fraudulent or illegal use of, or subscription to, such services. 130

65. The term "billing name and address," or BNA, is defined in the Commission's rules as "the name and address provided to a [LEC] by each of its local exchange customers to which the [LEC] directs bills for its services."131 Section 64.1201(b) of the Commission's rules provides that "[n]o [LEC] providing billing name and address shall disclose billing name and address information to any party other than a telecommunications service provider or an authorized billing and collection agent of a telecommunications service provider."132 Section 64.1201(c)(1) provides that "[n]o telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than the following: (i) Billing customers for using telecommunications services of that service provider and collecting amounts due; (ii) Any purpose associated with the 'equal access' requirements of United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982); (iii) Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes." 133

2. Discussion

66. We assume, for purposes of this Order, that the information that is the subject of the data exchange requirements adopted herein constitutes CPNI, as that term is defined in section 222(h) of the Act. Assuming that it does qualify as CPNI, we note that the information that we direct carriers to disclose under these requirements includes basic customer account information that is required by carriers in order to accurately bill their customers and to carry out their customers' PIC changes and other requests. As such, we conclude that disclosure for these purposes is consistent with the requirements of section 222 and is expressly permitted under subsections (c)(1)(B) and (d)(2) of that provision.134

67. As reflected in the attached rules, carriers that receive customer account information under the rules we adopt here may use that information for billing and provisioning purposes only and may not use it for marketing purposes unless they obtain customer approval pursuant to our CPNI rules.135

G. Implementation Issues and Cost Recovery

1. Background

68. The NPRM sought comment on "the expected implementation costs associated with adopting minimum CARE standards, as well as the appropriate allocation of those costs."136 In the NPRM we noted the statement of the Joint Petitioners that their proposal would require carriers to use fewer than five percent of the approximately 700 CARE codes developed by ATIS and would provide for the "transmission of required data in a variety of ways." 137 We also asked whether these aspects of the Joint Petition were sufficient to contain the costs and burdens associated with adopting the Joint

[130] 47 U.S.C. § 222(d)(1), (2).

[131] 47 C.F.R. § 64.1201(a).

[132] 47 C.F.R. § 64.1201(b).

[133] 47 C.F.R. § 64.1201(c)(1).

[134] 47 U.S.C. § 222(c)(1)(B), (d)(2).

[135] *See* 47 C.F.R. Part 64, Subpart U.

[136] *NPRM*, 19 FCC Rcd at 5696 ¶ 15.

[137] *NPRM*, 19 FCC Rcd at 5696 ¶ 15.

Petitioners' proposal. 138

2. Discussion

69. In the data exchange requirements adopted in this Order, we have attempted to balance two goals, ensuring the exchange of critical customer account information in a manner that will protect consumers and minimizing the burden of such exchanges on carriers. To that end, we have adopted minimum standards that focus on information sharing in designated situations while affording carriers flexibility in the methods and processes used to provide the required notifications. Because of the flexibility and accommodation of different carrier needs provided in these standards, we anticipate that the costs associated with their implementation will be minimal. For example, carriers that currently provide timely and adequate notifications in the situations identified above should incur few, if any, additional costs.139 Carriers that currently do not provide such notifications may incur additional costs. As discussed previously, we conclude that any such additional costs or burdens are outweighed by the substantial benefits that will be provided to end user customers, state and federal enforcement efforts, and to competition in the industry.

70. To the extent that carriers incur costs associated with implementing the notification requirements adopted in this Order, we permit, but do not require, the recovery of those costs, consistent with federal and state laws, through the filing of tariffs, via negotiated agreements, or by other appropriate mechanisms.140 We note that any cost recovery method must be reasonable and must recover only costs that are associated with providing the particular information.141 In addition, we caution that the imposition of unreasonable terms or conditions on the provision of information required by this Order by a LEC or by an IXC may be considered an unreasonable carrier practice under section 201(b) of the Act and subject the carrier to appropriate enforcement action. 142

H. Issues For Future Proceedings

71. In this Order, the Commission has addressed itself, for the first time, to issues pertaining to the customer account information exchange process between carriers. We recognize that additional issues raised in the record of this proceeding remain to be addressed and conclude that these issues merit serious Commission consideration. In order to address in an expeditious manner those issues that we deem to be most pressing, however, we defer consideration of a number of those issues. For example, we do not at this time address proposals concerning: (1) the establishment of a line-level database;143 (2) notification obligations of a LEC when the LEC has temporarily suspended or blocked its customer's account due to

---

[138] *NPRM*, 19 FCC Rcd at 5696 ¶ 15.

[139] *See, e.g.*, Rural ILECs Comments at 3 (noting that rural ILECs currently are exchanging customer account information).

[140] NTCA Comments at 5 ("If the Commission imposes a mandate, it should provide for cost recovery from the carriers who benefit directly").

[141] Working Assets Comments at 3 (asserting that basic customer account information should be available at charges, "if any, that reflect the actual costs of providing the information and subject to fair and reasonable terms and conditions").

[142] Working Assets Comments at 3 (alleging that particular LECs have "improperly used their unilateral control of customer account information to disadvantage their competitors").

[143] *NPRM*, 19 FCC Rcd at 5697 ¶¶ 17-19.

fraud or nonpayment;144 and (3) whether to impose data exchange requirements on wireless service providers that offer functionally equivalent services to those provided by LECs and IXCs.145

IV. FURTHER NOTICE OF PROPOSED RULEMAKING

A. Background

72. As explained above, the CARE process was originally developed by ATIS' Ordering and Billing Forum ("OBF") to allow LECs to comply with their obligation to provide all IXCs with access equal in type, quality, and price to that provided to AT&T and its affiliates. The purpose of CARE was specifically to facilitate communication between LECs and IXCs regarding customer account information—primarily when a customer elected to change long distance carriers or wished to modify his or her BNA information. The CARE standards were designed to enable customers to move seamlessly from one IXC to another and to ensure that the appropriate IXC receives accurate customer account information in a timely manner. Joint Petitioners focus exclusively on mandating CARE for the exchange of information between LECs and IXCs.

