

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

In the Matter of)	
)	
Rules and Regulations Implementing)	
Minimum Customer Account Record)	CG Docket No. 02-386
Exchange Obligations on All Local and)	
Interexchange Carriers)	
)	
)	
)	

NOTICE OF PROPOSED RULE MAKING

Adopted: March 10, 2004

Released: March 25, 2004

By the Commission:

I. INTRODUCTION

1. On February 28, 2002, the Commission released a *Notice of Inquiry* to develop a baseline record regarding the status and continued importance of the equal access and nondiscrimination obligations of section 251(g) of the Communications Act of 1934, as amended (the Act).¹ In its comments in the *Equal Access NOI* proceeding, AT&T argued that all carriers should be subject to the same mandatory, minimum requirements with regards to the accurate and timely exchange of customer information.² Specifically, AT&T proposed that the Commission initiate a rulemaking proceeding to address the issue of making the voluntary industry standard process governing these exchanges - Customer Account Record Exchange, known as CARE – mandatory for all local exchange carriers (LECs) in order to provide uniform,

¹ *Review of the Equal Access and Nondiscrimination Obligations Applicable to Local Exchange Carriers*, Notice of Inquiry, CC Docket No. 02-39, 17 FCC Rcd 4015 (2002) (*Equal Access NOI*). That statutory provision preserves the equal access and nondiscrimination requirements that were established for local exchange carriers “under any court order, consent decree, or regulation, order, or policy of the Commission” prior to passage of the 1996 Act. 47 U.S.C. 251(g). Section 251(g) imports the obligations of the Modification of Final Judgment (MFJ), the consent decree that settled the Department of Justice’s antitrust suit against AT&T and required divestiture of the Bell Operating Companies (BOCs), as well as Commission equal access requirements. *U.S. v. AT&T Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d sub nom., Maryland v. U.S.*, 460 U.S. 1001 (1983).

² See Comments of AT&T Corp. in the *Equal Access NOI* proceeding, at 39-43 (filed May 10, 2002) (AT&T *Equal Access NOI* Comments).

timely, and complete CARE data.³ In their reply comments in that proceeding, Sprint and MCI⁴ both supported AT&T's proposal for implementation of a mandatory minimum CARE standard.⁵ As described below, two separate petitions were subsequently filed with the Commission concerning the exchange of customer account data between LECs and interexchange carriers (IXCs) in today's competitive market.⁶ On December 20, 2002, the Commission issued a Public Notice seeking comment on both the Americatel Petition and the Joint Petition.⁷ We are issuing this *Notice of Proposed Rulemaking (Notice)* to elicit further comment on whether the Commission should impose mandatory minimum CARE obligations on all local and interexchange carriers.

II. BACKGROUND

2. The CARE system provides a uniform method for the exchange of certain information by interexchange carriers and LECs. CARE allows these carriers to exchange the data necessary to establish and maintain customer accounts, and to execute and confirm customer orders and customer transfers from one long distance carrier to another.⁸ At the time the existing CARE process was developed, incumbent LECs, for the most part, did not compete for long distance service, and local markets were not competitive. However, subsequent to the passage of the Telecommunications Act of 1996 (the 1996 Act),⁹ the growth of customer migration in the competitive local exchange market has affected the ability of long distance carriers to bill for long distance services rendered to those customers.¹⁰

³ *Id.*

⁴ We note that WorldCom, Inc. recently changed its corporate name to MCI, and we will generally refer to the company by its current corporate name.

⁵ See Reply Comments of Sprint Corporation in the *Equal Access NOI* proceeding, at 3-4 (filed June 10, 2002); Reply Comments of WorldCom, Inc. in the *Equal Access NOI* proceeding, at 2-3 (filed June 10, 2002).

⁶ Obligations of All Local Exchange Carriers to Provide Timely and Accurate Billing Name and Address Service to Interexchange Carriers, filed by Americatel Corporation on September 5, 2002 (Americatel Petition); Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corporation, and WorldCom, Inc. on November 22, 2002 (Joint Petition).

⁷ *Public Notice*, Pleading Cycle Established for Comments on Petition for Declaratory Ruling and/or Rulemaking, filed by Americatel Corporation, and for Comments on Joint Petition for Rulemaking to Implement Mandatory Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, filed by AT&T Corp., Sprint Corporation, and WorldCom, Inc., CG Docket No. 02-386, 17 FCC Rcd 25535 (2002).

⁸ Joint Petition at 2.

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹⁰ Americatel Petition at 4, 6; Joint Petition at 3, 5.

