

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Presubscribed Interexchange Carrier Charges) CC Docket No. 02-53
)

REPLY COMMENTS OF MCI

MCI, Inc. (“MCI”) respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking released by the Federal Communications Commission (“Commission”) on April 23, 2004 in the above-referenced proceeding.¹ In these reply comments, MCI responds to a number of arguments made by the Bell Operating Companies (“BOCs”) and ACUTA.

I. Issues Relating to Separate Safe Harbors for Electronic and Manual Processing

Basis for Establishing New Safe Harbors. As MCI explained in its initial comments, adopting separate safe harbors for manually and electronically processed PIC changes based upon the cost support data filed with BellSouth’s most recent tariff filing will result in more reasonable PIC-change fees.² SBC disagrees, arguing that it is improper to use that cost data to establish a safe harbor because BellSouth’s costs differ substantially from those of SBC.³ Yet, the role of a safe harbor is not to reflect the costs of every single carrier, but rather to establish a fee level that a carrier knows will be considered reasonable by the Commission, in the event that

¹ *Presubscribed Interexchange Carrier Charges*, Further Notice of Proposed Rulemaking, 19 FCC Rcd 7445 (2004) (FCC 04-96) (“*Further NPRM*”).

² Comments of MCI at 2-5 (discussing required adjustments to BellSouth’s cost study) (“MCI Comments”). (Unless otherwise indicated, all comments cited herein were filed in CC Docket No. 02-53 on June 15, 2004.)

³ Comments of SBC Communications at 3-6.

a carrier chooses not to document the specific costs it incurs to process a PIC change. To the extent that the costs of SBC or another incumbent local exchange carrier (“LEC”) exceed the safe harbors, those carriers have the option of filing their own cost support data to justify a higher rate. Of course, the Commission should suspend and investigate any tariff filings that seek to justify charges above the safe harbor, in order to ensure that the proposed charges are just and reasonable.

Manual Processing of Automated PIC Changes. Although BellSouth does not object to bifurcated PIC-change charges, it states that the submitter of the PIC change may not “be able to dictate how a PIC change is effectuated.”⁴ According to BellSouth, for example, an interexchange carrier (“IXC”) could submit a flawed PIC-change request electronically, and that request could be rejected by the incumbent LEC’s mechanized system, resulting in a manual processing fee.⁵ The Commission should clarify that any request that is submitted electronically should result in an electronic processing fee.

In MCI’s experience, it is unlikely that automated PIC-change requests submitted by the IXC require manual processing by LEC personnel due to IXC error. Rather, to the extent that automated orders “fall out” and are processed manually, it is more likely because incumbent LECs have chosen to design their PIC-change systems so that they are not fully automated, possibly in order to limit the number of PIC changes that will flow through at one time and thus avoid overloading the switch. In contrast, when an IXC-submitted order is rejected due to insufficient information or because the customer’s service is not eligible for a PIC change, the ILEC system responds with an *automated* notice of the order failure and cause.

⁴ Comments of BellSouth Corporation at 4 (“BellSouth Comments”).

⁵ *Id.* at 5.

Moreover, there is no way for an IXC to audit the number of automated PIC-change requests that “fall out” of the incumbent LEC’s electronic systems and require manual processing. Consequently, if BellSouth’s proposal were implemented, incumbent LECs would have complete discretion to assess consumers a higher fee for manual processing of a PIC change – regardless of how the order was processed – and no party except for the incumbent LEC would have the data necessary to evaluate whether the fee had been properly assessed.

II. Issues Relating to Party Assessed PIC Change Fees

Slamming. ACUTA incorrectly claims that requiring IXCs to pay the PIC-change charge on behalf of customers will discourage slamming.⁶ The Commission currently has in place aggressive liability rules designed to take the profit out of slamming. Under those rules, a subscriber is not liable for any unpaid calls made within 30 days after being slammed. If the subscriber has paid his or her bill without detecting the error, the Commission’s rules require the slamming carrier to pay the authorized company 150% of the unauthorized charges. Of this amount, the authorized carrier reimburses the subscriber 50% of the charges.⁷ In addition, the unauthorized carrier is liable to the subscriber for any charge required to return the subscriber to his or her properly authorized carrier.⁸ Therefore, the unauthorized carrier must disgorge all

⁶ Comments of ACUTA at 3.

⁷ *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*, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, ¶ 5 (1998), and First Order on Reconsideration, 15 FCC Rcd 8158, ¶¶ 1, 3, 13, 17 (2000); 47 C.F.R. §§ 64.1140(b), 64.1160(b), 64.1170(b)-(c).

