

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

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

**COMMENTS OF THE
NEW YORK STATE DEPARTMENT OF PUBLIC SERVICE**

On February 25, 2005, the Commission issued a Further Notice of Proposed Rulemaking (FNPRM) in the above-entitled proceeding, which was noticed in the Federal Register on June 1, 2005. In the FNPRM, the Commission inquired whether it 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. In addition, the Commission sought comment on the interplay between state rules and any federal rules which may subsequently be adopted in the area of end-user migrations between facilities-based providers. The New York State Department of Public Service (NYDPS) submits these comments in response to the FNPRM.

SUMMARY

The NYDPS agrees with the Commission's overall assessment that all local exchange carriers should be required to exchange customer account information in a manner which ensures seamless and timely transitions of customers between local

exchange carriers (LECs).¹ In order for competition to be meaningful and efficient, it is imperative that end users be assured the ability to migrate between carriers without unreasonable delay or confusion. In 2002, as a result of complaints received by the NYDPS, the New York State Public Service Commission (“Public Service Commission”) developed and adopted End User Migration Guidelines (“New York Guidelines”).² The guidelines were developed through a collaborative process which resulted in a comprehensive, carefully detailed set of rules governing customer account information exchanges between competitive local exchange carriers (CLECs) and from CLECs to Verizon New York, Inc. These rules have proven to be highly effective in promoting order and efficiency in New York’s aggressively competitive telecommunications market, and have well served the industry and its end users. There is no reason for the Commission to adopt rules which would preempt state requirements, as states are best suited for addressing local customer migrations. In any event, it is unlikely that the Commission possesses legal authority to enact nationwide rules.

DISCUSSION

The New York Guidelines were developed in response to a growing number of complaints about end user migrations. CLECs complained of excessive delay and refusals by some competitors to release any customer information or otherwise to assist in the transfer of customers who desired to change local carriers.³ The NYDPS also

¹ We assume that the term "LEC," as used in this proceeding, includes CLECs and incumbent local exchange carriers (ILECs).

² Case 00-C-0188, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Order Adopting Phase II Guidelines (issued June 14, 2002). A copy of the New York Guidelines is available on the Web at <<http://www.dps.state.ny.us/doc11820B.pdf>>.

³ Case 00-C-0188, supra, Order Adopting Guidelines (issued January 8, 2001), p. 8.

received numerous complaints regarding migration practices by CLECs. Investigation of those complaints by NYDPS staff revealed that there were instances of unreasonable delays in migration or misunderstandings between the carriers involved.⁴ All of this led to customer inconvenience and confusion.

In response to these problems, the Public Service Commission established a collaborative workgroup in order to develop end user migration guidelines by consensus.⁵ This workgroup included over fifty members of the industry, as well as the New York State Office of the Attorney General and the New York State Consumer Protection Board. The end product of this effort was a set of guidelines which assign specific, enforceable duties to CLECs, including facilities-based CLECs from which and to which the end user is migrating. The final New York Guidelines were adopted on June 14, 2002.⁶

The results for consumers and industry in New York have been generally positive. The New York Guidelines offer a set of step-by-step procedures for CLECs to follow when migrating customers under a variety of scenarios. As a result, the number of consumer complaints in the area of CLEC migrations has diminished substantially.

New York has already accomplished at the state level that which the Commission appears to be contemplating on a national basis. The New York Guidelines were developed by industry consensus through substantial effort, and have proven to be successful. Rather than disturb effective state programs such as New York's, the Commission should refrain from preempting state end user migration rules, especially in

⁴ Id., pp. 8-9.

⁵ Id., p. 2.

⁶ Case 00-C-0188, supra, Order Adopting Phase II Guidelines.

the absence of clear federal legal authority.⁷ Assuming, arguendo, the Commission has authority to promulgate end user migration rules aimed at local service providers, it should consider utilizing the New York Guidelines as a template as minimum standards which the states may augment, if they so choose.

While the NYDPS appreciates BellSouth's interest in nationally uniform rules,⁸ the Commission should recognize that the migration of local customers between local service providers is ultimately a local issue. States are clearly in the best position to tailor end user migration rules to their own local markets, for several reasons. First, the technical sophistication and capabilities of CLECs may vary among regions within the nation. This would impact CLECs' abilities to comply with national requirements governing, e.g., timelines and data transfer protocols. Second, because local market conditions vary widely throughout the nation, there may be a need for rules specifically tailored to reflect these differences. For example, the New York local

⁷ It is unlikely that the Commission possesses statutory authority to promulgate national rules. The legal authority cited in the FNPRM extends to protecting the privacy of customer proprietary network information, see 47 U.S.C. §222, and enacting protections against unauthorized changes in providers of telephone exchange service, see 47 U.S.C. §258. The regulations proposed here do not involve protection of consumer privacy or protection from slamming. Rather, these rules are aimed at the smooth transfer of customers from one LEC to another. Nothing in the Act expressly gives the Commission authority to establish rules or procedures governing exchanges of customer information between LECs, or concerning end user migrations among CLECs. Therefore, the Commission should respect the states' authority over such matters. Even if the Commission were to possess statutory authority in the area of end user migrations among LECs, its authority would be restricted by §2 (b) of the Communications Act of 1934. 47 U.S.C. §152 (b); Louisiana Public Service Comm'n v. FCC, 476 U.S. 355 (1986). In Louisiana, the Supreme Court held that the Commission may only preempt state law in the event that it is impossible for a regulated entity to comply simultaneously with both federal and state rules. Id. at 375, n.4.

⁸ Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, CG Docket No. 02-386, BellSouth October 28, 2004 *ex parte* at 10.

telecommunications market is among the most competitive in the nation, and the New York Guidelines are tailored to accommodate high customer churn rates. Third, it would be unreasonable for the Commission to force states such as New York, which have expended substantial effort, to abandon standards which not only have proven effective, but have buy-in from the industry, which cooperated to develop those standards because of their recognition that end user migration problems are local in nature.

Finally, the NYDPS presumes that any proposed federal rules governing customer information exchanges between CLECs and from CLECs to ILECs would not replace or supersede the Commission's rules concerning customer information exchanges among interexchange carriers (IXCs), and between IXCs and incumbents. As a practical matter, the circumstances surrounding IXC and local service provider end user migrations are dissimilar enough to justify separate rules governing each of these two types of migration.⁹

Respectfully submitted,

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⁹ For example, a CLEC-to-CLEC end user migration may involve a "hot cut" to transfer a subscriber loop between the CLECs, or possibly even between one CLEC and the incumbent. Such activity incurs a degree of technical and operational complexity not typically found in end user migrations between IXCs.