73. BellSouth contends that local service providers experience many of the same difficulties with access to customer account information as described by Joint Petitioners, and that the sharing of necessary customer information should not be limited to changes involving presubscribed IXCs.146 BellSouth notes that, in response to industry's concerns about the exchange of information among LECs, the OBF recently developed Local Service Migration Guidelines to facilitate the sharing of customer service records among LECs.147 According to BellSouth, these guidelines became "final" during the OBF meeting of October 2004.148

74. BellSouth urges the Commission to adopt information exchange requirements for all LECs to ensure that customers switching between local service providers experience a seamless and timely transition. BellSouth explains that ILEC-to-CLEC migrations are regulated by the Commission under section 271, which requires ILECs to transfer customer information to CLECs in a timely manner.149

---

[144] Joint Petition, App. A at 2. Although we do not here require LECs to provide notifications to presubscribed IXCs concerning temporary suspensions or blocks on customers accounts, we encourage those currently providing such notifications voluntarily to continue to do so.

[145] *See, e.g.*, NECA, NTCA & OPASTCO Reply at 3 n.5. Proposals also have been advanced regarding data-exchange requirements for IP-enabled services. *See, e.g.*, *id.* ("Should the Commission ultimately decide on standards for 'all LECs,' it should ensure that they apply as well to all IP-enabled service providers offering functionally equivalent services that touch the public switched telephone network (PSTN) to originate or terminate voice traffic"). We note that the Commission currently is considering the regulatory framework for IP-enabled services in *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

[146] *See* BellSouth *ex parte* filing at 3-4, October 28, 2004; *see also* OPCDC Comments at 3 (consumers are unaware that CLECs are totally dependent upon the incumbent LEC for obtaining customer record information or accessing the telephone network to provide local telephone service. Therefore, it is critical that all carriers exchange customer information in a uniform and unbiased manner to level the playing field for all telecommunications carriers.).

[147] *See* BellSouth *ex parte* filing at 8, October 28, 2004.

[148] *See* BellSouth *ex parte* filing at 8, October 28, 2004.

[149] *See* BellSouth *ex parte* filing at 2, 5, October 28, 2004. Under section 271 of the Communications Act of 1934, as amended, the Bell Operating Companies must file applications with the FCC on a state-by-state basis in order to provide in-region interLATA services.

Conversely, CLEC-to-ILEC and CLEC-to-CLEC migrations are largely unregulated by the Commission and by the states.150 Therefore, BellSouth contends that many local service providers not subject to other regulatory requirements do not exchange information in a uniform manner and/or fail to provide complete or timely information. BellSouth argues that with the increase in competition and churn in the local market, accompanied by the advent of local number portability, the failure to exchange information in a uniform or timely manner has resulted in an increase in customer migrations that are not seamless.151 BellSouth believes customers switching between facilities-based carriers and who want to retain their phone numbers, in particular, experience confusion, delays, or problems with double billing. Thus, BellSouth proposes a set of minimum standards that the Commission should adopt to facilitate local-to-local carrier changes.

B. Discussion

75. In this Further Notice, we seek comment on the exchange of information between LECs. We specifically ask whether the Commission should require all local service providers to participate in the exchange of customer account information and if so, what information local service providers should be required to supply.

76. A significant number of commenters recognize that the sharing of customer account information is necessary for service changes involving presubscribed IXCs.152 BellSouth argues that the exchange of end user account information between local service providers is equally critical when a customer is switching local service. As an incumbent LEC subject to section 271 obligations, BellSouth indicates that it already is required to provide timely customer account information to a requesting CLEC that has acquired a new customer. However, a similar obligation on CLECs does not exist.153 Many local service providers not subject to the section 271 requirements fail to exchange information in a uniform manner or to provide complete and timely information, thereby delaying the customer's switch in service. Specifically, BellSouth describes a problem with "old" local service providers not responding to customer service record requests in a timely or consistent manner. Customers, in turn, who expect service transitions to occur seamlessly and in a timely fashion, are confused about the source of the delay, frustrated, and often give up on the desired change.154 In addition, the NIS OBF's recent action to develop local service migration guidelines and to outline standards for the exchange of customer service record information suggests that the industry as a whole recognizes the need for uniform standards in connection with local-to-local carrier changes.

77. We seek comment on the issues identified by BellSouth. To what extent are other carriers

---

[150] As noted below, however, some states—New York, New Hampshire, Illinois, Texas and Oregon—have established guidelines to facilitate such migrations. *See* BellSouth *ex parte* filing at 2 and 6, October 28, 2004.

[151] Bell South explains that the following must occur for successful migrations: the old provider must provide the new provider with business rules for exchanging account information and submitting local service requests (LSRs); the old provider must provide the new provider with account information in a uniform and timely manner; the old provider must provide the new provider with clarifications to, or confirmations of, the LSR in a timely and uniform manner. Bell South *ex parte* filing at 4, October 28, 2004.

[152] *See supra*, ¶ 19.

[153] BellSouth *ex parte* filing at 4, October 28, 2004; *see also* SBC Comments at 4 (generally supporting data exchange requirements for CLECs and ILECs, as SBC too has experienced innumerable instances where it did not receive necessary information from CLECs to effectively and timely transfer a local customer to SBC).

[154] BellSouth indicates that consumers may blame the new provider when the old provider has withheld necessary information from the new provider. *See* BellSouth *ex parte* filing at 4, October 28, 2004.

experiencing similar problems with the exchange of information between or among LECs? If such problems exist, are they exacerbated when a customer wishes to switch between facilities-based local service providers and, in the process, requests to retain the same telephone number? We seek comment on whether mandating the exchange of customer account information among LECs will reduce the problems identified by BellSouth, including double billing, delays in migration, and confusion on the part of consumers concerning their local service accounts.

78. Should the Commission take action regarding the exchange of customer record information among LECs, we ask what information is necessary to ensure the seamless transfer of customers. Is "account level" information, such as billing telephone number, name and address, along with similar directory listing information, critical to this process? We also seek comment on the exchange of "line level" information, such as working telephone number, current preferred interexchange carrier and freeze status, along with calling features such as toll blocking and call forwarding. Is there additional information that would facilitate the customer's smooth transfer from one carrier to another?