3. The CARE process was developed by the telecommunications industry in response to the break-up of the Bell System and the introduction of competitive long distance services.¹¹ To facilitate the equal access and cooperation among telecommunications providers mandated by the Modified Final Judgment, the industry created the Alliance for Telecommunications Industry Solutions (“ATIS”), a developer of telecommunications standards and operational guidelines that has 124 member companies, representing nearly every sector of the telecommunications industry.¹² The Carrier Liaison Committee of ATIS in turn created the Ordering and Billing Forum (“OBF”), which established voluntary industry standards for CARE among carriers, based on input from all participating segments of the industry. The CARE standards were developed to facilitate the exchange of customer account information to allow LECs to comply with their obligation to provide all interexchange carriers with access that is equal in type, quality, and price to that provided to AT&T and its affiliates.¹³ CARE generically identifies data elements that might be shared between carriers and supports a data format intended to facilitate the mechanized exchange of that information. It aims to provide a consistent definition and data format for the exchange of common data elements.¹⁴

4. Historically, incumbent LECs managed the exchange of customer data between themselves and the various interexchange carriers that were competing for the provision of long distance services. When a customer elected to change long distance carriers, or otherwise changed his or her billing, name, and address (BNA) information,¹⁵ the incumbent LEC would provide CARE data to the appropriate interexchange carrier(s) to ensure seamless provision of service to the customer.¹⁶

5. Though most LECs and long distance carriers participated in CARE prior to 1996, CARE data is not currently exchanged in a uniform manner now that the number of LECs has increased significantly. As a result, interexchange carriers may often be unable to identify local carrier lines in the current competitive marketplace.¹⁷ Interexchange carriers may therefore be unaware of whether a customer remains on the network, has switched to another local or long distance carrier, has been disconnected, or has made changes to BNA information. This can inhibit customers’ ability to move seamlessly from one carrier to another, and can result in

¹¹ *U.S. v. AT&T Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff’d sub nom., Maryland v. U.S.*, 460 U.S. 1001 (1983).

¹² Joint Petition at 2 and n.2.

¹³ *Id.*

¹⁴ AT&T *Equal Access NOI* Comments at 40 n.28.

¹⁵ BNA is defined as “the name and address provided to a local exchange company by each of its local exchange customers to which the local exchange company directs bills for its services.” See 47 C.F.R. § 64.1201(a)(1).

¹⁶ Joint Petition at 2-3.

¹⁷ Americatel Petition at 4-6; Joint Petition at 3-5.

substantial increases in unbillable calls and customer complaints.¹⁸ These problems may also arise in the context of customers porting wireline telephone numbers to wireless carriers.¹⁹ In addition, carriers may be viewed as being responsible for double or continued billing, cramming,²⁰ slamming,²¹ or violations of the Commission's truth-in-billing requirements²² when they do not receive accurate, timely, or complete information regarding their customers' accounts.

6. On September 5, 2002, Americatel filed a petition for declaratory ruling to clarify LEC obligations with regard to the provision of BNA service.²³ Specifically, Americatel seeks a declaration that: (1) all local exchange carriers, both competitive and incumbent LECs, are obligated to provide BNA service, subject to existing safeguards; (2) all LECs have an obligation to provide the appropriate presubscribed long distance carrier with the identity of the new serving carrier whenever one of the LEC's customers changes local service providers; and (3) any LEC that no longer serves a particular end user customer has an obligation, upon the request of a long distance carrier, to indicate which other LEC is now providing service to such end user customer.²⁴ Americatel also requests that we require all carriers to exchange customer billing information under specific parameters developed by the industry through the OBF.²⁵

7. AT&T, Sprint, and MCI (Joint Petitioners) filed a petition on November 22, 2002, requesting that the Commission initiate a rulemaking proceeding to require certain mandatory CARE obligations for all local and interexchange carriers.²⁶ Under this proposal, all carriers would be required, in specified situations, to transmit certain CARE codes to involved carriers

¹⁸ *Id.*

¹⁹ See *Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues*, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 23697, 23706, n.64 (2003) (*Wireless LNP Order*); Letter from Robert M. Quinn, Jr., VP-Federal Government Affairs, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 02-386, CC Docket No. 95-116, at 1 (filed Nov. 10, 2003) (AT&T Nov. 10 *Ex Parte* Letter).

²⁰ "Cramming" refers to the practice of causing unauthorized, misleading, or deceptive charges to be placed on consumers' telephone bills.

²¹ "Slamming" is the submission and execution by a telecommunications carrier of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. See 47 U.S.C. § 258(a).

²² See 47 C.F.R. §§ 64.2400 and 64.2401.

²³ Americatel Petition at 3-4. In the alternative, Americatel requested that the Commission initiate a rulemaking on these issues. *Id.* at 4, n.4.

²⁴ See Americatel Petition at 3-4.

²⁵ See Americatel Reply at 5-6.

