

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Mid America Computer Corporation)	
)	
Petition for Expedited Interim Waiver)	CG Docket No. 02-386
Of Section 64.4002 of the Commission's)	
Rules)	

**OPPOSITION OF AT&T INC. TO MID AMERICA COMPUTER CORPORATION'S PETITION FOR
EXPEDITED INTERIM WAIVER**

AT&T Inc., on behalf of its interexchange carrier affiliates, hereby submits these comments in opposition of Mid America Computer Corporation's (MACC)¹ petition for an interim waiver of certain portions of the Commission's customer account record exchange requirements. As AT&T demonstrates below, MACC has failed to demonstrate that special circumstances warrant a waiver of these requirements and that such a waiver would serve the public interest.

Petition. MACC² requests that the Commission waive, until September 2006, two of the information exchange requirements adopted in the *CARE Order*³: (1) the requirement that carriers indicate that the customer's account is subject to a preferred interexchange carrier freeze ("PIC-freeze Notification"),⁴ and (2) the requirement that carriers notify the interexchange carrier that the PIC change order is rejected ("Order Rejection Notification").⁵ In support of its

¹ Petition for Expedited Interim Waiver, CC Docket No. 02-386 (filed Nov. 21, 2005).

² MACC provides billing and data services to small rural ILECs and CLECs.

³ *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 4560 (2005).

⁴ 47 CFR §64.4002(a)(7).

⁵ 47 CFR §64.4002(c).

Petition, MACC claims that in order to comply with the foregoing information exchange requirements, it must make programming changes to its operating support systems (“OSS”) product used to provide billing services to its small rural ILEC and CLEC clients. Rather than implement the necessary changes to its systems on an ad hoc basis, MACC claims that it is most cost-effective “to include the software solutions for these requirements in its next regularly-scheduled release of its operating supports system product.”⁶ Otherwise, according to MACC, its carrier clients will incur significant costs.⁷

Discussion. The Commission may waive its rules if special circumstances warrant a deviation from those rules and such deviation would better serve the public interest than would strict adherence to the rules.⁸ MACC’s Petition falls far short of this standard and thus should be denied.

First, there are no special circumstances warranting a deviation from the two rules at issue here. MACC’s alleged “special circumstance” is that it is cheaper for its clients if it includes the software changes for these requirements in the next scheduled release of its OSS product. But this purported “special circumstance” exists for every carrier when software changes are necessary for existing systems to ensure compliance with regulatory requirements. AT&T — and any carrier for that matter— would love to amend its systems only when it is most economically feasible to do so. However, the fact is AT&T is required to comply with FCC mandates and must make changes to its products and systems as necessary to comply with new FCC rules in a timely manner.

⁶ MACC Petition at 2.

⁷ *Id.*

⁸ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) *citing* *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969). 47 C. F.R. § 0.91.

Not surprisingly, MACC has provided no evidence regarding the frequency of its *regularly-scheduled* OSS product release or the costs its clients would have incurred had MACC released an updated OSS product in time to comply with the September 2005 effective date. As the Commission has held, waiver of the Commission's rules is a high standard.⁹ General assertions that new rules are costly and burdensome will not suffice. Rather, a petitioner must, with substantial evidence, demonstrate any alleged costs and burdens.¹⁰ Not only has MACC failed to do so, but MACC has failed to justify why *its* inability to update its OSS product warrants a waiver of the exchange requirements for its LEC clients. The *CARE Order* does not obligate any LEC to use a specific method for exchanging customer data. To the extent MACC's clients cannot use MACC's software, they still have the capability to provide the information at issue here manually, and if not, must affirmatively demonstrate why they lack the ability to do so to warrant waiver relief.

Moreover, given that the Commission adopted and released the *CARE Order* seven months prior to the effective date of its rules, MACC's request for a temporary waiver is clearly out of time. MACC's OSS product is on a regularly-scheduled release. This necessarily means that MACC should have known well in advance of September 2005 when its next scheduled release would occur. To wait *nine* months after the Commission's adoption of the information exchange requirements and *two* months after the effective date of these requirements to seek significant additional time — 10 months — is frankly unconscionable. Not to mention, MACC does not even attempt to substantiate its delay in filing for the requested waiver relief.

⁹ *WAIT Radio*, 418 F.2d at 1157.

¹⁰ See, e.g., *In the Matter of Telephone Number Portability; Petition of Yorkville Telephone Cooperative, et. al.*, CC Docket No. 95-116, Order, 19 FCC Rcd. 9296, 9298 (2004) (stating "In seeking an extension of the LNP deployment deadline, a carrier must provide substantial, credible evidence to support its contention that it is unable to comply with the deployment schedule.").

Second, a temporary waiver of the PIC freeze and Order Rejection requirements would not serve the public interest. The Commission adopted these requirements to ensure that a customer's request for long distance service is honored, and in a timely manner. Waiver of these requirements would have the opposite effect. In particular, waiver of the Order Rejection requirement would stymie an IXC's ability to effectuate a customer's request for service. Simply put, when an IXC does not receive notification that its PIC-change order was rejected and the exact reason for the rejection, the IXC has no way of discerning that the customer's request was unexecuted *unless and until* the customer contacts the IXC. For example, if a LEC does not notify the IXC that its order was rejected due to a PIC freeze being on the account, the IXC cannot remedy the reject by contacting the customer to request that he lift his freeze protection with the LEC, and to resubmit the order. The end result — the customer does not receive the service he requested timely or at all; the customer blames the IXC for the failure, and likely develops an unfavorable impression of the IXC; and/or the IXC loses revenue or the customer as a result of the delay in execution.

Importantly, in adopting the information exchange requirements, the Commission attempted to balance two competing goals: 1) ensuring that carriers exchange critical customer information for the benefit of consumers and (2) minimizing the burdens and costs of the exchange requirements on carriers.¹¹ The Commission expressly recognized that its exchange requirements could impose additional costs on carriers.¹² Nonetheless, the Commission concluded 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

¹¹ *CARE Order*, ¶69.

¹² *Id.*

competition in the industry.”¹³ MACC has failed to show why these public interests harms are outweighed by the purported costs to its clients.

The complete exchange of customer information, including the PIC order rejection information, is absolutely critical to AT&T for the proper provisioning, billing and account maintenance of long distance services to its customers. All LECs, small or large, accordingly should be required to adhere to the Commission’s existing rules and exchange this information. While the mechanized exchange of this information is preferred, AT&T is willing to accept this information manually and in this vein will work with all small ILECs and CLECs to negotiate a mutually acceptable manual means for providing this information.

In conclusion, MACC has failed to justify the waiver relief requested. Accordingly, MACC’s Petition should be denied.

Respectfully Submitted,

AT&T Inc.

By: /s/ Davida M. Grant
Davida M. Grant
Gary L. Phillips
Paul K. Mancini

AT&T Inc.
1401 I Street, NW
Suite 400
Washington, DC 20005
(202) 326-8903- telephone
(202) 408-8745 - fax

Its Attorneys

February 2, 2006

¹³ *Id.*