79. BellSouth notes that several states have established guidelines for end user migrations between facilities-based providers.155 Therefore, we seek comment broadly on the interplay between the state rules and any federal rules we might adopt in this area. If the Commission adopts requirements that are inconsistent with any state requirements, should the federal rules preempt the state rules? Should the Commission instead make clear that any federal rules we adopt would constitute the minimum requirements on LECs, and that states may adopt more restrictive requirements for the exchange of information? What conflicts between state and federal rules might warrant preemption? Should our analysis depend on whether the exchange of customer account information occurs solely on an intrastate basis?

80. BellSouth explains that a customer's new local service provider must seek initial information or clarification of customer service records from the customer's old local service provider. When rejecting, or seeking clarifications of, a local service provider's request for customer account information, should a carrier be required to identify all errors at once, rather than serially, to avoid delays? In addition, should the Commission require that such rejects and clarifications be returned within a designated timeframe? As discussed above, the Commission declined to adopt performance measurements for the exchange of information between LECs and IXCs. We ask that carriers identify problems specific to LEC-to-LEC exchanges that might warrant adopting standards for timeliness. If so, we ask commenters to describe what those standards for timeliness should be. Should all LECs be required, as BellSouth contends, to provide near real-time access to the "old" local service provider's customer service records? Should this include on-line access, or a minimum period of time, such as 24 hours, for the retrieval of customer service records by facsimile or email when online access is not available?

81. For all information identified as necessary for seamless and timely exchanges among LECs, we ask in what format the information should be provided. Should the Commission mandate the use of CARE guidelines, or of particular CARE codes, as developed by ATIS OBF? Would implementing CARE codes be problematic for any LECs, or for small or rural LECs in particular? We seek comment on ways to minimize the burdens on small businesses. Should we instead mandate the exchange of data without requiring the use of codes? Would mandated data exchanges adequately address the migration and billing problems that arise in connection with LEC-to-LEC transfers?

[155] *See* BellSouth *ex parte* filing at 6, October 28, 2004 (noting that Illinois, New Hampshire, New York, Oregon and Texas have established guidelines, and that Michigan and Florida are currently developing such guidelines).

V. PROCEDURAL ISSUES

A. Ex Parte Presentations for Further Notice of Proposed Rulemaking

82. This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's ex parte rules, 47 C.F.R. § 1.1200. Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written ex parte presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

B. Paperwork Reduction Act

83. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on the information collection requirements proposed in the earlier NPRM.

84. In this present document, we have assessed the effects of mandating the exchange of customer account information among carriers and find that there may be an increased administrative burden on businesses with fewer than 25 employees. We have taken steps to minimize the information collection burden for small business concerns, including those with fewer than 25 employees. We have determined not to require the use of particular CARE codes for the exchange of such information. We have also declined to adopt specific performance measurements for the timeliness and completeness of the transfer of customer account information between LECs and IXCs. Finally, we have determined that carriers subject to these requirements may use a variety of transmission mediums (e.g., facsimile, mail, electronic mail, cartridge) for the required information exchanges. These measures should substantially alleviate any burdens on businesses with fewer than 25 employees.156

85. In addition, the Further Notice of Proposed Rulemaking contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection requirements contained in this Further Notice, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. Public and agency comments are due 60 days after the date of publication of this Further Notice in the Federal Register. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

C. Congressional Review Act

86. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. §

[156] Also, see the discussion in App. B, FRFA, at § E.

801(a)(1)(A).

D. Filing of Comments and Reply Comments

87. Pursuant to sections 1.415 and 1.419 or the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments in this proceeding on or before the 45 days after publication of this Further Notice of Proposed Rulemaking in the Federal Register, and reply comments may be filed on or before 60 days after publication of this Further Notice of Proposed Rulemaking in the Federal Register. When filing comments, please reference CG Docket No. 02-386. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

88. Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554.

89. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

E. Accessible Formats

90. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This Report and Order and Further Notice of Proposed Rulemaking can also be downloaded in Word and Portable Document Format (PDF) at http://www.fcc.gov/cgb/policy.

F. Regulatory Flexibility Analysis

91. Pursuant to the Regulatory Flexibility Act of 1980, as amended,157 the Commission's Final

[157] *5 U.S.C. §§ 601 et seq.*

Regulatory Flexibility Analysis regarding the Report and Order is attached as Appendix B.

G. Initial Regulatory Flexibility Analysis

92. Pursuant to the Regulatory Flexibility Act of 1980, as amended,[158] the Commission's Initial Regulatory Flexibility Analysis regarding the Further Notice of Proposed Rulemaking is attached as Appendix C.

VI. ORDERING CLAUSES

93. Accordingly, it is ORDERED that, pursuant to the authority contained in sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r), the REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING ARE ADOPTED.

94. IT IS FURTHER ORDERED that, pursuant to the authority contained in sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r), Part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED as set forth in Appendix A.

95. IT IS FURTHER ORDERED THAT, because many of the rules and requirements contained in this Order and in Appendix A attached hereto contain information collection requirements under the PRA, the rules and requirements SHALL NOT BECOME EFFECTIVE until the information collection requirements have been approved by OMB. The Commission will publish a document in the Federal Register announcing the effective date of these rules.

96. IT IS FURTHER ORDERED THAT, pursuant to the authority contained in sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Declaratory Ruling filed by Americatel Corporation on September 5, 2002, IS GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

97. IT IS FURTHER ORDERED THAT, pursuant to the authority contained in sections 1-4, 201, 202, 222, 258, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. §§ 151-154, 201, 202, 222, 258, and 303(r), and section 1.407 of the Commission's rules, 47 C.F.R. § 1.407, that the Petition for Rulemaking filed by AT&T Corp, Sprint Corporation, and WorldCom, Inc. on November 22, 2002, IS GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

[158] 5 U.S.C. §§ 601 *et seq.*

98. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of the Report and Order and Further Notice of Proposed Rulemaking, including the Final and Initial Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of the Small Business Administration.

COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Subpart BB is added to read as follows:

Subpart BB - Customer Account Record Exchange Requirements

3. The authority citation for this subpart reads as follows:

Authority: 47 U.S.C. 154, 201, 202, 222, 258 unless otherwise noted.