²⁶ Joint Petition at 1.

that are designed to provide specific billing and other essential customer data.²⁷ Joint Petitioners ask that carriers be given flexibility to provide for the transmission of required data in a variety of ways, including paper (facsimile, U.S. and/or overnight mail), e-mail, cartridge, Internet processing, mechanized processing, or real-time processing.²⁸ Joint Petitioners argue that this flexibility will minimize implementation costs on the industry, particularly on smaller carriers.²⁹ In addition, Joint Petitioners propose to provide flexibility for carriers to use alternate codes for certain transactions, in order to minimize potential development costs for carriers that are not already providing all of the CARE codes.³⁰ Finally, Joint Petitioners propose that we adopt performance measurements for timeliness, accuracy, and completeness of CARE data.³¹

III. DISCUSSION

8. Fifteen parties filed comments or replies in response to the two petitions.³² While most agree that the concerns raised in the petitions have some merit, most also contend that the solutions proposed by petitioners are inappropriate or overly broad. Incumbent LECs generally argue that they are already providing CARE and BNA data, and that petitioners have not demonstrated that the existing CARE process is deficient with respect to incumbent LECs.³³ They assert that the problems described by petitioners arise due to certain competitive LECs' failure to participate in CARE and BNA data exchange, or to provide such information to interexchange carriers in the same manner as the incumbent LECs. Accordingly, incumbent LECs argue that competitive LECs should be the sole focus of any proposed rules.³⁴ Small and rural LECs in particular express concern that mandatory minimum CARE standards will impose additional, unnecessary burdens on them.³⁵

9. After reviewing the petitions and the subsequent comments and replies, we believe that the issues raised in the petitions would be more appropriately addressed through a notice and comment rulemaking proceeding than by an immediate ruling on the petitions. Accordingly, we seek comment on whether mandatory minimum CARE standards could provide consistency within the industry, and could eliminate a significant percentage of consumer

²⁷ *Id.* at 7.

²⁸ *See* Joint Petition, Appendix A, at 3 (“Cost Considerations”) and 4-8 (“Processing Considerations”).

²⁹ Joint Petition at 8.

³⁰ Joint Petition, Appendix A, at 9-17.

³¹ Joint Petition at 8-10 and Appendix A, at 4-8.

³² *See* Appendix A (list of commenters).

³³ BellSouth Comments at 2; SBC Comments at 1-2; SILEC Comments at 1-2.

³⁴ Verizon Comments at 5.

³⁵ NECA Comments at 3; Oklahoma RTC Comments at 6; PBT Reply at 1-2; SILEC Comments at 3-5.

complaints concerning billing errors.³⁶ We focus here primarily on the proposals outlined in the Joint Petition, and do not address Americatel's petition in full at this time.³⁷ In particular, with respect to Americatel's request for declaratory relief regarding LECs' BNA service obligations, we note that § 64.1201 makes no distinction between the responsibilities of independent LECs and competitive LECs, and places the obligations of notice and access on *all* LECs.³⁸

10. As a general matter, we believe that a uniform process observed by all regulated entities – competitive LECs, incumbent LECs, and interexchange carriers alike – could also provide a better framework for fair and consistent enforcement activity by the Commission. We therefore seek comment on whether we should impose mandatory minimum CARE obligations on all local and interexchange carriers. How extensive are the billing problems described in the petitions? Are they sufficiently pervasive throughout the industry to warrant regulatory intervention at this time?³⁹ To what extent would adoption of the proposed minimum CARE standards place a burden on LECs and interexchange carriers generally?

11. The Joint Petitioners have recommended a Minimum CARE Standard composed of a subset of the existing OBF CARE/Industry Support Interface guideline Transaction Code Status Indicators (TCSIs).⁴⁰ They state that these recommended TCSIs are essential for an interexchange carrier to be able to do all of the following:

- submit a Preferred Interexchange Carrier (PIC) order to the correct LEC on behalf of the end user (01XX TCSIs - 0101, 0104, 0105);⁴¹
- know when any LEC has put an end user on the interexchange carrier's network (20XX TCSIs – 2003, 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2020);⁴²

³⁶ Joint Petitioners estimate that mandatory CARE standards could eliminate as much as 60% of consumer billing complaints. *See* Joint Petition at 5.

³⁷ In particular, we do not tackle Americatel's requests for declaratory relief and its proposal to establish a national database of carrier ownership information related to each telephone line. *See* ¶ 15, *infra*.

³⁸ *See* 47 C.F.R. § 64.1201.

³⁹ For example, Americatel states that its unbillable calls for 2001 were equal to 6% of its long distance revenues, and were worth more than \$6.4 million in 2002; Americatel further contends that other dial-around carriers are also experiencing large volumes of unbillable calls. *See* Letter from Robert H. Jackson, counsel for Americatel, to Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, CG Docket No. 02-386, at 3 (filed May 15, 2003) (Americatel May 15 *Ex Parte*).

