Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

PETITION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, PETITION FOR CLARIFICATION

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CONTENTS

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I. Introduction and Summary.

The Commission should reconsider its February 17, 2005 Order insofar as it permits the local exchange carriers ("LECs") to charge only one half of the safe harbor rates for the presubscribed interexchange carrier ("PIC") change charge when a customer changes both the PIC and the intraLATA primary interexchange carrier ("LPIC") at the same time.[1] The Commission based this decision on a finding that the costs of processing a PIC and LPIC simultaneously are the same as the costs of a PIC change alone (i.e., that the incremental costs of making the LPIC change are zero). Therefore, the Commission required the carriers to recover half of the safe harbor rate from the federal PIC change charge and the other half from the state LPIC change charge. However, the cost data that the Commission used to establish safe harbor rates for PIC change charges show that the LECs incur additional costs to process an LPIC together with a PIC. For the Verizon LECs, the Commission's decision arbitrarily disallows recovery of as much as $12 million

[1] *See Presubscribed Interexchange Carrier Charges*, CC Docket No. 02-53, Report and Order, FCC 05-32, ¶ 21 (rel. Feb. 17, 2005) ("Order").

in the costs of processing PIC changes. The Commission should reconsider the Order and eliminate the half-PIC rule. Alternatively, the Commission should clarify that carriers submitting cost studies can show that the PIC change charge for changes that are made simultaneously with LPIC changes should be higher than one half the safe harbor PIC rate.

II. Background.

The Commission began this proceeding on March 20, 2002 with a Notice seeking comments on continuation of the $5 "safe harbor" for PIC change charges that the Commission had established in its initial access charge orders.[2] The Commission raised a number of rate level and rate structure issues.[3] In response, Verizon and other carriers explained why the Commission should retain the $5 safe harbor, which they demonstrated was a reasonable method of recovering the costs of making PIC changes and which Verizon showed was reasonable in comparison to LPIC rates adopted by the state commissions.[4]

In the Notice, the Commission noted that when a customer changes both the PIC and the LPIC at the same time, LECs may assess both a federal PIC charge and a state LPIC charge. *See* Notice, ¶ 18. The Commission asked for comments on whether this amounted to double recovery, and whether the Commission should allow the LECs to recover both charges, a

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[2] *See Presubscribed Interexchange Carrier Charges*, Order and Notice of Proposed Rulemaking, 17 FCC Rcd 5568 (2002) ("Notice").

[3] The Commission asked (1) whether the PIC change charge should be a regulated cost-based charge or a market-based rate; (2) whether the $5 safe harbor continued to be reasonable in light of current costs; (3) whether the PIC change charge should be higher for customers that have PIC freezes or that make excessive numbers of PIC changes; (4) what type of costs, such as the costs of administering slamming disputes, should be recovered through the PIC change charge; and (5) the basis for establishing a new safe harbor rate. *See id.*, ¶¶ 15-20.

[4] *See, e.g.*, Verizon 2002 Comments, at 2-7 (filed June 14, 2002); SBC 2002 Comments, at 4-11 (filed June 14, 2002); Sprint 2002 Comments, at 3-5 (filed June 14, 2002).

percentage of each charge, only one of the charges, or some different charge under these circumstances. In response, several LECs showed that they incur additional costs to implement an LPIC change when a PIC and LPIC are changed simultaneously and that these costs should be recovered separately through the LPIC charge.[5]

Other commenters argued that the Commission should allow the LECs to charge only a single PIC change charge when a customer changes both the PIC and LPIC, because they claimed that it "seems likely" that the costs are the same as for a single PIC change.[6] However, they provided absolutely no facts to support these allegations.

On April 23, 2004, the Commission released a Further Notice of Proposed Rulemaking seeking to refresh the record and seeking comment on cost support information that had been filed by BellSouth in support of an increase in its PIC change charge.[7] The Further Notice sought comments on the differences in BellSouth's filing between the costs of processing a manual PIC change request (for example, one submitted by an end user to a BellSouth business service center) and an electronic PIC change request (such as one submitted by an interexchange carrier through a computer link or computer tapes directly to the LEC's operating support systems). *See id.* at ¶ 3. In response to the Further Notice, Verizon provided a detailed cost study demonstrating that its costs were higher than those in BellSouth's study and that they supported continuation of the $5 safe harbor. *See* Verizon 2004 Comments (filed June 15, 2004). Verizon

[5] *See* Verizon 2002 Comments, at 8; *Ex Parte* letter from Joseph DiBella, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-53, at 3 (filed Jan. 24, 2003) ("Verizon Jan. 24, 2003 Ex Parte"); BellSouth 2002 Comments, at 7 (filed June 14, 2002); SBC 2002 Comments, at n.5.