§ 64.4000 Basis and purpose.

(a) Basis. The rules in this subpart are issued pursuant to the Communications Act of 1934, as amended.

(b) Purpose. The purpose of these rules is to facilitate the timely and accurate establishment, termination, and billing of customer telephone service accounts.

§ 64.4001 Definitions.

Terms in this Subpart have the following meanings:

(a) Automatic number identification (ANI). The term automatic number identification refers to the delivery of the calling party's billing telephone number by a local exchange carrier to any interconnecting carrier for billing or routing purposes.

(b) Billing name and address (BNA). The term billing name and address means the name and address provided to a [LEC] by each of its local exchange customers to which the [LEC] directs bills for its services.

(c) Customer. The term customer means the end user to whom a local exchange carrier or interexchange carrier is providing local exchange or telephone toll service.

(d) Interexchange carrier (IXC). The term interexchange carrier means a telephone company that provides telephone toll service. An interexchange carrier does not include commercial mobile radio service providers as defined by federal law.

(e) Local exchange carrier (LEC). The term local exchange carrier means any person that is engaged in the provision of telephone exchange service or exchange access. Such term does not include a person insofar as such person is engaged in the provision of a commercial mobile service under section 332(c), except to the extent that the Commission finds that such service should be included in the definition of that term.

(f) Preferred interexchange carrier (PIC). The term preferred interexchange carrier means the carrier to

which a customer chooses to be presubscribed for purposes of receiving intraLATA and/or interLATA and/or international toll services.

§ 64.4002 Notification obligations of LECs.

To the extent that the information is reasonably available to a LEC, the LEC shall provide to an IXC the customer account information described in this section consistent with section 64.4004. Nothing in this section shall prevent a LEC from providing additional customer account information to an IXC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC order.

(a) Customer-submitted PIC order. Upon receiving and processing a PIC selection submitted by a customer and placing the customer on the network of the customer's preferred interexchange carrier at the LEC's local switch, the LEC must notify the IXC of this event. The notification provided by the LEC to the IXC must contain all of the customer account information necessary to allow for proper billing of the customer by the IXC including but not limited to: (1) the customer's billing telephone number, working telephone number, and billing name and address; (2) the effective date of the PIC change; (3) a statement describing the customer type (*i.e.*, business or residential); (4) a statement indicating, to the extent appropriate, that the customer's telephone service listing is not printed in a directory and is not available from directory assistance or is not printed in a directory but is available from directory assistance; (5) the jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international); (6) the carrier identification code of the submitting LEC; and (7) if relevant, a statement indicating that the customer's account is subject to a PIC freeze. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that a customer's PIC selection was the result of: (1) a move (an end user customer has moved from one location to another within a LEC's service territory); (2) a change in responsible billing party; or (3) the resolution of a PIC dispute.

(b) Confirmation of IXC-submitted PIC order. When a LEC has placed a customer on an IXC's network at the local switch in response to an IXC-submitted PIC order, the LEC must send a confirmation to the submitting IXC. The confirmation provided by the LEC to the IXC must include: (1) the customer's billing telephone number, working telephone number, and billing name and address; (2) the effective date of the PIC change; (3) a statement describing the customer type (*i.e.*, business or residential); (4) a statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance; (5) the jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international); and (6) the carrier identification code of the submitting LEC. If the PIC order at issue originally was submitted by an underlying IXC on behalf of a toll reseller, the confirmation provided by the LEC to the IXC must indicate, to the extent that this information is known, a statement indicating that the customer's PIC is a toll reseller.

(c) Rejection of IXC-submitted PIC order. When a LEC rejects or otherwise does not act upon a PIC order submitted to it by an IXC, the LEC must notify the IXC and provide the reason(s) why the PIC order could not be processed. The notification provided by the LEC to the IXC must state that it has rejected the IXC-submitted PIC order and specify the reason(s) for the rejection (*e.g.*, due to a lack of information, incorrect information, or a PIC freeze on the customer's account). The notification must contain the identical data elements that were provided to the LEC in the original IXC-submitted PIC order (*i.e.*, mirror image of the original order), unless otherwise specified by this subsection. If a LEC rejects an IXC-submitted PIC order for a multi-line account (*i.e.*, the customer has selected the IXC as his PIC for two or more lines or terminals associated with his billing telephone number), the notification provided by the LEC rejecting that order must explain the effect of the rejection with respect to each line (working telephone number or terminal) associated with the customer's billing telephone number. A LEC is not required to generate a line-specific or terminal-specific response, however, and may communicate the

rejection at the billing telephone level, when the LEC is unable to process an entire order, including all working telephone numbers and terminals associated with a particular billing telephone number. In addition, the notification must indicate the jurisdictional scope of the PIC order rejection (*i.e.*, intraLATA and/or interLATA and/or international). If a LEC rejects a PIC order because: (1) the customer's telephone number has been ported to another LEC; or (2) the customer has otherwise changed local service providers, the LEC must include in its notification, to the extent that it is available, the identity of the customer's new LEC.

(d) Customer contacts LEC or new IXC to cancel PIC. When a LEC has removed at its local switch a presubscribed customer from an IXC's network, either in response to a customer order or upon receipt of a properly verified PIC order submitted by another IXC, the LEC must notify the customer's former IXC of this event. The LEC must provide to the IXC the customer account information that is necessary to allow for proper final billing of the customer by the IXC including but not limited to: (1) the customer's billing telephone number, working telephone number, and, billing name and address; (2) the effective date of the PIC change; (3) a description of the customer type (i.e., business or residential); (4) the jurisdictional scope of the lines or terminals affected (i.e., intraLATA and/or interLATA and/or international); and (5) the carrier identification code of the submitting LEC. If a customer changes PICs but retains the same LEC, the LEC is responsible for notifying both the old PIC and new PIC of the PIC change. The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that a customer's PIC removal was the result of: (1) the customer moving from one location to another within the LEC's service territory, but where there is no change in local service provider; (2) a change of responsible party on an account; or (3) a disputed PIC selection.

