

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

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

**REPLY COMMENTS OF
AT&T CORP., MCI, INC. AND SPRINT CORPORATION
TO NOTICE OF PROPOSED RULEMAKING**

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Pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. § 1.415, AT&T Corp. (“AT&T”), MCI, Inc. (“MCI”) and Sprint Corporation (“Sprint”) (collectively referred to as “Joint Petitioners”) hereby submit these reply comments in further response to the Commission’s Notice of Proposed Rulemaking (“*NPRM*”) in the above-entitled proceeding to establish rules that would require all local and interexchange carriers to provide Customer Account Record Exchange (“CARE”).¹

In these reply comments the Joint Petitioners demonstrate the necessity for Commission action and the industry’s overwhelming support for mandating minimum CARE standards. Further, as part of this rulemaking proceeding, the Commission should adopt the subset of CARE codes identified by the Joint Petitioners because it will provide

¹ *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Notice of Proposed Rulemaking, FCC 04-50, released March 25, 2004 (“*NPRM*”). A summary of the *NPRM* was published in the Federal Register on April 19, 2004. See 69 Fed. Reg. 20845.

the foundation required for new participants to the CARE process to exchange the critical customer information necessary to properly provision telecommunication services to customers and to reduce significantly customers' billing complaints. Finally, the Commission should also adopt, as part of this rulemaking proceeding, reasonable performance metrics for timeliness, accuracy and completeness to ensure that customer requests are processed without undue delay.

I. THE COMMENTS DEMONSTRATE THE NEED FOR COMMISSION ADOPTION OF CARE STANDARDS.

The comments submitted in response to the *NPRM* overwhelmingly demonstrate the need for Commission action to adopt mandatory minimum CARE standards. “The exchange of information between interexchange (IXCs) and local exchange carriers (LECs), including competitive local exchange carriers, is critical in ensuring the seamless transfer of customers between long distance carriers and accurate billing for long distance service.”² “Similarly, for carriers to be able to bill their customers for services rendered, there needs to be a reasonable degree of uniformity and consistency among carriers with respect to such customer billing information.”³ “The CARE process as established by the Ordering and Billing Forum of ATIS has the advantage of providing standard ‘language’ for how carriers communicate with one another. ... The critical missing component is enforceability.”⁴ Therefore, “[i]n order to ensure the smooth and predictable exchange of customer information needed for

² Comments of the New England Conference of Public Utilities Commissioners (NECPUC) at 1.

³ Comments of Americatel at 6.

⁴ Comments of NECPUC at 3.

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.”⁵

Some parties claim that there is no problem with the current industry CARE practices and that Commission action is therefore unnecessary.⁶ But the comments of state regulatory commissions, consumer groups and other carriers show otherwise.⁷ State agencies have received a significant number of complaints from telephone consumers regarding billing:

- “The patterns of consumer complaints to the public utilities commissions that comprise NECPUC indicate that many consumer complaints are caused by a lack of adherence to CARE requirements concerning what obligations each carrier has for information exchange and the time frames for that exchange, as well as the format.”⁸
- According to NASUCA, “between January 2003 and May 2004, more than 300 residential customers lodged such complaints with the Office of the Ohio Consumers’ Counsel.”⁹
- The PCDC found that “customers are often double-billed or may experience significant delays in obtaining new services or retaining their discount calling plan rates when [] transition[ing] from one carrier to another.”¹⁰

⁵ Comments of Time Warner Telecom at 2.

⁶ Comments of Oklahoma Rural Telephone Companies (ORTC) at 4; Comments of TDS Telecommunications (TDS) at 4.

⁷ See *infra* notes 8-11 and accompanying text.

⁸ NECPUC at 1-2.

⁹ Comments of the National Association of State Utility Consumer Advocates (NASUCA) at 5.

¹⁰ Comments of the Office of the People’s Counsel for the District of Columbia (PCDC) at 2-3.