[6] NASUCA 2002 Comments, at 7 (filed June 14, 2002); *see also* WorldCom 2002 Comments, at 6-7 (filed June 14, 2002).

[7] *Presubscribed Interexchange Carrier Charges*, 19 FCC Rcd 7445 (2004) ("Further Notice").

did not provide a separate cost study for LPIC changes or highlight the costs of making LPIC changes at the same time as PIC changes, because the Commission never asked for the data, it never raised the issue of LPIC costs in its Further Notice, and BellSouth's study did not address this issue.[8]

On February 17, 2005, the Commission issued the Order, in which it required the LECs to bifurcate the PIC change charge into a charge for manual PIC changes and a charge for electronic PIC changes. *See* Order, ¶ 7. The Commission relied on Verizon's cost study to establish new safe harbors of $5.50 for a manual PIC change and $1.25 for an electronic PIC change, finding that Verizon's study was the "best record evidence" of the cost of making PIC changes. *Id.*

In addition, the Commission allowed the carriers to recover only half the safe harbor rates for PIC changes that are made simultaneously with LPIC changes. *See id.*, ¶ 21. The Commission based this decision on statements from some commenters that, when PIC and LPIC changes are made simultaneously, the costs are equal to the costs of a single change. The Commission ignored statements from the LECs, as well as data in their cost studies, showing that they incur additional costs to make an LPIC change on top of a PIC change. While there are no data in the record to indicate how often customers change the PIC and the LPIC simultaneously, the demand data in Verizon's study shows that this finding alone might reduce the Verizon LECs' revenues by as much as $12 million.[9] The Order permitted carriers to file tariffs with PIC

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[8] On November 4, 2004, SBC filed its own cost study, which included the costs of changing either a PIC or an LPIC, and which incorporated the efficiencies of changing both the PIC and LPIC in the same transaction. SBC did not price a PIC change separately from a PIC/LPIC change, again because the Commission did not ask the parties to do so. *See* Letter from Davida Grant, SBC to Marlene H. Dortch, Secretary, FCC, CC Docket No. 02-53 (filed Nov. 4, 2004).

[9] Workpaper 8.1 of the Verizon East cost study and Workpaper 8 of the Verizon West cost study show the PIC and LPIC demand levels for 2003. Assuming that about 70 percent of the

change charges other than the safe harbor rates if they filed cost studies. *See* Order, ¶¶ 6, 19. However, the Order did not specifically state whether carriers filing cost studies could also avoid the half-PIC rule, although that appears to be the case.

III. The Commission's Decision To Disallow Recovery Of Half Of The LECs' PIC Change Costs Is Not Supported By Substantial Evidence And It Is Contrary To The Evidence In The Record.

The Courts have held that the Commission's decisions will be upheld only if they are supported by "substantial evidence."[10] The decision to reduce the PIC change charges by half when a customer changes the LPIC at the same time is not supported by any evidence at all. The order cited merely the opinions of a few commenters who were not in a position to have any facts on the subject, and it ignored countervailing statements by the LECs who administer PIC changes and are in the best position to know what it takes to make more than one PIC/LPIC change at a time. The LECs also included evidence in their cost studies that each additional PIC or LPIC takes additional time to implement, and that they included LPIC demand in their cost recovery. It was arbitrary for the order to disallow tens of millions of dollars of costs without a basis in the record. On reconsideration, the Commission should reverse the decision to require a half-PIC charge.

The lack of a factual basis for the decision is apparent from the order itself. The order starts with citations to comments from three parties – NASUCA, WorldCom, and the NJ Ratepayer Advocate – who do not administer PIC changes and therefore have no direct

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LPIC demand occurs simultaneously with a PIC on the same line, about 3.4 million electronic PIC charges would be reduced by $0.625, and approximately 3.6 million manual PIC charges would be reduced by $2.75, for a net reduction of about $12 million.

[10] *See, e.g., AT&T v. FCC*, 349 F.3d 692, 698 (D.C. Cir. 2003).

knowledge of the costs involved. *See* Order, ¶ 21. They argued that the LECs should not be able to assess multiple PIC change charges when a customer changes both the PIC and LPIC at the same time, claiming that the LPIC transaction adds essentially no costs to the costs incurred to change a PIC.[11] None of the cited comments provides anything more than speculation to support their claims.