(e) Particular changes to customer's local service account. When, according to a LEC's records, certain account or line information changes occur on a presubscribed customer's account, the LEC must communicate this information to the customer's PIC. For purposes of this subsection, the LEC must provide to the appropriate IXC account change information that is necessary for the IXC to issue timely and accurate bills to its customers including but not limited to: (1) the customer's billing telephone number, working telephone number, and billing name and address; (2) the customer code assigned to that customer by the LEC; (3) the type of customer account (*i.e.*, business or residential); (4) the status of the customer's telephone service listing, to the extent appropriate, as not printed in a directory and not available from directory assistance, or not printed in a directory but available from directory assistance; and (5) the jurisdictional scope of the PIC installation (*i.e.*, intraLATA and/or interLATA and/or international). If there are changes to the customer's billing or working telephone number, customer code, or customer type, the LEC must supply both the old and new information for each of these categories.

(f) Local service disconnection. Upon receipt of an end user customer's request to terminate his entire local service account or disconnect one or more lines (but not all lines) of a multi-line account, the LEC must notify the PIC(s) for the billing telephone number or working telephone number on the account of the account termination or lines disconnected. In conjunction with this notification requirement, the LEC must provide to a customer's PIC(s) all account termination or single/multi-line disconnection change information necessary for the PIC(s) to maintain accurate billing and PIC records, including but not limited to: (1) the effective date of the termination/disconnection; and (2) the customer's working and billing telephone numbers and billing name and address; (3) the type of customer account (i.e., business or residential); (4) the jurisdictional scope of the PIC installation (i.e., intraLATA and/or interLATA and/or international); and (5) the carrier identification code of the LEC.

(g) Change of local service provider. When a customer changes LECs, the customer's former LEC must notify the customer's PIC(s) of the customer's change in LECs and, if known, the identity of the customer's new LEC. If the customer also makes a PIC change, the customer's former LEC must notify the customer's former PIC(s) of the change and the new LEC must notify the customer's new PIC of the

customer's PIC selection. If the customer's LEC is unable to identify the customer's new LEC, the former LEC must notify the customer's PIC of a local service disconnection as described in subsection (f). The notification also must contain information, if relevant and to the extent that it is available, reflecting the fact that an account change was the result of: (1) the customer porting his number to a new LEC; (2) a local resale arrangement (customer has transferred to local reseller); or (3) the discontinuation of a local resale arrangement.

(h) IXC requests for customer BNA information. Upon the request of an IXC, a LEC must provide the billing name and address information necessary to facilitate a customer's receipt of a timely, accurate bill for services rendered and/or to prevent fraud, regardless of the type of service the end user receives/has received from the requesting carrier (*i.e.*, presubscribed, dial-around, casual). In response to an IXC's BNA request for ANI, a LEC must provide the BNA for the submitted ANI along with: (1) the working telephone number for the ANI; (2) the date of the BNA response; (3) the carrier identification code of the submitting IXC; and (4) a statement indicating, to the extent appropriate, if the customer's telephone service listing is not printed in a directory and is not available from directory assistance, or is not printed in a directory but is available from directory assistance. A LEC that is unable to provide the BNA requested must provide the submitting carrier with the identical information contained in the original BNA request (*i.e.*, the mirror image of the original request), along with the specific reason(s) why the requested information could not be provided. If the BNA is not available because the customer has changed local service providers or ported his telephone number, the LEC must include the identity of the new provider when this information is available.

§ 64.4003 Notification obligations of IXCs.

To the extent that the information is reasonably available to an IXC, the IXC shall provide to a LEC the customer account information described in this section consistent with section 64.4004. Nothing in this section shall prevent an IXC from providing additional customer account information to a LEC to the extent that such additional information is necessary for billing purposes or to properly execute a customer's PIC order.

(a) IXC-submitted PIC order. When a customer contacts an IXC to establish interexchange service on a presubscribed basis, the IXC selected must submit the customer's properly verified PIC order (*see* 47 C.F.R. § 64.1120(a)) to the customer's LEC, instructing the LEC to install or change the PIC for the customer's line(s) to that IXC. The notification provided by the IXC to the LEC must contain all of the information necessary to properly execute the order including but not limited to: (1) the customer's billing telephone number or working telephone number associated with the lines or terminals that are to be presubscribed to the IXC; (2) the date of the IXC-submitted PIC order; (3) the jurisdictional scope of the PIC order (*i.e.*, intraLATA and/or interLATA and/or international); and (4) the carrier identification code of the submitting IXC.

(b) Customer contacts IXC to cancel PIC and to select no-PIC status. When an end user customer contacts an IXC to discontinue interexchange service on a presubscribed basis, the IXC must confirm that it is the customer's desire to have no PIC and, if that is the case, the IXC must notify the customer's LEC. The IXC also is encouraged to instruct the customer to notify his LEC. An IXC may satisfy this requirement by establishing a three-way call with the customer and the customer's LEC to confirm that it is the customer's desire to have no PIC and, where appropriate, to provide the customer the opportunity to withdraw any PIC freeze that may be in place. The notification provided by the IXC to the LEC must contain the customer account information necessary to properly execute the cancellation order including but not limited to: (1) the customer's billing telephone number or working telephone number associated with the lines or terminals that are affected; (2) the date of the IXC-submitted PIC removal order; (3) the jurisdictional scope of the PIC removal order (*i.e.*, intraLATA and/or interLATA and/or international); and (4) the carrier identification code of the submitting IXC.

§ 64.4004 Timeliness of required notifications.

Carriers subject to the requirements of this section shall provide the required notifications promptly and without unreasonable delay.

§ 64.4005 Unreasonable terms or conditions on the provision of customer account information.

To the extent that a carrier incurs costs associated with providing the notifications required by this section, the carrier may recover such costs, consistent with federal and state laws, through the filing of tariffs, via negotiated agreements, or by other appropriate mechanisms. Any cost recovery method must be reasonable and must recover only costs that are associated with providing the particular information. The imposition of unreasonable terms or conditions on the provision of information required by this section may be considered an unreasonable carrier practice under section 201(b) of the Communications Act of 1934, as amended, and may subject the carrier to appropriate enforcement action.

§ 64.4006 Limitations on use of customer account information.