- The NYOAG explained that “[t]he failure of telecommunications carriers to exchange data uniformly or to act on data received in a timely manner has resulted in a significant number of customer complaints for carriers and regulators across the nation.”¹¹

Apart from the Joint Petitioners, other long distance carriers, such as Qwest’s long distance companies, have experienced difficulty obtaining necessary information from carriers across the country.¹² The comments clearly demonstrate that the problem is pervasive.¹³ “ATIS believes participation in the exchange of CARE by *all* industry players would go a long way towards resolving the consumer complaints and billing errors identified in the *NPRM*.”¹⁴

Some carriers claim that promulgating mandatory CARE standards would be akin to forcing LECS to perform marketing services for IXCs.¹⁵ But the CARE system has nothing to do with marketing data or services. CARE is a process by which carriers exchange information about their mutual customers. The exchange of this information is a necessary part of doing business in an industry comprised of interconnecting networks. As Americatel states, “[j]ust as every carrier has an obligation to interconnect with all other carriers, on a direct or indirect basis, and to accept and deliver traffic to other carriers in a manner that is transparent to customers, so too every carrier has a duty to provide accurate and timely customer billing information to other

¹¹ Comments of Eliot Spitzer, Attorney General of the State of New York (NYOAG) at 2.

¹² Comments of Qwest at 5.

¹³ *See NPRM* ¶ 10.

¹⁴ Comments of the Alliance for Telecommunications Industry Solutions (ATIS) at 6 (*emphasis added*).

¹⁵ Comments of Cincinnati Bell at 7; Comments of TDS at 12.

carriers. In a competitive, multi-carrier market, no carrier can be permitted to take the position that it can elect not to cooperate with other carriers in the exchange of traffic and the provision of necessary customer billing information to those other carriers.”¹⁶

While some parties claim that the costs of mandatory CARE standards will be too great,¹⁷ the truth is that any burden that might result will not be unreasonable. LECs that provided estimated costs that they characterized as unreasonable offered no detailed explanations or data to support their estimates, and parties neutral to this proceeding have reached contrary conclusions. For example, the industry workgroup created by the NECPUC Collaborative Forum – comprised of representatives from carriers of all sizes and from all segments of the telecommunications industry – examined the costs of implementing limited mandatory CARE standards and ultimately made a recommendation similar to that of the Joint Petitioners.¹⁸ NECPUC agrees “that identifying a subset of ATIS codes that are the most critical for the carrier change and customer processes to function properly and allowing carriers to transmit that data using multiple media options (facsimile, mail, e-mail, cartridge, Internet processing, mechanized processing or real-time processing) should minimize costs and make this option affordable to all carriers.”¹⁹ An independent systems support consulting firm also concluded that “[t]o the extent that existing processes do not require modification, that the medium utilized for the transmission of CARE remains flexible, and that the list of

¹⁶ Comments of Americatel at 6.

¹⁷ Comments of Cox Communications (Cox) at 6-7; Comments of USTA at 6-8; Comments of Cincinnati Bell at 13-14; Comments of Frontier/Citizens at 2-3.

¹⁸ Comments of NECPUC at 6-7.

¹⁹ *Id.* at 7.

mandated transactions is basic and manageable, the actual cost of implementation should not prove to be burdensome.”²⁰

Indeed, it is the very uniformity that some carriers oppose that would reduce the costs associated with the exchange of this critical information. As SBC noted, “carriers are forced to expend additional resources to implement and support multiple processes and procedures for the receipt of customer data. SBC’s IXC’s, for example, not only receive customer data through the CARE process, but also through the alternative unmechanized means. The time and resources needed to process information received in non-CARE formats, given the number of carriers who use alternative media and formats, can be significant. A uniform process would significantly minimize these administrative burdens.”²¹

It should also be stressed that relief is available for any carrier that does experience a unique circumstance that would make the exchange of mandatory CARE information unnecessary or overly burdensome. That carrier could petition the Commission for a waiver pursuant to Section 1.3 of the Commission’s Rules.²² Nonetheless, no LEC, subgroup of LECs or IXC should be *automatically* exempt from the regulations. The Commission should consider such exemption on a case-by-case basis.

²⁰ Comments of Creative Support Solutions at 4-5.

²¹ Comments of SBC at 8.

²² 47 C.F.R. § 1.3.

A few parties invoke concerns of consumer privacy and anticompetitive behavior to justify not exchanging CARE data.²³ Yet the Joint Petitioners have not requested the exchange of any information that has not been part of the industry standard for years.²⁴ Additionally, the “Privacy of Customer Information” section of the Telecommunications Act of 1996 contemplates the need for carriers to exchange customer information in the provision of telecommunications services, and accordingly provides the necessary protection. In particular, the Act states that a “telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.”²⁵

Indeed, it is not the exchange of CARE that harms fair competition; it is the failure on the part of certain carriers to participate in the process that amounts to anticompetitive behavior. As numerous parties recognize, local exchange carriers continue to be the long distance companies’ only source of essential CARE information. “In the absence of regulatory oversight the local exchange carriers can, and in Working Assets experience have, improperly used their unilateral control of CARE information to disadvantage their competitors. In this new competitive situation the Commission must

²³ Comments of USTA at 5, 6 and 8; Comments of ORTC at 7; Comments of TDS at 11-12.