Next, the Commission cites the comments of two LECs to "confirm" that when a PIC and LPIC are processed simultaneously, the costs are equivalent to the costs of a single PIC change.[12] However, the cited comments say nothing of the sort. Both commenters were responding to the claim that imposing a PIC and an LPIC at the same time constitutes double recovery. Sprint stated that there is no double recovery, because it claimed that when a customer changes both the PIC and the LPIC at the same time, the total charge is the same as for an LPIC change alone. This is a statement about *rates*, not *costs*. Obviously, if a carrier applies only one charge when the customer requests two changes, there can be no double recovery. However, it does not mean that the costs of the second change are zero. It simply means that there is no cost recovery for the second change at all.[13] Similarly, SBC stated that it splits the PIC change charge in half when

[11] *See* NASUCA 2002 Comments, at 7 (arguing that it is "highly unlikely" that the costs of doing two changes at once are the same as the costs of doing them on different occasions); WorldCom 2002 Comments, at 6-7 (claiming that the LPIC requires nothing more than processing one more field in a service order); NASUCA 2002 Reply Comments, at 11-12 (filed July 1, 2002) (arguing that because SBC says there is no sensible way of determining the cost of each subsequent PIC change, the rate should be zero); NJ Ratepayer 2004 Comments, at 2 (filed June 15, 2004) (simply stating again that the customer should pay only the PIC charge for a PIC/LPIC combination).

[12] *See* Order, ¶ 21, *citing* Sprint 2002 Comments, at 13; SBC 2004 Reply Comments, at 4 (filed June 15, 2004).

[13] Sprint did not point out that many other states do apply the full LPIC change charge when a customer makes a simultaneous PIC change. In either case, the state's ratemaking policy says absolutely nothing about how costs are incurred.

processing both a PIC and an LPIC change, citing California as an example, where the charge for a customer making a PIC and LPIC change at the same time is $2.49 for each. Again, this rate comparison proves nothing about costs. In addition, SBC's statement of how California allows customers to apply LPIC changes is in error. Verizon's Comments showed that, in California, the carriers apply a full PIC change charge and one half of the LPIC charge when a customer makes a PIC and LPIC change at the same time.[14] SBC confirmed this recently in an *ex parte* correcting its earlier comments.[15]

This is the entire record on which the Commission decided to disallow tens of millions of dollars of the costs that the LECs incur to make PIC changes. Clearly, this does not satisfy the "substantial evidence" test that the Courts require an agency to meet.[16]

Furthermore, it is overwhelmed by the evidence in the record that the Commission ignored. First, Verizon explained that;

> The federal and state PIC change charges recover the costs of separate activities. The local exchange carrier incurs processing costs to carry out a customer's choice of an intraLATA toll carrier that are in addition to the costs of making an interLATA PIC change. Each service is negotiated and physically put in the switch as a separate activity. The interLATA PIC and the intraLATA PIC cannot be populated simultaneously in the switch as each has its own field-led identifier and must be updated separately. These additional provisioning, operational, and billing costs must be recovered through the state PIC change charge.[17]

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[14] *See* Verizon 2002 Comments, Attachment B, p. 1 (for example, PIC rate is $5.00, LPIC rate is $4.46, and combined PIC/LPIC rate is $7.23, equal to the PIC rate plus one half of the LPIC rate).

[15] SBC clarified that the charge for a PIC/LPIC combination is $5.26 for the PIC change and $2.49 for the LPIC change. *See Ex Parte* letter from Toni Acton, SBC, to Marlene Dortch, Secretary, FCC, CC Docket No. 02-52 (filed March 15, 2005).

[16] *See AT&T v. FCC*, 349 F.3d 692, 698 (D.C. Cir. 2003).

[17] Verizon Jan. 24, 2003 Ex Parte at 3.

For these reasons, Verizon and other LECs explained that there was no overlap in costs between the PIC and LPIC and that the additional provisioning, operational, and billing costs of making the LPIC change must be recovered through the state LPIC change charge while the PIC charge remained the same.[18] The Commission did not even address these comments.