A carrier that receives customer account information under this section shall use such information to ensure timely and accurate billing of a customer's account and to ensure timely and accurate execution of a customer's preferred interexchange carrier instructions. Such information shall not be used for marketing purposes without the express consent of the customer.

APPENDIX B

FINAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking[2] (NPRM) released by the Federal Communications Commission (Commission) on March 25, 2004. The Commission sought written public comments on the proposals contained in the NPRM, including comments on the IRFA. Only two comments filed in this proceeding were specifically identified as comments addressing the IRFA; however comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for, and Objectives of, the Order

2. The telecommunications industry developed the Customer Account Record Exchange ("CARE") process in response to the break-up of the Bell System and the introduction of competitive long distance services.[4] In order to facilitate equal access and cooperation mandated by the Modified Final Judgment, the industry created the Alliance for Telecommunications Industry Solutions ("ATIS").[5] ATIS develops and promotes technical and operational standards for communications and related information technologies worldwide.[6] ATIS' 124 member companies represent all segments of the telecommunications industry and participate in ATIS' open industry committees and forums.[7] ATIS in turn created the Ordering and Billing Forum ("OBF"), which established voluntary CARE standards in the industry.[8] These voluntary standards were developed to allow local exchange carriers ("LECs") to comply with their obligation to provide all interexchange carriers ("IXCs") with access equal in type, quality, and price to that provided to AT&T and its affiliates.[9] Thus, the CARE standards generally were created to facilitate the transfer of customer account information from a customer's incumbent local exchange carrier ("ILEC") to the appropriate IXC(s) when a customer elected to change long distance carriers or wished to modify his or her billing, name, and address ("BNA") information. The transfer of CARE data in these situations was designed to enable customers to move seamlessly from one IXC to another and to ensure that the appropriate IXC receives accurate customer account information in a timely

---

[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (*SBREFA*), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

[2] *See 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

[3] *See* 5 U.S.C. § 604.

[4] *See NPRM* at 3, ¶ 3.

[5] *See NPRM* at 1, ¶ 1, n.1.

[6] ATIS Comments at 2.

[7] *Id.*

[8] *Id.*

[9] *Id.*

manner.10

3. In November of 2002, AT&T, Sprint Corporation, and MCI, Inc. (Joint Petitioners) filed a petition asking the Commission to initiate a rulemaking proceeding to implement mandatory, minimum standards governing the exchange of customer account information between LECs and IXCs and to adopt CARE as the prescribed format for such exchanges. The Joint Petitioners argued that mandatory, minimum standards are needed to ensure the exchange of information that carriers require to maintain accurate billing records and to deliver quality customer service and asked the Commission to initiate a rulemaking proceeding to mandate particular CARE codes and data exchange situations for communications between all wireline carriers. The Joint Petitioners contend that the voluntary exchange of information worked relatively well until the Telecommunications Act of 1996 ("the Act").11 The passage of the Act created competitive LECs ("CLECs"), many of which do not participate in the voluntary CARE exchange, or do not provide appropriate information on a timely basis or with a quality or format upon which IXCs can depend. The Joint Petitioners proposed that all LECs and IXCs be required, in specified situations, to transmit to other carriers particular CARE codes that are designed to provide particular billing and/or other "essential" customer account information.12

4. The NPRM sought comment as to whether the Commission should adopt mandatory, minimum standards governing the exchange of customer account information between LECs and IXCs. In addition, in the IRFA, the Commission sought comment on the effect of the proposed policies and rules on small business entities.

5. In this Report and Order (Order), the Commission establishes mandatory, minimum standards governing the exchange of customer account information between LECs and IXCs. In taking this action, we do not prescribe the use of a particular notification format or medium for the transfer of customer account information, such as CARE codes, and, instead, identify situations in which information exchanges must take place and the obligations of particular carriers with respect to those exchanges. We reach this conclusion in light of the considerable record evidence demonstrating that information needed by carriers to execute customer requests in a timely and efficient manner and to properly bill customers is not being consistently provided by all LECs and by all IXCs, thereby often resulting in customer migration delays, consumer confusion and problems such as cramming, slamming, and double billing.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA.

6. Two entities filed comments specifically addressing the proposed rules and policies presented in the IRFA.13 The Rural Incumbent Local Exchange Carriers ("Rural ILECs") filed the most comprehensive analysis on the impact of the proposed rules on small or rural carriers.14 The Rural ILECs urged the Commission to exempt small ILECs from the reporting requirements, arguing that there was no justification for the imposition of new regulations on small ILECs. In the alternative, the Rural

[10] *See NPRM* at 3, ¶ 4.

[11] Joint Petitioners Comments at 2.

[12] *See* Joint Petition at 7-8. *See also* Joint Petition at Appendix A.

[13] *See* NTCA Comments at 6; Rural ILECs Comments on the IRFA.

[14] *See generally*, Rural ILECs Comments.

ILECs requested that the Commission exempt at least those ILECs that participate in centralized equal access networks where the centralized equal access network provides reports to other carriers.15 In the event that the Commission did not carve out an exemption for such ILECs, the Rural ILECs suggested that the Commission only mandate specific exchange situations and allow all carriers the choice of media to transmit customer account data.16 The Rural ILECs indicated that allowing ILECs to continue to exchange information using the formats and media they currently use, on the schedules they use, will minimize costs of compliance for the rural carriers.17 The Rural ILECs explain that if they are required to send customer account information on a more frequent basis or use codes not currently used, they would face increasing costs.18 For example, they might incur costs for additional staff time to process reports, or for the use of modified software to incorporate codes not currently used, or for the purchase of the ATIS OBF Equal Access Subscription CARE/Industry Support Interface.19

7. National Telecommunications Cooperative Association ("NTCA") maintains that the Commission should consider less burdensome alternatives before imposing mandatory requirements on small rural ILECs.20 Specifically, NTCA argues that any new cost burdens associated with mandatory standards should be placed squarely on the IXC beneficiaries, rather than on small ILECs.21 NTCA further states that, should the Commission mandate the exchange of information, small rural ILECs must be able to recover their costs in the interstate jurisdiction through access charges or other mechanisms.22 Finally, NTCA indicates that the IRFA failed to identify federal rules that may duplicate, overlap or conflict with the proposed rules and suggests that the Customer Proprietary Network Information ("CPNI") requirements under section 222 of the Act and the Commission's rules for changing long distance service potentially duplicate, conflict with, or overlap the proposed rules.23

8. Other parties filed comments that specifically mentioned small businesses. SBC indicated that small businesses must be able to retain the flexibility to use third party vendors to participate in CARE and to transmit data to these third parties in a variety of ways.24 SBC also noted that, if the Commission is concerned that mandatory minimum CARE standards would prove too burdensome to

---

[15] Rural ILECs Comments on the IRFA at 3.