⁴⁰ *See* Joint Petition, Appendix A, at 2.

⁴¹ *See* Joint Petition, Appendix A, at 2, 9.

⁴² *See* Joint Petition, Appendix A, at 2, 10-12.

- know when any LEC has removed an end user from the interexchange carrier's network (22XX TCSIs – 2201, 2202, 2203, 2206, 2215, 2216, 2217, 2218, 2219, 2231, 2233, 2234);⁴³
- receive critical changes to the account for the end user currently PIC'd at the local switch to the interexchange carrier (23XX TCSIs – 2317, 2368, 2369);⁴⁴
- facilitate a request for BNA for end users who have usage on the requesting carrier's network where the interexchange carrier does not have an existing account for the end user (TCSIs 0501, 2503, 2504);⁴⁵
- know whom the LEC has suspended or blocked from using the carrier network due to collection or fraud issues to allow the PIC'd interexchange carrier to take appropriate steps necessary to maintain customer continuity with the carriers network and or calling/card process (27XX TCSIs – 2710, 2711, 2716, 2717, 2720, 2721);⁴⁶ and
- receive a notification of order failure with a reason specific to the order to allow the interexchange carrier to correct the order or take alternative steps (all applicable reject TCSIs - 21XX, 31XX, 41XX, 26XX).⁴⁷

12. We seek comment on whether, if we were to adopt minimum CARE standards, the Joint Petitioner's proposed standard is appropriate and adequate to address the concerns raised in the petitions. Are any modifications to these proposals necessary? Cox notes that, to the extent any new standards adopted are appropriate and are truly minimal, they should be applied to all LECs, and should not create any meaningful burden on incumbent LECs who are already interacting with interexchange carriers.⁴⁸ We seek comment on this view. In addition, should all LECs, including competitive LECs, be required to notify the appropriate presubscribed long distance carrier whenever a specific customer changes local service providers, as Americatel requests?⁴⁹ Should all LECs that no longer serve a particular end user customer be required, upon the request of a long distance carrier, to indicate which other carrier is providing local service to that customer?⁵⁰ To the extent commenters suggest modifications or other

⁴³ See Joint Petition, Appendix A, at 2, 12-14.

⁴⁴ See Joint Petition, Appendix A, at 2, 15.

⁴⁵ See Joint Petition, Appendix A, at 2, 9-10, 15.

⁴⁶ See Joint Petition, Appendix A, at 2, 16-17.

⁴⁷ See Joint Petition, Appendix A, at 2, 12.

⁴⁸ Cox Reply at 2.

⁴⁹ Americatel Petition at 12-13.

⁵⁰ *Id.* at 13.

alternatives to petitioners' proposals, commenters should specifically outline the minimum data exchange necessary to address the problems described in the petitions.

13. In the *Wireless LNP Order*, we acknowledged that the billing problems described by Joint Petitioners may also arise in the context of wireline-to-wireless number porting.⁵¹ As AT&T explains, where a standalone interexchange carrier customer exercises the right to port a wireline telephone number to a wireless carrier, there are no procedures currently in place requiring notification of interexchange carriers that the customer has selected a wireless carrier to provide long distance service.⁵² As a result, those customers may continue to be billed by their former interexchange carrier unless and until they advise that carrier that they are discontinuing their long distance service.⁵³ We note that analogous IXC notification issues do not arise in the context of wireless-to-wireline porting. Because wireless carriers typically provide for long distance as part of their service to customers, wireless customers do not have a separate commercial relationship with an IXC and are not separately billed by the IXC. Accordingly, if a wireless customer ports to a wireline carrier, there is no need for separate notification to the IXC that the wireless service is being discontinued.

14. We seek comment on these wireline-to-wireless number porting concerns. Have consumers or carriers experienced such problems yet, and if so, to what extent have they arisen so far? What have those carriers that have experienced local number porting billing issues done to address them and prevent them from recurring? The Joint Petitioners have suggested that a possible solution to this problem would be to require LECs to notify IXCs when a local exchange number is ported from a wireline to a wireless carrier.⁵⁴ One possibility might be a CARE code that would add a "W" designation for local lines that are ported to wireless carriers. We seek comment on this and any other proposals for addressing billing issues in wireline-to-wireless number porting situations. Would a new CARE code be necessary or appropriate under these circumstances? What else might be done to prevent the billing problems that Joint Petitioners contend may arise in this context? If we were to adopt a mandatory minimum CARE standard for wireline-to-wireless porting, would that standard impose a burden on LECs and/or commercial mobile radio service (CMRS) providers? If so, what steps could we take to ameliorate or minimize that burden? Would voluntary standards be adequate? We note that, in the circumstance of a wireline-to-wireless port, the CMRS provider (unlike the LEC) would not necessarily know the identity of the customer's presubscribed carrier.