²⁴ The only exception is the addition of a “W” code in the case of a port to a wireless service. But this is not an extraordinary change and at least one LEC already has plans to implement it by the end of the year. *See* Comments of Verizon at 3.

²⁵ 47 U.S.C. § 222(b). *See also* BNA Rules, 47 C.F.R. § 64.1201.

clarify the obligations companies have regarding the provision and receipt of CARE information.”²⁶

II. THE PROPOSED SUBSET OF CARE CODES PROVIDES NEW ENTRANTS THE FOUNDATION NECESSARY TO SUPPORT THE EXCHANGE OF CRITICAL DATA FOR PARTICIPATION IN THE CARE PROCESS.

The Commission should adopt the Joint Petitioners’ modest subset of CARE/Industry Support Interface (“CARE/ISI”) Transaction Code Status Indicators (“TCSIs” or “codes”) developed by the Alliance for Telecommunications Industry Solutions Ordering and Billing Forum (“ATIS/OBF”).²⁷ This proposed subset of CARE codes will provide new participants to the CARE process a set of basic minimum codes approved and utilized by the industry for the exchange of essential customer information when changes occur to a customer’s long distance service, and/or local service, and/or account information.

Adopting these minimum CARE TCSIs for use by new participants will significantly streamline the exchange interface set-up process between the new participants and the IXCs or a chosen third party vendor offering CARE services. It is unrealistic to expect each new participant to review, understand and determine which of the existing 700+ codes its company will initially support. Identifying a manageable subset of minimum TCSIs that effectively communicate the necessary activities and critical information to be shared is a reasonable expectation and will jump start the capability of new participants to support the customers’ ability to move seamlessly from

²⁶ Comments of Working Assets Funding Service (Working Assets) at 3.

²⁷ See Appendix A to the Joint Petition, Section 4 at 9-17.

one local and/or long distance provider to another.²⁸ This proposed set of minimum codes is not meant to over-ride or replace any company's currently supported CARE codes – these are meant to be a basic minimum from which to start. Thus, if a carrier does not support any CARE codes today, it should, *at the very least*, support this set of minimum codes. In the same way, should a carrier choose to support a different TCSI instead of the basic minimum code, the selected alternative TCSI would be acceptable as long as it conveyed the same critical data exchange activity information as the basic minimum code.²⁹

In addition, once a carrier begins the data exchange process using a minimum set of basic codes, it has the flexibility and opportunity to enhance and/or modify its supported codes, as business and industry needs evolve, by adopting additional or new industry established codes, just as all other CARE participating companies do today, and have for years. As several commenters noted, almost all of the companies supporting CARE today do not support all the same codes nor does any one company

²⁸ Today, a LEC, for the most part, determines which subset of TCSIs it will support based on industry needs, business decisions and system functionality. As a result, IXCs must be able to accept and process a good number of the 700+ available TCSIs simply because some LECs support additional alternative codes in each category while others support only the more basic TCSIs proposed by the Joint Petitioners.

²⁹ Some Commenters have suggested that the imposition of rules mandating a subset of existing transaction codes would degrade the voluntary industry forum (ATIS/OBF) process. *See* Comments of SBC at 9; Comments of BellSouth at 9; Comments of TDS at 10-11; Comments of Cincinnati Bell at 4; Comments of Frontier/Citizens at 1. To the contrary, Joint Petitioners do not intend that the proposed mandatory minimum standard would replace the more expansive guidelines that exist today. In point of fact, Joint Petitioners encourage industry participants to continue to work with ATIS/OBF.

support a majority of the available codes.³⁰ This is due to the fact that every LEC's specific processing, system capabilities, editing and business strategies are different. Nevertheless, more than a few commenters either support a majority of the Joint Petitioners' identified minimum CARE codes or an acceptable alternative code, all of which are supported in the full text of the CARE/ISI Document.