⁸ 47 C.F.R. § 64.1140(b)(3); *see also 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*, Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996, ¶ 85 (2000) (“[W]e hereby clarify that the unauthorized carrier shall pay the preferred carrier change charges that are assessed in the event of a slam, *i.e.*, the charge assessed when the LEC executes the slamming carrier’s preferred

revenue, and is liable for the PIC-change charges ensuing from a slam. As a result, requiring the IXC, rather than the subscriber, to pay the PIC-change charge, even for authorized conversions, will not provide any further incentives to deter slamming. In fact, the carrier's payment of the PIC-change charge regardless of the customer's authorization would eliminate one of the deterrents.

III. Price Cap Issues

Although the Commission has not proposed any changes in treatment of PIC-change charges by price cap carriers, or any other changes to the price cap indices as a result of adoption of new safe harbors, BellSouth and Verizon raise separate issues regarding the proper treatment of PIC-change charges for price cap carriers.

Inclusion of PIC-Change Charges in Price Caps. BellSouth argues that PIC-change charges should be brought under price caps.⁹ MCI disagrees. In the 1990 *LEC Price Cap Order*, the Commission excluded a number of services from price caps, including the PIC-change charge.¹⁰ The Commission noted that PIC-change charges were assessed on end-user subscribers, and were "very different" from the access charges assessed on IXCs that had been studied to provide the basis for the productivity offset. The Commission's reasoning remains valid today; nothing has changed in the past fourteen years that should cause the Commission to alter its original conclusion that PIC-change charges should be excluded from price cap indices.

Exogenous Increase to Price Cap Rates. Verizon argues that any reduction in the safe harbor for the PIC-change charge should result in an exogenous increase in price cap carriers'

carrier change order and the charge assessed when the LEC returns the subscriber to his or her authorized carrier.").

⁹ BellSouth Comments at 1-2.

¹⁰ *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 9786, ¶ 195 (1990) ("*LEC Price Cap Order*").

rates.¹¹ Verizon's argument is nonsensical. As noted above, the PIC-change charge has always been excluded from price caps. Over the past fourteen years, the price cap indices have been adjusted at least annually to account for predicted changes in costs due to various causes, including gains in productivity relative to other industries, inflation, and rule changes that affect interstate costs, such as changes in the separations manual.¹² If the Commission were to adopt a lower safe harbor, that presumably would reflect the Commission's view that incumbent LECs' costs of processing PIC-change charges have decreased. Adoption of a lower safe harbor for the PIC-change charge has no relevance for the costs of services that remain under price caps, and therefore could not, under the Commission's rules, result in an exogenous adjustment to the price cap indices.

IV. Applicability of New Safe Harbors to Incumbent LECs

As MCI explained in its initial comments in this proceeding, PIC-change charges are well above cost, and have a deleterious effect on customer choice and competition.¹³ MCI thus supports the Commission's proposal to require incumbent LECs to have separate charges for manual and mechanized PIC-change requests, and agrees that separate charges, together with new, cost-based safe harbors, would result in more reasonable PIC-change charges. At the same time, MCI recognizes that PIC-change issues may be different for small incumbent LECs than for the largest incumbent LECs, and therefore, in the interest of expediting the establishment of

¹¹ Comments of Verizon at 9-10.

¹² See 47 C.F.R. § 61.45.

¹³ MCI Comments; see also WorldCom's Comments, CC Docket No. 02-53 (June 14, 2002); Joint Reply Comments of WorldCom and the Competitive Telecommunications Association, CC Docket No. 02-53 (July 1, 2002); MCI Petition to Reject or, in the Alternative, Suspend and Investigate, *BellSouth Telecommunications, Inc. Tariff FCC No. 1*, Transmittal No. 746 (Oct. 21, 2003).

new safe harbors, would not object to the Commission adopting different safe harbors for large and small incumbent LECs.

CONCLUSION

For the reasons stated above and in MCI's initial comments, the Commission should require incumbent LECs to bifurcate PIC-change charges so that there are separate charges for electronic and manual processing, and adopt separate safe harbors for those charges based on the data provided in the recent BellSouth tariff filing.

Respectfully submitted,

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Certificate of Service

I, Ruth E. Holder, hereby certify that on this 25th day of June, 2004, I caused true and correct copies of the foregoing Reply Comments of MCI to be mailed by electronic mail to:

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