PUBLIC NOTICE

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Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: http://www.fcc.gov
TTY: 1-888-835-5322

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CONSUMER & GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON PROPOSED MODIFICATIONS/CLARIFICATIONS TO RULES GOVERNING THE EXCHANGE OF CUSTOMER ACCOUNT INFORMATION BETWEEN LOCAL AND LONG DISTANCE CARRIERS

CG Docket No. 02-386

Oppositions or Comments Due: 15 Days After Publication in the Federal Register
Reply Comments Due: 25 Days After Publication in the Federal Register

On February 25, 2005, the Commission adopted mandatory, minimum standards governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs).[1] In adopting these mandatory, minimum standards, the Commission relied in large measure on a compromise proposal that was filed with the Commission by a coalition of IXCs and LECs, including representatives of AT&T, MCI, Sprint, BellSouth, Qwest, SBC, and Verizon (Coalition).

On April 15, 2005, and June 15, 2005, the Coalition proposed modifications and clarifications to the *Order*.[2] In particular, the Coalition identified certain aspects of section 64.4002 of the Commission's rules that, in its view, should be clarified and/or modified by the Commission "in the interest of clarity and completeness."[3] The Coalition's proposed clarifications and modifications to section 64.4002 are described immediately below:

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[1] *See Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, CG Docket No. 02-386, Report and Order and Further Notice of Proposed Rulemaking (rel. Feb. 25, 2005) (*Order*), published in Federal Register at 70 Fed. Reg. 32258 (June 2, 2005). Because the rules and requirements adopted in the *Order* contain new information collection requirements that are subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, they will not become effective until the Office of Management and Budget has approved the information collection requirements contained therein. Once OMB has approved the information collection requirements, the Commission will publish a document in the Federal Register announcing the effective date of the rules.

[2] *See* Letter from Michael F. Del Casino, AT&T, to Marlene Dortch, FCC (April 15, 2005) (*April 15th Letter*) and Letter from Michael F. Del Casino, AT&T, to Marlene Dortch, FCC (June 15, 2005) (*June 15th Letter*).

[3] *April 15th Letter* at 2 (citing 47 C.F.R. § 64.4002).

- Among the categories of information that LECs must provide to IXCs in certain identified situations, section 64.4002(a)(6), (b)(6), (d)(5) and (f)(5) currently include the "carrier identification code of the submitting LEC."[4] The Coalition suggests that this phrase should be modified to state "carrier identification code of the IXC."[5] According to the Coalition, this "mirroring" of information back to the IXC by the LEC serves as a kind of "handshake" and is needed to confirm that the LEC has properly identified the intended recipient of a particular notification.

- The Coalition asks the Commission to modify section 64.4002(d).[6] In particular, it proposes that a LEC that has received a notification from an IXC indicating that the IXC's customer no longer wishes to be presubscribed to any IXC (customer has selected "no-PIC" status) be required to respond to the IXC with a confirmation or reject notification.[7] As proposed by the Coalition, section 64.4002(d) would read in pertinent part:

  (d) Customer contacts LEC or new IXC to change PIC, or current IXC to select no-PIC. When a LEC has removed at its local switch a presubscribed customer from an IXC's network, in response to a customer order, upon receipt of a properly verified PIC order submitted by another IXC, or upon receipt of the current IXC's request to change the PIC to no-PIC, the LEC must notify the customer's former IXC of this event....[8]

- The Coalition proposes modifications to section 64.4002(e) and (g) to make those subsections consistent with other notification obligations of LECs adopted in the *Order*.[9] First, it asks the Commission to modify section 64.4002(e) to include the effective date of a change to a customer's local service account as well as the carrier identification code of the IXC.[10] Second, the Coalition asks the Commission to modify subsection (g) to include the customer's billing telephone number, working telephone, and billing name and address; the effective date of the change of local service provider; a description of the customer type (*i.e.*, business or residential); the jurisdictional scope of the lines or terminals affected (*i.e.*, intraLATA and/or interLATA and/or international); and the carrier identification code of the IXC.[11]

- The Coalition suggests an additional clarification to section 64.4002(g) whereby the Commission would insert the phrase "in LEC" and remove the word "new" as specified in the bracketed portions of the following sentence: "If the customer also makes a PIC change, the customer's former LEC must notify the customer's former PIC(s) of the

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[4] 47 C.F.R. § 64.4002 (a)(6), (b)(6), (d)(5), (f)(5).