Second, the Commission's citation of SBC's mistaken statement that the LECs apply half the PIC rate and half the LPIC rate in California when a customer makes both a PIC and an LPIC change ignored the extensive data that Verizon provided about the LPIC rates for the entire country.[19] In addition to showing that the SBC statement was wrong about California, Verizon's data showed that most states allow the LEC to apply the full LPIC rate in addition to the full PIC rate for simultaneous PIC/LPIC changes. Some states allow the full PIC rate plus a half LPIC, and only a minority allow the full PIC rate plus no LPIC charge at all. The Commission ignored these data and relied solely on SBC's mistaken observation about California. The Commission did not explain why it found the LPIC practices in one state to be more relevant than the practices in the rest of the states, or what conclusion could be drawn from the diversity among the states. Nor did it explain why state ratemaking practices have any relevance to the *costs* of making LPIC changes. The Commission itself initially established the $5 safe harbor for the PIC change charge based on policy objectives rather than costs.[20] The states may also have established the LPIC rates at different levels for policy reasons unrelated to costs.

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[18] *See, e.g.,* Verizon 2002 Comments, at 8; BellSouth 2002 Comments, at 7.

[19] *See* Verizon 2002 Comments, Attachment B.

[20] *See* Notice, ¶ 3; *Investigation of Access and Divestiture Related Tariffs*, Memorandum Opinion and Order, 55 Rad. Reg. 2d (P&F) 1422, App. B, 13-5 (rel. Apr. 27, 1984), (the carriers' actual costs for PIC changes were difficult to establish and a $5 charge would discourage excessive amounts of shifting back and forth between or among interexchange carriers).

Third, the Commission ignored actual cost data in the record showing that the costs of making an LPIC change simultaneously with a PIC change are not zero. Verizon's cost study, which the Commission found was the "best record evidence,"[21] provides hard evidence that there are additional costs in processing LPIC changes that are not recovered in the safe harbor rates.

For example, when Verizon estimated the manual cost of each PIC change transaction, it used work time studies to develop per-transaction costs of making just PIC changes. Verizon relied on data from a service center survey of the amount of time that service representatives take for various types of customer transactions. The results of the study, which are shown in Workpaper 3.1 of the Verizon East study, show that the amount of time that service representatives take with a customer to process PIC changes is sensitive to the number of changes that the customer requests on the same call.[22] For example, the residential service center personnel take an average of 4.68 minutes to negotiate and process a PIC change for one line.[23] If the customer changes the PICs on two lines at the same time, the total time spent is 6.97 minutes. This shows that additional PIC changes on the same call take additional time, regardless of whether the second change is a PIC on a second line or an LPIC on the same line. Just as for adding a PIC change on a second line, adding an LPIC change requires additional time for the service representative to discuss it with the customer and to enter the change into the customer's account. In fact, it may take longer, because many customers may not know what the LPIC is, what types of calls it covers, what the LATA boundaries defining the LPIC are, or that

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[21] *See* Order, ¶ 16.

[22] *See* Verizon 2004 Comments, Attachment B, Exhibit Verizon East PIC Cost, Workpaper 3.1

[23] *See id.*, Attachment B, Exhibit Verizon East PIC Cost, Workpaper 3.1

the customer has the ability to choose different carriers for the PIC and the LPIC. The Commission's half-PIC rule allows no recovery of these additional costs.

Another example is how Verizon developed the costs of Staff and Systems Support and Computer Investment. Verizon divided its total costs for Staff and Systems Support for both electronic and manual PIC changes by the total number of PIC and LPIC changes.[24] Similarly, Verizon divided the costs of Computer Investment used for PIC and LPIC changes by total PIC and LPIC demand.[25] This methodology spread the costs between PIC changes and LPIC changes and therefore ensured that the costs for processing a PIC change do not include the costs of processing an LPIC change, regardless of whether the LPIC change is done simultaneously with the PIC change or done separately.[26] The Staff and Systems Support costs and Computer Investment costs alone represent 25 percent of the costs that the Commission used in setting the safe harbor for the PIC change charge.[27]

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[24] *See, e.g., id.*, Attachment B, Exhibit Verizon East PIC Cost, Workpaper 3.3, line 4; Workpaper 8.1. Staff and Systems Support costs include PIC Interface Specialist, PIC System Administration Specialist, PIC Methods Staff Support, XEA IT Support, Switch Manager IT Support, MTAC CARE IT Support, NJ Local EAMI, C&P Local EAMI, and MARCH.

[25] *See id.*, Attachment B, Exhibit Verizon East PIC Cost, Workpaper 2, line 8.