Several commenters – most of whom are already engaged in some level of participation in the CARE exchange – suggest that the Commission should look to the OBF to set the minimum.³¹ The Joint Petitioners' proposal consists of a subset of ATIS-developed codes. As discussed below, Joint Petitioners have already accomplished the task of identifying which of the ATIS-developed codes are most critical. If any party to the proceeding disagrees with the necessity of any particular code, that party has an opportunity to identify and explain its opposition to the Commission. Nonetheless, sending the matter for consideration to ATIS will only delay implementation of a mandatory standard. The Commission needs to determine the baseline standard as part of this rulemaking proceeding.

III. JOINT PETITIONERS' PROPOSAL HAS IDENTIFIED THE MOST CRITICAL ACTIVITIES AND BASIC SUPPORTING CODES.

In their Petition, the Joint Petitioners identified the activities that are critical for the exchange of customer information.³² It also identified specific basic industry-approved CARE TCSIs that accurately reflect the activity type within each

³⁰ Comments of Qwest at 5, n.6, 10 n.15; Comments of SBC at 4; Comments of BellSouth at 7-8; Comments of TDS at 7; Comments of Working Assets at 2.

³¹ Comments of BellSouth at 5-6; Comments of Cincinnati Bell at 5-6; Comments of Frontier/Citizens at 1-2; Comments of SBC at 9; Comments of TDS at 7.

³² See Appendix A to the Joint Petition.

activity. The Joint Petitioners offer the following explanations and reasons to underscore why the identified activities and proposed basic TCSIs are necessary for accurate, complete and timely exchange of information in order to resolve industry-wide billing problems impacting customers who are only exercising their right to change their local and/or long distance services.³³

1. LEC accepts IXC initiated PIC change orders.

IXCs must be able to submit Preferred Interexchange Carrier (“PIC”) orders to the LECs when a customer contacts his preferred IXC to request service. Consequently, when this activity is not supported, the customer is unable to make a change to his long distance service by contacting his new preferred carrier. The customer has always had the option to either contact his chosen carrier or his local service provider to order his selected intraLATA and/or interLATA toll service(s).³⁴ In order to execute a customer PIC request, the IXC must be able to submit the order to the customer’s LEC, who owns the local switch, to make the appropriate change. Alternatively, in a UNE-P or

³³ Some of the commenters voiced objection to the Joint Petitioners’ identified CARE TCSIs, but offered no replacement TCSI that would better or more accurately provide the required function. As evidenced by the comments received, there are several varying opinions on exactly what types of activities should be identified as critical for information exchange. Likewise, although some commenters provided their list of what they considered to be critical activities – while others did not – most did not offer a valid reason for not supporting the additional activities identified by the Joint Petitioners. *See* Comments of Qwest at 9-11; Comments of SBC at 3, 5-7; Comments of BellSouth at 4-8; Comments of TDS at 3; Comments of Cox at 6-7; Comments of Cincinnati Bell at 6-11.

³⁴ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998, *reported at* 14 FCC Rcd. 1508.

resale environment, the customer's UNE-P or resale local provider submits the order, on behalf of the IXC, to its switch provider to make the appropriate change in its switch.

2. LEC notification to an IXC of IXC submitted order failures.

IXCs need to be notified when an IXC-submitted PIC order cannot be executed, and provided the reason the order is rejected. IXC orders may be rejected, for example, due to required order information missing (*i.e.*, type of service selected) or often are rejected based upon the status of the customer's account (*e.g.*, PIC freeze or customer's service is not eligible for a PIC change). When an IXC is not notified that a submitted order has failed and the reason why (the LEC does not provide one of the salient TCSIs) the IXC is not afforded the opportunity to correct and resubmit the customer's order (if applicable) or seek any appropriate additional steps to fulfill the customer's service request. The IXC depends on notification from the LEC when an IXC order cannot be processed; no other method is available for an IXC to make this determination.

3. LEC notification to the IXC whenever a customer is connected to the IXC's network in the local switch.

IXCs need to know when a LEC has connected a customer to the IXC's network via the local switch. There are several different order processing functions that can occur for this activity type and each is identified by a unique TCSI. For example, confirmation of a PIC change executed from an IXC order, notification that the LEC has processed an order received directly from a customer for new service, a PIC change, or a change resulting from a customer's claim of a PIC dispute. Via this activity, the IXC receives the necessary notification that the customer is on its network, which includes, at a minimum, the individual pieces of critical customer information CARE/ISI identifies as

required (*e.g.*, customer's BNA and the selected intraLATA and/or interLATA toll service) to facilitate the IXC's ability to accurately bill the customer.