[5] *April 15th Letter.*

[6] *June 15th Letter* (citing 47 C.F.R. § 64.4002(d)).

[7] *Id.*

[8] *June 15th Letter*, Attachment.

[9] *April 15th Letter* (citing 47 C.F.R. § 64.4002(e), (g)).

[10] *April 15th Letter* (citing 47 C.F.R. § 64.4002(e)).

[11] *April 15th Letter* (citing 47 C.F.R. § 64.4002(g)).

change [**in LEC**] and the new LEC must notify the customer's [~~new~~] PIC of the customer's PIC selection."[12]

Pursuant to section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, interested parties may file oppositions, comments or replies in response to the Coalition's proposed clarifications and modifications on or before the dates indicated on the first page of this document. **When filing oppositions, comments, or replies, please reference CG Docket No. 02-386.** Oppositions, comments, or replies 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). Oppositions, comments, or replies 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 submissions, 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.

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 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.

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 substance 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).

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, SW., Room CY-A257, Washington, D.C. 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI, at their web site: www.bcpiweb.com or by calling 1-800-378-3160.

[12] *April 15th Letter* at 2 (citing 47 C.F.R. § 64.4002(g)).

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Initial Regulatory Flexibility Certification. The Regulatory Flexibility Act[13] requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."[14] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[15] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[16] A "small business concern" is one which: (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).[17]

On March 25, 2004, the Commission released a Notice of Proposed Rulemaking seeking public comment on whether the Commission should establish mandatory, minimum standards governing the exchange of customer account information between local exchange carriers and interexchange carriers.[18] As required by the RFA, the Commission incorporated into the *NPRM* an Initial Regulatory Flexibility Analysis (IRFA) and sought public comment on the specific issues raised in the IRFA.[19] Two entities filed comments addressing the IRFA. On February 25, 2005, the Commission adopted the *Order* which, as discussed above, established extensive and detailed standards governing the exchange of customer account information between local exchange carriers and interexchange carriers.[20] Consistent with the

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[13] *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).

[14] *See* 5 U.S.C. § 605(b).

[15] *See* 5 U.S.C. § 601(6).

[16] *See* 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 comment, 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."

[17] *See* 15 U.S.C. § 632.

[18] *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, 19 FCC Rcd 5688 (2004) (*NPRM*). A summary of the NPRM was published in the Federal Register on April 19, 2004. *See* 69 Fed. Reg. 20845.

[19] *See NPRM*, 19 FCC Rcd at 5703-08.

[20] *See Order*, 20 FCC Rcd 4560 (2005); *see also* note 1, *supra*.

RFA, the Commission incorporated into the *Order* a Final Regulatory Flexibility Analysis (FRFA) addressing, among other things, the comments that had been filed in response to the IRFA.[21]

In this Public Notice, we seek comment on the Coalition's proposed clarifications and modifications to section 64.4002 of the Commission's rules.[22] The proposed clarifications and modifications are in the nature of technical corrections to the Commission's customer account record exchange rules that, if adopted, would not have a significant economic impact on entities subject to those rules. For example, the Coalition asserts that its proposed modification to section 64.4002(d) would make this provision consistent with similar notification requirements adopted in the *Order* simply by requiring a LEC to confirm its receipt of a particular IXC-initiated notification with an appropriate response. The Coalition similarly proposes modifications to section 64.4002(e) and (g) to include within the information exchanges prescribed by those subsections, the same standard categories of information that carriers routinely must provide in connection with other notification obligations adopted in the *Order*. If the Commission were to adopt the proposed modifications and clarifications, we believe that the compliance burden, and resulting economic impact on entities subject thereto, would be *de minimus*. Therefore, we certify for purposes of the RFA that the proposals in this Public Notice, if adopted, will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Public Notice, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA.[23] This initial certification will also be published in the *Federal Register*.[24]

FOR FURTHER INFORMATION CONTACT: Kelli Farmer, Consumer & Governmental Affairs Bureau, Federal Communications Commission, 202-418-2512 (voice), Kelli.Farmer@fcc.gov.

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[21] *See Order*, 20 FCC Rcd at 4598-4607. The Commission also prepared an IRFA addressing issues raised in the Further Notice of Proposed Rulemaking that was attached to the February 2005 *Order*. *See Order*, 20 FCC Rcd at 4608-4612. Those IRFA issues are not a part of the present Public Notice.

[22] 47 C.F.R. § 64.4002.

[23] *See* 5 U.S.C. § 605(b).

[24] *See* 5 U.S.C. § 605(b).