[16] Rural ILECs Comments at 16 (specifically that the Commission could specify the events that trigger the exchange of information, but not require the use of specific CARE Transaction Code Status Indicators (TCSIs)).

[17] Rural ILECs Comments on IRFA at 4.

[18] Rural ILECs Comments on the IRFA at 5 (maintaining that if the ILEC were to generate reports twice a week, the additional burden may be 0.5 to 1 hour, depending on whether the reports were created by hand or by computer, which amounts to 26 to 52 hours per year per ILEC. If applicable to 1,000 ILECs, the total additional burden for all small ILECs could be 26,000 to 52,000 hours per year).

[19] Rural ILECs Comments on the IRFA at 5-6 (contending that the ATIS document costs $550 and that with 1,000 small ILECs, the cost to the industry may be $550,000 for the initial purchase of the ATIS document, and for each revision of that document).

[20] NTCA Comments at 2.

[21] NTCA Comments at 2-3.

[22] NTCA Comments at 4-5.

[23] NTCA Comments at 5-6.

[24] SBC Comments at 8.

small businesses, it could exempt those businesses that demonstrate that compliance would be too economically burdensome.25 TDS Telecommunications Corp. ("TDS") maintains that because the Joint Petitioners' proposal "lacks flexibility and suitability to the current voluntary standards," it would unduly burden small and rural LECs.26 Texas Statewide Telephone Cooperative, Inc. ("TSTCI") also suggested that while small and rural carriers are currently using some CARE codes, they lack the resources to be active participants in the ATIS/OBF forums. Thus, it could potentially be burdensome on these carriers should the Commission require compliance with the ATIS/OBF standards.27 Frontier similarly maintains that small and rural LECs lack the necessary resources to implement costly new processes.28

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

9. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein.29 The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."30 In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.31 Under the Small Business Act, a "small business concern" is one that: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the Small Business Administration (SBA).32

10. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation."33 The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.34 We have therefore included small incumbent LECs in this RFA analysis, although we

---

[25] SBC Comments at 8.

[26] TDS Comments at 8-10.

[27] TSTCI Comments at 2-3.

[28] Frontier Comments at 2-4.

[29] 5 U.S.C. § 604(a)(3).

[30] 5 U.S.C. § 601(6)

[31] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comments, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[32] 15 U.S.C. § 632.

[33] 13 C.F.R. § 121.201, NAICS code 517110.

[34] *See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. § 632(a) (Small Business Act); 5 U.S.C.

emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

11. Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.35 According to the FCC's Telephone Trends Report data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services.36 Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees.37 Consequently, the Commission estimates that the majority of providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

12. Competitive Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 38 According to the FCC's Telephone Trends Report data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.39 Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees.40 Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

13. Local Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees.41 According to the FCC's Telephone Trends Report data, 127 companies reported that they were engaged in the provision of local resale services.42 Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees.43 Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b).

[35] 13 C.F.R. § 121.201, NAICS code 517110.

[36] FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5 - 5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003.

[37] *Id.*

[38] 13 C.F.R. § 121.201, NAICS code 517110.

[39] *Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report.*

[40] *Id.*

[41] 13 C.F.R. § 121.201, NAICS code 517310.

[42] *Telephone Trends Report*, Table 5.3.

[43] *Id.*

14. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[44] According to the FCC's Telephone Trends Report data, 645 companies reported that they were engaged in the provision of toll resale services.[45] Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees.[46] Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

15. Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[47] According to the FCC's Telephone Trends Report data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services.[48] Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees.[49] Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

16. Operator Service Providers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees.[50] According to the FCC's Telephone Trends Report data, 21 companies reported that they were engaged in the provision of operator services.[51] Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees.[52] Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

17. Prepaid Calling Card Providers. The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.[53] According to the FCC's Telephone Trends Report data, 40 companies reported that they were engaged in the provision of prepaid calling cards.[54] Of these 40 companies, all 40 are estimated to have 1,500 or fewer employees.[55] Consequently, the Commission

---

[44] 13 C.F.R. § 121.201, NAICS code 517310.

[45] *Telephone Trends Report*, Table 5.3.

[46] *Id.*

[47] 13 C.F.R. § 121.201, NAICS code 517110.

[48] *Telephone Trends Report*, Table 5.3.

[49] *Id.*

[50] 13 C.F.R. § 121.201, NAICS code 517110.

[51] *Telephone Trends Report*, Table 5.3.

[52] *Id.*

[53] 13 C.F.R. § 121.201, NAICS code 517310.

[54] *Telephone Trends Report*, Table 5.3.

[55] *Id.*

estimates that all or most prepaid calling card providers may be affected by the rules.

18. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 56 According to the FCC's Telephone Trends Report data, 65 carriers reported that they were engaged in the provision of "Other Toll Services."57 Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees.58 Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities.

19. The Commission adopts rules to require minimum standards necessary to facilitate the exchange of customer account information between LECs and IXCs. We require that the exchange of information take place in certain situations, and we describe the obligations of particular carriers with respect to those exchanges. The rules require the exchange of information in the following specific situations (described in detail in the Order, paragraphs 31-57): 1) a customer is placed on an IXC's network; 2) a customer is removed from an IXC's network; 3) a customer's account information changes; 4) a customer changes his local service provider; 5) an IXC requests customer BNA information; 6) a LEC rejects an IXC-initiated PIC order; and 7) an IXC initiates a PIC Order. However, these rules do not prescribe a particular format or delivery method (e.g., the CARE process) for the transfer of customer account information and instead focus more generally on information sharing in particular situations.

