor altogether.

Respectfully submitted,

Janine L. Migden-Ostrander
Consumers' Counsel

/S/ David C. Bergmann
David C. Bergmann
Assistant Consumers' Counsel
Chair, NASUCA Telecommunications Committee
Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Phone: (614) 466-8574
Fax: (614) 466-9475
bergmann@occ.state.oh.us

NASUCA
8380 Colesville Road, Suite 101
Silver Spring, MD 20910
Phone: (301) 589-6313
Fax: (301) 589-6380

June 15, 2004