When this activity is not supported, the IXC does not know the customer is presubscribed to the IXC and connected to its network at the LEC switch. As a result, the customer receives a bill for usage at higher rates or may not receive a bill at all due to the IXC being unable to identify the LEC serving the customer to request the BNA. The LEC is the IXC's only source of the existence and identity of a customer that has been put on the IXC's network in the local switch.

4. LEC notification to the IXC whenever a customer is removed from the IXC's network in the local switch and/or as a result of a customer selecting a new local service provider.

IXCs need to know whenever a LEC removes a customer from the IXC's network in the local switch, including notification when the IXC's presubscribed customer moves to a new local service provider. There are several different order processing functions that can occur for this activity type, each represented by a unique TCSI. For example, this may occur when a customer contacts the LEC business office to disconnect local dial tone service or request a PIC change. In addition, this activity supports notification to the presubscribed IXC when a customer has elected to change his local service provider, but does not confirm if the customer has left the IXC's presubscribed services in conjunction with the decision to change his LEC.

A number of parties claimed that notification to the IXC when a customer changes his local provider is unnecessary.³⁵ Joint Petitioners disagree. The LEC is the

³⁵ Comments of SBC at 7; Comments of Verizon at 2; Comments of BellSouth at 10; Comments of TDS at 12; Comments of Cincinnati Bell at 8, 11; Comments of Frontier/Citizens at 6.

only possible source for an IXC to receive such notification. When a change in the local provider occurs, the customer may or may not also change his IXC. The previous LEC is no longer privy to the customer's PIC choice and the new LEC is not aware of the identity of the IXC the customer had at the previous LEC. Therefore, for an IXC to know whether or not it is still the customer's PIC the previous LEC must notify the IXC of the change in local providers and the new LEC must notify the IXC that it was selected as the customer's new PIC choice. If either of these notifications fail to occur, customer billing is impacted.

5. LEC notification to the presubscribed IXC of critical customer account changes.

LECs need to notify the presubscribed IXC of customer changes to critical account information, even if it is not associated with a change in the PIC or activity in the switch. Joint Petitioners have proposed the use of only one or two codes to notify the IXC of these information changes rather than relying on the available 54 TCSIs developed by ATIS/OBF/CARE/ISI. Customer change information examples for this activity may include changes to the billing telephone number and/or working telephone number, changes to the customer's address associated with a move, or designation of the responsible party on the account where no change was made in the local switch.

Joint Petitioners contend that this activity is critical. When a presubscribed IXC is not informed of these basic, but critical, changes billing errors occur. For example, the IXC may inaccurately assess or identify taxes on the customer bill; when there is a change in the telephone number, the IXC will not be able to associate the new number usage to a presubscribed customer and bill him at higher rates; and when there is a change of responsible party (where there has been no change at the LEC switch)

the IXC is not provided with the new BNA, which in turn causes the new responsible party to receive billing for usage incurred before the change is confirmed.

6. LEC accept and respond to IXC's requests for the BNA for telephone numbers that incurred usage on the IXC's network.

This activity supports a process to facilitate an IXC's ability to request and receive BNA for telephone numbers that incurred usage where the IXC does not have a current customer for the telephone number. When a LEC is unable to provide the requested BNA the LEC notifies the IXC via the unique TCSIs that identify why the requested BNA cannot be provided (*e.g.*, BNA not found or customer no longer serviced by this LEC). It is critical for an IXC to have the capability to request and obtain the BNA from the LEC providing local service for the telephone number because this is the most reliable source for accurate BNA. This BNA process is supported by most major LECs participating in the CARE process today and is consistent with the *Third BNA Order*,³⁶ as well as with the Commission's statements in this proceeding, regarding LECs' BNA service obligations.³⁷ When an IXC is unable to receive accurate BNA to support billing, the end user is impacted. The IXC either bills the wrong customer or bills at inaccurate rates.

7. LEC notification to the IXC when a suspension or block is put on or removed from a presubscribed customer's account.

This activity supports notification to the presubscribed IXC when a LEC

³⁶ *In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115; Third Order on Reconsideration ("*Third BNA Order*"), FCC 96-38, released February 9, 1996, reported at 11 FCC Rcd. 6835.