20. By focusing on information exchanges in particular circumstances, rather than mandating specific formats or transmission mediums for those exchanges, we have attempted to minimize the potential costs or burdens associated with implementing these requirements, particularly for small and rural carriers. We recognize that the CARE process could add burdens to smaller ILECs that currently do not use CARE codes but nevertheless provide information to other carriers. Thus, we have determined not to require those carriers that currently are providing, consistent with the rules described in this Order, timely and adequate notifications to other carriers pursuant to inter-carrier agreements or other non-CARE processes, to incur potentially unnecessary expenses associated with modifying their current processes. Thus, to avoid imposing any potentially unnecessary burdens on small and rural carriers, we do not mandate participation in CARE. In addition, although we require that the transmission of customer account information be processed without unreasonable delay, we determined not to adopt more specific timeliness measures in light of the widely divergent proposals and needs of commenters, nor do we mandate the use of the OBF-developed CARE/ISI documents to ensure completeness of data transmissions. Our determination not to adopt specific performance measurements at this time should minimize any administrative burdens on small or rural LECs to comply with the new rules.

21. We believe that the adoption of nationwide rules requiring the exchange or transfer of customer account information in the situations identified in the Joint Petition will help to alleviate the billing and provisioning problems described in this proceeding, as well as the associated customer confusion and customer complaints that are documented in the record before us. We further believe that

[56] 13 C.F.R. § 121.201, NAICS code 517110.

[57] *Telephone Trends Report*, Table 5.3.

[58] *Id.*

the need for mandatory minimum standards to facilitate the exchange of customer account information between LECs and IXCs outweighs the administrative and cost burdens associated with the increase in compliance requirements for those carriers not currently exchanging such information in a timely manner.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. § 603.

23. We believe that effective communications between LECs and IXCs are critical to an IXC's ability to maintain accurate billing records and to honor customer PIC selections and other customer requests. Today, there is no uniform, nationwide process by which all carriers exchange customer account information. The records show that basic customer account information that carriers require to ensure accurate billing of end user customers and to execute end user customer requests is not provided by all LECs and by all IXCs. Thus, we adopt rules to ensure that such information is exchanged and without unreasonable delay. Recognizing the potential compliance burdens on carriers—particularly small or rural carriers—associated with any new rules in this area, we considered several alternatives to address the problems identified in the record.

24. First, we considered not mandating the exchange of information among LECs and IXCs, but permitting such exchanges to continue on a voluntary basis.59 Voluntary standards would arguably impose no additional compliance burdens on small or rural LECs. We concluded, however, that customer account information that is within the exclusive control of a customer's LEC is not always obtainable by an IXC through voluntary negotiations with the LEC or in reliance on voluntary ATIS OBF standards. We believe that voluntary standards fall short because they do not result in industry-wide participation. Thus, without such industry-wide participation, customers have no assurance that their carrier changes and other requests will be acted upon in a timely or efficient manner, if at all. Voluntary industry standards are inadequate to address the problems described in the record.

25. Second, we considered exempting small and rural LECs from the information exchange requirements. However, in light of the numerous measures we have taken to minimize burdens on small LECs and the fact that without uniform participation (as described above), the problems faced by IXCs, LECs and their customers with completing PIC changes and executing customers' requests would not be adequately addressed, we opted not to carve out such an exemption. We found that certain basic customer account information that is needed by IXCs to provide service and properly bill their customers is not reasonably available to the IXC from sources other than the customer's LEC, whether that LEC is small or not. Thus, we concluded that mandatory standards should be established for communications among all LECs and all IXCs.

26. Third, we determined not to mandate information exchanges in every situation originally identified by the Joint Petitioners and other commenters. Doing so might prove efficient for those carriers currently using the CARE process developed by ATIS/OBF. However, by limiting the universe of mandated information exchanges to those situations that we believe are most critical to addressing the

[59] *See* Order, *supra* ¶¶ 21-22.

problems identified in the record of this proceeding, we anticipate that the costs or burdens associated with implementing the requirements we adopt in this Order will be minimal. In addition, we declined to require carriers to use the specific CARE codes developed by ATIS/OBF to facilitate the exchange of information among LECs and IXCs. While mandating the use of CARE codes might provide greater uniformity, such action could potentially impose unnecessary burdens on small or rural carriers that currently do not participate in CARE. We also refrained from prescribing the use of particular CARE codes because we recognize that, among carriers currently participating in CARE, few of those carriers' operating systems, if any, support an identical set of CARE codes.

27. Fourth, we considered not adopting specific performance measurements for the exchange of customer account information (timeliness and method of transmission such as facsimile, mail, electronic email, cartridge, etc).60 We concluded that, while we should require notifications regarding customer account information to be completed promptly and without unreasonable delay, that more specific timeliness measures were not warranted at this time, given the widely divergent proposals from commenters and the potential burden on smaller LECs. We also do not require carriers to refer to the CARE/ISI document to ensure the completeness of date transmissions, although we require carriers to exercise reasonable efforts to ensure that the data transmitted is accurate.

28. Fifth, we considered using the NARUC model rules as a template upon which states could build their own customized individual standards.61 We concluded, however, that the NARUC model rule is not likely to ensure industry-wide participation or a uniform, minimum standard. Although the NARUC model rule may prove useful to states wishing to adopt more expansive requirements than those the Commission would adopt, the model rule is unlikely to result in the adoption, on a nationwide basis, of the minimum standards that we believe are needed to address the billing and provisioning problems at issue. In addition, absent Commission rules in this area, small carriers may face greater compliance burdens associated with rules adopted on a state-by-state basis.

29. REPORT TO CONGRESS: The Commission will send a copy of the Report and Order, including this FRFA, in a report to be sent to Congress and the Comptroller General pursuant to the Congressional Review Act.62 In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or

[60] *See* Order *supra*, ¶¶ 57-58, 60-61.

[61] *See* Order *supra*, ¶ 22.

[62] *See* 5 U.S.C. § 801(a)(1)(A).

summaries thereof) will also be published in the Federal Register.[63]

[63] *See* 5 U.S.C. § 604(b).