⁵¹ *Wireless LNP Order*, 18 FCC Rcd at 23706, n. 64.

⁵² AT&T Nov. 10 *Ex Parte* Letter, at 1. AT&T notes that, because wireless carriers do not have equal access obligations, the long distance provider for a local line newly ported to a wireless carrier will almost always become the wireless provider itself, thereby replacing the interexchange carrier. *Id.*

⁵³ *Id.*

⁵⁴ Letter from Michael F. Del Casino, Government Affairs Director, AT&T, to Marlene Dortch, Secretary, Federal Communications Commission, CG Docket No. 02-386, at 1 (filed Dec. 5, 2003) (Dec. 5 *Ex Parte* Letter).

15. We also seek comment on the expected implementation costs associated with adopting minimum CARE standards, as well as the appropriate allocation of those costs. Commenters should also discuss how, if we adopt minimum CARE standards, we can provide sufficient flexibility to protect carriers, particularly small and/or rural LECs, from unduly burdensome requirements. Joint Petitioners claim that their proposal, which would require carriers to use fewer than five percent of the total CARE codes developed by ATIS, provides for transmission of required data in a variety of ways, provides flexibility for carriers to utilize alternate codes for certain transactions, and minimizes start-up costs and potential development costs for all carriers that are not already providing CARE data.⁵⁵ Will these steps sufficiently alleviate the cost concerns raised in the comments on the petitions? Are there further, or perhaps better, steps we should consider to minimize the cost and burdens of imposing mandatory CARE standards, particularly for small and/or rural carriers?

16. We also seek comment on Joint Petitioners' request that we provide for "reasonable" performance measurements for any minimum CARE standards that we adopt. Joint Petitioners have identified specific recommendations for timeliness, accuracy and completeness thresholds.⁵⁶ Specifically, they propose: (1) timeliness thresholds for the various CARE processing methods (real-time, mechanized, e-mail or internet, and cartridge and paper) that vary from 12 hours to five business days, depending on the method employed;⁵⁷ (2) that all carriers use "best efforts" and "quality practices and methods" to ensure that the data exchange is accurate and complete;⁵⁸ and (3) that all carriers use the guidelines set forth in the ATIS OBF Equal Access Subscription CARE/Industry Support Interface document to ensure the accuracy and completeness of CARE data.⁵⁹ Are these recommendations appropriate or necessary? Would other measures provide a more accurate assessment of carrier compliance with any minimum standards we might adopt?

17. Americatelel agrees that Joint Petitioners' proposals would resolve many billing-related issues for presubscribed calls, but states that those proposals do not address additional problems associated with dial-around traffic, which is subject to greater collection risks and fraud because the serving carrier does not have any credit information about the customer.⁶⁰ Dial-around service providers, who do not have established business relationships with their customers, must either enter into billing and collection agreements with LECs or obtain BNA

⁵⁵ Joint Petition at 7-8; *see also* Joint Petition, Appendix A, at 3.

⁵⁶ Joint Petition, Appendix A, at 5-8.

⁵⁷ Joint Petition, Appendix A, at 5.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Americatelel Comments at 2-3.

data from LECs, in order to bill their end users. Americatele supports adoption of a line-level database as a comprehensive solution to current data exchange problems in the industry.⁶¹

18. In contrast, Joint Petitioners urge us to address these billing concerns with a phased approach, first requiring all LECs and interexchange carriers to participate in mandatory minimum CARE, and later examining the possibility of creating an industry-wide, line level database to address billing problems not remedied in the first phase.⁶² Joint Petitioners believe that mandating minimum CARE standards would alleviate a substantial portion of the billing problems faced by both pre-subscribed and dial-around service providers.⁶³

19. Although, as Joint Petitioners acknowledge, establishing a national line-level database might provide a more comprehensive solution to the billing problems petitioners are experiencing, it appears that development and implementation of such a solution would not provide relief for petitioners in the short term.⁶⁴ As Americatele itself notes, the OBF has not been able to reach consensus on a database solution, despite several years of review, development and analysis.⁶⁵ CARE is an already established, industry-developed solution that has worked reasonably well in the past, and we believe that establishing uniform, minimal CARE obligations for all carriers could more readily and quickly provide at least some relief for petitioners than the database solution proposed by Americatele. We seek comment on these views.