[26] For the costs of mechanized orders that fall out for manual processing by the Equal Access Point of Contact ("EAPOC"), Verizon multiplied the average time per fall-out by the percentage of total PIC orders that fall out. *See, e.g., id.*, Exhibit Verizon East PIC Cost, Workpaper 1.3, line 2. Since the numerator of the percentage was total PIC and LPIC orders that fall out and the denominator was total PIC changes, this puts all of the fall-out costs on the PIC. If Verizon separated these costs between PIC and LPIC, the PIC rate would be reduced and there would be no difference between the stand-alone mechanized PIC rate and the rate for a combined PIC/LPIC change.

[27] *See, e.g., id.*, Attachment B, Exhibit Verizon East PIC Cost, Workpaper 1.1, lines 30 and 32. These costs total $1.17. Total PIC change costs on this exhibit minus PIC freeze costs are $4.75. $1.17 divided by $4.75 equals 25 percent.

A third example is the method for developing bill entry costs.[28] Verizon based these costs on the number of entries that are included in a bill to notify the customer of the PIC change and the associated charge. The study only included the costs of inserting print lines on the bill for the PIC change alone.[29] It did not include the costs of inserting additional lines on the bill to inform the customer of an LPIC change and any associated LPIC change charge. Again, the Commission's half-PIC rule allows for no recovery of these costs.

Verizon did not conduct a study of the incremental time to process an LPIC change with a PIC change because the Commission's Further Notice did not address the issue. However, there is already more than enough evidence in the record to show that the Commission's safe harbor rates do not include the incremental costs of making LPIC changes.

IV. The Commission Should Eliminate the Half-PIC Rule Or Clarify That Carriers Submitting Cost Studies Can Show That More Than A Half-PIC Change Charge Should Be Applied.

The Commission should eliminate the half-PIC rule. The record does not support the Commission's conclusion that the costs of making a PIC change plus an LPIC change are the same as the costs of making a PIC change alone.

Alternatively, the Commission should clarify that the Order permits carriers who file cost studies to show that the PIC rate when a customer makes a simultaneous LPIC change should be something more than one-half the normal PIC rate. The Order states that carriers are free to file cost showings if their costs exceed the safe harbor limits. *See* Order, ¶¶ 6, 19. Since the half-

[28] *See, e.g., id.,* Attachment B, Exhibit Verizon East PIC Cost, Workpaper 1.1, line 33; Workpaper 5.

[29] *See id.,* Attachment B, Exhibit Verizon East PIC Cost, Workpaper 5, line 15.

PIC rule was not based on any data in Verizon's cost study, the Commission should make it clear that Verizon and other carriers may submit studies showing the cost of making a PIC change simultaneously with an LPIC change and demonstrating that the half-PIC rule should not apply to them.[30]

Finally, the Commission should act on this petition expeditiously, because the carriers must make extensive changes to their service ordering and billing systems to implement the half-PIC rule. The carriers must program their service ordering systems to distinguish between electronic and manual PIC change orders, to recognize when a PIC and LPIC are changed simultaneously, and to pass this information along to the billing systems to apply the appropriate charges. The systems also will have to be programmed to track which PIC change charge – the existing $5 or one of the four new bifurcated rates – a customer has paid so that the customer can be provided the appropriate refund if he or she has been slammed. In an order released April 8, 2005, the Bureau granted a six month extension of time to implement the rate structure and rate level changes mandated by the Order.[31] Tariffs must be filed by October 17, 2005 for effect on November 1. If the Commission decides to eliminate the half-PIC rule or allow the carriers to avoid it by filing cost studies, it must give the carriers sufficient notice before the new deadline so that they can incorporate that decision into their implementation plans.

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[30] For example, if the cost of a manual PIC is $5.50 and the cost of a combination of a PIC and LPIC is $8.25 ($5.50 plus half as much, or $2.75, for the LPIC), the PIC charge for the simultaneous PIC/LPIC could be $4.12, and the remaining $4.12 would have to be recovered through the LPIC charge. In this example, the PIC rate for a simultaneous PIC/LPIC change would be 75 percent of the full PIC rate.

[31] *Presubscribed Interexchange Carrier Charges*, Order, CC Docket No. 02-53, DA 05-1045 (rel. Apr. 8, 2005).

Conclusion

For the foregoing reasons, the Commission should reconsider its decision to require the LECs to charge only one half the safe harbor PIC change charge rate when a customer changes the PIC and the LPIC in the same transaction, or clarify that carriers are not subject to this rule if they submit cost studies.

Respectfully submitted,

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Dated: April 14, 2005

ATTACHMENT A

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.