³⁷ *NPRM* ¶ 9.

has suspended or blocked the customer's access to the IXC's network as well as when the suspended or block action has been removed. Contrary to the suggestion that this is unnecessary,³⁸ this information is important to assist the IXC in understanding why there is no usage occurring on the customer's service particularly in situations when the customer complains that he is unable to place long distance calls but there is no problem with the IXC's network. Thus, where the LECs have the capability to provide this information, this activity should be mandated. The IXCs should be provided the same information that is available to the LECs' business office representatives for activity of this type because of the significant impact to the IXC's ability to service its presubscribed customers appropriately.

When an IXC does not receive information that its presubscribed customer's service has been suspended or blocked the IXC may receive and investigate customer complaints unnecessarily or continue to allow usage on its network that will result in uncollectible revenues. Receipt of this information allows the presubscribed IXC the opportunity to take the appropriate steps necessary to service customer calls concerning a customer's inability to access the IXC's network, maintain customer continuity within its network and take appropriate measures to curtail any possible fraudulent use as well as assess risks associated with the inability to collect revenues on usage during the time of the suspension or block.

In summary, the Commission should adopt minimum CARE standards that require obligatory participation for all LECs and IXCs that include at the very least all of the activities and associated basic TCSIs proposed by the Joint Petitioners. The

³⁸ Comments of SBC at 6.

Joint Petitioners have demonstrated how this obligation will improve and support the necessary billing and customer account maintenance activities for the exchange of critical customer information between all LECs and IXC's necessary to improve the customer's experience and drastically reduce the instances of customer complaints.

IV. ADOPTION OF REASONABLE PERFORMANCE STANDARDS ARE NECESSARY TO ENSURE THAT COMPLETE AND ACCURATE DATA ARE TRANSMITTED IN A TIMELY MANNER.

The Joint Petitioners have detailed both in their Petition for Rulemaking and their comments that the adoption of performance criteria for ensuring the timeliness, accuracy and completeness of the CARE data exchange is absolutely crucial if the consumer benefits that would flow from mandating CARE as requested by the Joint Petitioners are to be realized.³⁹ Moreover, the standards would put all carriers on notice as to what would be considered the reasonable thresholds for compliance and would allow carriers to adopt methods and procedures to meet such thresholds.

Most of the commenting parties addressed the issue of performance standards briefly, if at all. A few commenters supported the adoption of performance standards as a necessary feature of a mandatory CARE structure since the overarching goal of such structure is to minimize the number of billing complaints by customers. Thus, Americatel explains that "there needs to be a reasonable degree of uniformity and consistency among carriers with respect to [] customer billing information" so as to enable "carriers to bill their customers for services rendered. Otherwise, carriers would

³⁹ See Joint Petition at 8 and Appendix A at Section 3 and Joint Comments at 14-15.

have the flexibility to furnish data which would be meaningless to the recipients and would prevent the “seamless interexchange and delivery of traffic...”⁴⁰ Working Assets states that such thresholds not only “will ensure that the [CARE] information received is reliable, accurate and timely,” but also “will minimize the number of disputes between companies by establishing clear guidelines for what practices are acceptable and what are not.”⁴¹ And the CPUC points out that the adoption of performance metrics are necessary to ensure that customers’ requests are executed promptly so as to minimize the problem of inaccurate billing and the complaints to the FCC or state commission that result.⁴²

Others addressed the timeliness standard and argued that such metrics needed to be flexible so as not to place any undue burdens on smaller carriers.⁴³ The Joint Petitioners agree that a “one size fits all” timeliness metric should not be adopted. In fact, the Joint Petitioners have recommended that the timeliness thresholds adopted take into account the various types of media that may be used to exchange CARE information. The Joint Petitioners believe that such time frames are reasonable and that the longer time frames being recommended by some of the commenting parties simply would diminish the efficacy of requiring carriers to exchange CARE records in reducing customer complaints and confusion.

The ILECs that already participate in CARE, as well as their industry association, generally oppose the imposition of any performance standards as

⁴⁰ Comments of Americatel at 6-7.

⁴¹ Comments of Working Assets Funding Service at 15.

⁴² Comments of Public Utilities Commission of the State of California (CPUC) at 5-9.