20. Several carriers also argue that the industry-wide OBF is the more appropriate venue for addressing these issues.⁶⁶ They note that the existing CARE process was developed by the industry, and ask the Commission to carefully consider the status of industry solutions before adopting rules that may increase burdens on the industry. According to these commenters, the OBF should be used to address any changes to the CARE process because it is better suited to considering the technical and operational aspects of the way information will be exchanged than

⁶¹ Americatele's proposed line-level database would be a national database containing information on a telephone number level related to the carrier ownership of that line, and would identify the LEC that serves a specific line when that LEC is obtaining its local switching from an underlying incumbent LEC. This situation occurs whenever the serving LEC is reselling the incumbent LEC's local service or purchasing switching from the incumbent LEC as a UNE. *See* Letter from Robert H. Jackson, counsel for Americatele, to Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, CG Docket No. 02-386, at 2-4 (filed July 15, 2003) (Americatele July 15 *Ex Parte* Letter); Americatele Reply at 5; *see also* Intrado Comments at 4-7.

⁶² *See* Letter from Michael B. Fingerhut, Sprint; Martha Lewis Marcus, AT&T; and Karen Reidy, WorldCom, to Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, CG Docket No. 02-386, at 2 (filed June 19, 2003) (Joint Petitioners June 19 *Ex Parte*).

⁶³ *Id.*

⁶⁴ Joint Petitioners June 19 *Ex Parte* at 2.

⁶⁵ Americatele Petition at 7; Americatele Reply at 5.

⁶⁶ *See, e.g.*, Allegiance Comments at 4-5; BellSouth Comments at 3-4; NECA Comments at 4.

a notice and comment rulemaking.⁶⁷ Conversely, petitioners claim that the OBF has been looking into these billing problems for several years now, but has been unable to reach a resolution.⁶⁸ OBF has been attempting to develop a database solution for the exchange of customer billing information among multiple carriers in those cases where the customer has changed one or more of its carriers.⁶⁹ The petitioners assert that they have asked us to address these issues precisely because OBF has been unable to do so.

21. We seek comment on this debate. Would federally-mandated minimum CARE obligations for all carriers restrict the evolution of CARE standards? Or would mandatory, nationwide standards merely establish uniformity that is currently lacking in the CARE process and prove helpful to consumers, carriers, and the Commission?

22. Finally, we note that the NARUC Subcommittee on Consumer Affairs has been working to draft model carrier change guidelines that could help address some of the issues raised by the petitions, in the absence of uniform minimum CARE requirements.⁷⁰ Once finalized, the NARUC model guidelines could be adopted on a state-by-state basis to address customer account record concerns, but would be superseded by any federal rules we might adopt. We seek comment on the NARUC proposals. Will these model guidelines adequately address petitioners' concerns?

IV. CONCLUSION

23. As noted above, the aim of the CARE standards is to provide a consistent definition and data format for the exchange of common data elements. Failure to utilize consistent formats can create confusion for carriers, customers, and the Commission. These concerns are especially important given the increase in the number of local exchange carriers (and resultant escalation of customer migration) since the passage of the 1996 Act, as well as the evolution of number porting with respect to wireline to wireless carriers. As a general matter,

⁶⁷ *Id.*

⁶⁸ See http://www.atis.org/atis/clc/obf/L.SOP/multi_migration.htm for details on the efforts of the OBF's Local Services Ordering & Provisioning Committee Multi-Provider Migration Task Force to address these issues.

⁶⁹ The OBF website states: "With the advent of local competition, challenges associated with seamlessly migrating an end user to a new service provider is at the forefront of several state Public Utility Commission agendas. Designing an industry-wide standard for migrating end users has become critical to ensure companies have one process that benefits all companies - developed with minimal regulatory intervention." See <http://www.atis.org/atis/clc/obf/obfhom.htm> for further information about the OBF's work in this area.

⁷⁰ See, e.g., e-mail from Lynn Crofton, AT&T, to Margaret Egler, Deputy Chief, Consumer & Governmental Affairs Bureau, Federal Communications Commission, CG Docket No. 02-386, outlining Joint Petitioners' input to the draft guidelines prepared by the NARUC Subcommittee on Consumer Affairs (sent July 25, 2003). See also *Resolution Urging The FCC to Initiate a Rulemaking To Establish Mandatory Minimum Requirements Relative to the Exchange of Customer Account Information between Inter-Exchange Carriers, LECs and CLECs*, <http://www.naruc.org/associations/1773/files/requirements.pdf>.

based on our own experiences with customer complaints, we believe that uniformity amongst CLECs, ILECs, and IXCs could enhance our efforts to provide fair, consistent and efficient enforcement of our rules.

V. PROCEDURAL MATTERS

A. Regulatory Flexibility Analysis

24. As required by the Regulatory Flexibility Act, as amended (RFA),⁷¹ the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals set forth in this *Notice*. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments filed in this NPRM, and must have a separate and distinct heading designating them as responses to the IRFA.

B. Paperwork Reduction Act Analysis

25. This *Notice* contains proposed and/or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). These proposed and/or modified information collection(s) will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding.

C. Ex Parte Presentations

26. This is a permit-but disclose notice and comment rulemaking proceeding. Members of the public are advised that *ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's rules.⁷²

D. Filing of Comments and Reply Comments

27. We invite comment on the issues and questions set forth above. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before 45 days after publication in the Federal Register, and reply comments on or before 60 days after publication in the Federal Register. 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).

⁷¹ See 5 U.S.C. § 603. The RFA, 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).

⁷² See generally, 47 C.F.R. §§ 1.1202, 1.1203, 1.1206.

28. 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. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. 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 an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, 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 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 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, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Parties also should send four (4) paper copies of their filings to: Kelli Farmer, Federal Communications Commission, Room 4-C740, 445 12th Street, S.W., Washington, DC 20554.

29. Written comments by the public on the proposed or modified information collections are due on or before 45 days after the date of publication in the Federal Register. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before 60 days after date of publication in the Federal Register. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to: Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, S.W., Washington, D.C. 20554, or via the Internet to judy.boleyn@fcc.gov; and to Edward Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via the Internet to edward.springer@omb.eop.gov.

30. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418-7426, TTY (202) 418-7365, or at brian.millin@fcc.gov.

VI. ORDERING CLAUSES

31. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201, 206-208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 206-208 and 258 and sections 1.421 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.421 and 1.429, that the *Notice of Proposed Rulemaking* in CG Docket No. 02-386 IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Comments

Allegiance Telecom, Inc.
Americatel Corp.
BellSouth Corp.
Creative Support Solutions
Cox Communications, Inc.
Intrado Inc.
National Exchange Carrier Association, Inc.
Oklahoma Rural Telephone Companies
SBC Communications Inc.
Small Incumbent Local Exchange Carriers
Verizon

Replies

Americatel Corp.
AT&T Corp., Sprint Corporation, MCI.
Cox Communications, Inc.
Oklahoma Rural Telephone Companies
PBT Telecom, Inc.
United States Telecom Association

APPENDIX B

I. INITIAL REGULATORY FLEXIBILITY ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the NPRM. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. § 603(a). In addition, this *Notice* and the IRFA (or summaries thereof) will be published in the Federal Register.

A. Need for, and Objectives of, the Proposed Rules

2. The CARE system provides a uniform method for the exchange of certain information by interexchange carriers and LECs. CARE allows these carriers to exchange the data necessary to establish and maintain customer accounts, and to execute and confirm customer orders and customer transfers from one long distance carrier to another. At the time the existing CARE process was developed, incumbent LECs, for the most part, did not compete for long distance service, and local markets were not competitive. However, subsequent to the passage of the 1996 Act, the growth of customer migration in the competitive local exchange market has affected the ability of long distance carriers to bill for long distance services rendered to those customers.

3. Though most LECs and long distance carriers participated in CARE prior to 1996, CARE data is not currently exchanged in a uniform manner now that the number of LECs has increased significantly. This can inhibit customers' ability to move seamlessly from one carrier to another, and can result in substantial increases in unbillable calls and customer complaints. This *Notice of Proposed Rulemaking (Notice)* seeks comment on whether the Commission should impose mandatory minimum CARE obligations on all local and interexchange carriers. The *Notice* also seeks comment on whether such billing problems may also arise in the context of wireline-to-wireless number porting and, if so, what might be done to prevent such problems that may arise in this context?

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to this *Notice* is contained in sections 1, 4(i), 4(j), 201, 206-208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201, 206-208 and 258, and sections 1.421 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.421 and 1.429.

¹ 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).

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

5. 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 proposed rules, if adopted.² The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”³ In addition, the term “small business” has the same meaning as the term “small business concern” under Section 3 of the Small Business Act.⁴ 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).⁵

6. 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.”⁶ 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.⁷ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission’s analyses and determinations in other, non-RFA contexts.

7. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific 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.⁸ According to the FCC’s *Telephone Trends Report* data, 1,337 incumbent local

² See 5 U.S.C. § 603(b)(3).

³ 5 U.S.C. § 601(6).

⁴ 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.”

⁵ 15 U.S.C. § 632.

⁶ 13 C.F.R. § 121.201, NAICS code 517110.

⁷ 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. 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).

⁸ 13 C.F.R. § 121.201, NAICS code 517110.

exchange carriers reported that they were engaged in the provision of local exchange services.⁹ Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees.¹⁰ Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

8. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive 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.¹¹ According to the FCC's *Telephone Trends Report* data, 609 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹² Of these 609 companies, an estimated 458 have 1,500 or fewer employees, and 151 have more than 1,500 employees.¹³ Consequently, the Commission estimates that the majority of providers of competitive local exchange service are small entities that may be affected by the rules.

9. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPs). The closest applicable 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.¹⁴ According to the FCC's *Telephone Trends Report* data, 609 CAPs or competitive local exchange carriers and 51 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services.¹⁵ Of these 609 competitive access providers and competitive local exchange carriers, an estimated 458 have 1,500 or fewer employees, and 151 have more than 1,500 employees.¹⁶ Of the 51 other local exchange carriers, an estimated 50 have 1,500 or fewer employees and one has more than 1,500

⁹ FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5 - 5 (August 2003) (*Telephone Trends Report*).

¹⁰ *Id.*

¹¹ 13 C.F.R. § 121.201, NAICS code 517110.

¹² *Telephone Trends Report*, Table 5.3.

¹³ *Id.*

¹⁴ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁵ *Telephone Trends Report*, Table 5.3.

¹⁶ *Id.*

employees.¹⁷ Consequently, the Commission estimates that the majority of small entity CAPs and the majority of other local exchange carriers may be affected by the rules.

10. *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.¹⁸ According to the FCC's *Telephone Trends Report* data, 133 companies reported that they were engaged in the provision of local resale services.¹⁹ Of these 133 companies, an estimated 127 have 1,500 or fewer employees, and six have more than 1,500 employees.²⁰ Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

11. *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.²¹ According to the FCC's *Telephone Trends Report* data, 625 companies reported that they were engaged in the provision of toll resale services.²² Of these 625 companies, an estimated 590 have 1,500 or fewer employees, and 35 have more than 1,500 employees.²³ Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

12. *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.²⁴ According to the FCC's *Telephone Trends Report* data, 261 carriers reported that their primary telecommunications service activity was the provision of interexchange services.²⁵ Of these 261 carriers, an estimated 223 have 1,500 or fewer employees, and 38 have more than

¹⁷ *Id.*

¹⁸ 13 C.F.R. § 121.201, NAICS code 517110.

¹⁹ *Telephone Trends Report*, Table 5.3.

²⁰ *Id.*

²¹ 13 C.F.R. § 121.201, NAICS code 517110.

²² *Telephone Trends Report*, Table 5.3.

²³ *Id.*

²⁴ 13 C.F.R. § 121.201, NAICS code 517110.

²⁵ *Telephone Trends Report*, Table 5.3.

1,500 employees.²⁶ Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

13. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific 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.²⁷ According to the FCC's *Telephone Trends Report* data, 23 companies reported that they were engaged in the provision of operator services.²⁸ Of these 23 companies, an estimated 22 have 1,500 or fewer employees, and one has more than 1,500 employees.²⁹ Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

14. *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.³⁰ According to the FCC's *Telephone Trends Report* data, 37 companies reported that they were engaged in the provision of prepaid calling cards.³¹ Of these 37 companies, an estimated 36 have 1,500 or fewer employees, and one has more than 1,500 employees.³² Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific 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.³³ According to the FCC's *Telephone Trends Report* data, 92 carriers reported that they were engaged in the provision of "Other Toll Services."³⁴ Of these 92 carriers, an estimated

²⁶ *Id.*

²⁷ 13 C.F.R. § 121.201, NAICS code 517110.

²⁸ *Telephone Trends Report*, Table 5.3.

²⁹ *Id.*

³⁰ 13 C.F.R. § 121.201, NAICS code 517110.

³¹ *Telephone Trends Report*, Table 5.3.

³² *Id.*

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

³⁴ *Telephone Trends Report*, Table 5.3.

82 have 1,500 or fewer employees, and ten have more than 1,500 employees.³⁵ 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

16. As noted, we seek comment on whether mandatory minimum CARE standards could provide consistency in the exchange of customer account information within the industry, could eliminate a significant percentage of consumer complaints concerning billing errors, and whether we should impose mandatory minimum CARE obligations on all local and interexchange carriers. In the event any new standards are adopted, we expect that such standards will be minimal and will provide sufficient flexibility in their application that they will not create any significant burden on small entities.

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

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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 such 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.³⁶

18. *Mandatory Minimum CARE Requirements.* The *Notice* seeks comment on whether the Commission should impose mandatory minimum CARE obligations on all local and interexchange carriers. We especially seek information addressing the possible financial impact of such mandatory requirements on smaller carriers. We also ask commenters to discuss how, if we were to adopt minimum CARE standards, we could provide sufficient flexibility to protect carriers, particularly small/rural LECs and CMRS providers, from unduly burdensome requirements. We do not have any evidence before us at this time regarding whether the proposals outlined in this *Notice* would, if adopted, have a significant economic impact on a substantial number of small entities. However, we recognize that the RFA requires us to consider that such an impact may occur. We therefore seek comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that we should consider.

³⁵ *Id.*

³⁶ 5 U.S.C. § 603(c)(1)-(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

19. None.