⁴³ *See e.g.*, Comments of Martin Group at 3; Comments of Cox at 6-7; Comments of the Rural ILECs at 12.

unnecessary or premature. For example, SBC claims that the industry has already established standards for the timely delivery of accurate information and “[t]he industry is thus more than capable of addressing any lingering timing or accuracy delays after implementation of the requirements adopted in this proceeding.”⁴⁴ BellSouth argues “there is no need to establish performance standards for the CARE process” because “[t]he Commission’s enforcement authority is sufficient to protect carriers and consumers.”⁴⁵ Qwest echoes the arguments of SBC and BellSouth,⁴⁶ and USTA alleges that OBF is the proper forum to address CARE performance measurements.⁴⁷ The arguments of these ILECs and USTA cannot withstand scrutiny.

Referring the issue of reasonable performance metrics to the OBF is simply a prescription for delay. As the Joint Petitioners have repeatedly explained throughout this proceeding, the consensus process employed by the OBF to resolve the various issues put before it enables groups of carriers with similar interests to block the adoption of a new procedure or modification to an existing procedure.⁴⁸ Nonetheless, consensus is often achieved because no OBF participant is required to implement the recommended procedure. If OBF participants no longer had the ability to elect whether to implement an OBF approved measure – and a Commission referral of performance metrics issue to the OBF with the understanding that all carriers would have to comply

⁴⁴ Comments of SBC at 10.

⁴⁵ Comments of BellSouth at 10.

⁴⁶ Comments of Qwest at 11-13.

⁴⁷ Comments of USTA at 8.

⁴⁸ Consensus is established when there is substantial agreement among the participants on how to resolve an issue. Substantial agreement requires more than a simple majority but not necessarily unanimous consent.

with whatever metrics are adopted would eliminate such discretion – reaching consensus would be difficult, if not impossible. At the very least, the entire process is likely to become rather contentious which, in turn, would lead to delay.

Relying on the Commission’s enforcement authority to establish reasonable performance metrics is equally problematic. It could take years to develop a significant body of law, which would serve as a guide to industry members as to what constitutes reasonable performance metrics for the exchange of CARE information. Moreover, specifying the minimum performance metrics in a rulemaking rather than on a case-by-case basis as envisioned by SBC, BellSouth, USTA and others would certainly enable the Commission to conserve its limited resources. In fact, if all carriers know at the outset what constitutes acceptable performance standards, they would be less likely to file complaints at the Commission even for minor deviations from those standards.

In short, compelling reasons exist for the Commission to adopt Joint Petitioners’ performance metrics proposal, and the commenters have presented no compelling reason not to do so.

V. OTHER ISSUES.

The NYOAG, the CPUC, and BellSouth have asked the Commission to adopt proposals that the Joint Petitioners believe are outside the scope of this rulemaking.

The NYOAG suggests that the Commission require that IXCs submit termination notices to the LEC whenever the customer calls his IXC to cancel service. The NYOAG explains that its suggested rule would eliminate the burden currently placed

on the customer who upon notifying the IXC of his desire to drop the IXC's service has to also call his LEC to execute such termination.⁴⁹

The CPUC recommends that the Commission adopt a mechanism under which a carrier submitting a PIC change be required "to identif[y] 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."⁵⁰ The purpose of such identification would be to enable state commissions to identify the carrier providing service in slamming and cramming cases.⁵¹

BellSouth asks the Commission to consider adopting "customer account information exchange requirements applicable to changes involving local service providers."⁵² BellSouth explains that the adoption of such requirements are necessary because the ILECs encounter problems similar to those identified by the Joint Petitioners.⁵³

The Joint Petitioners believe that the requests of these commenting parties deserve serious consideration by the Commission. However, as stated, the issues are beyond the limited scope of this rulemaking, which is designed to solve the problems being experienced by customers when their IXC bills are negatively impacted because not all LECs participate in the CARE process. Thus, Joint Petitioners recommend that the Commission consider these issues in a subsequent phase of this proceeding.

⁴⁹ Comments of NYOAG at 4-5.

⁵⁰ Comments of CPUC at 10.

⁵¹ *Id.* at 9.

⁵² Comments of BellSouth at 12.

⁵³ *Id.*

CONCLUSION

For all of the reasons set forth above and in the Joint Petitioners' initial comments, filed June 3, 2004, the Joint Petitioners urge the Commission, as soon as practicable, to establish mandatory minimum CARE standards.

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June 18, 2004

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Reply Comments of AT&T Corp., MCI, Inc. and Sprint Corporation to Notice of Proposed Rulemaking was served on the 18th day of June 2004 by first class mail (or as otherwise noted) to the persons listed below:

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