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Federal Communications Commission FCC 96-476

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

In the Matter of	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

Second Order on Reconsideration

Adopted: December 13, 1996 Released: December 13, 1996

By the Commission.

I. INTRODUCTION

1. In this Order, we address two petitions for reconsideration of the *First Report and Order* in this proceeding[1] that question the Commission's rule concerning the obligation of incumbent local exchange carriers (LECs) to provide access to their operational support systems (OSS) functions by January 1, 1997. Because these petitions raise issues that are particularly time sensitive, we address them in this order. We will address petitions for reconsideration of other aspects of our August 8, 1996 Order, including other issues relating to access to OSS functions, in the future.

2. In the *First Report and Order*, the Commission concluded that an incumbent LEC is required to provide access to OSS functions pursuant to its obligation to offer access to unbundled network elements under section 251(c)(3) as well as its obligation to furnish access on a nondiscriminatory basis to all unbundled network elements and services made available

[1] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (rel. Aug. 8, 1996), 61 Fed. Reg. 45476 (Aug 29, 1996) (*First Report and Order*), Order on Reconsideration, 11 FCC Rcd 13042 (1996) (*First Reconsideration*), *further recon. pending, pet. for review pending sub nom. and partial stay granted, Iowa Utilities Board v. FCC*, No. 96-3221 and consolidated cases (8th Cir. filed Sept. 6, 1996), *partial stay lifted in part, Iowa Utilities Board v. FCC*, No. 96-3321 and consolidated cases, 1996 WL 589284 (8th Cir. Oct. 15, 1996).

for resale, under section 251(c)(3) and (c)(4).[2] In this *Second Order on Reconsideration*, we decline to extend the January 1, 1997 date established in the *First Report and Order*. In the *First Report and Order*, we based our determination that incumbent LECs must provide access to OSS functions on two distinct requirements in section 251(c). First, under section 251(c)(3), for purposes of providing access to OSS functions as a network element, an incumbent must be able to provide, upon request, access to OSS functions pursuant to an implementation schedule developed through negotiation or arbitration. Second, under section 251(c)(3) and (c)(4), in order to comply with the requirement to provide nondiscriminatory access to unbundled elements and services for resale, incumbent LECs also are required, by January 1, 1997, to offer nondiscriminatory access to OSS functions. If an incumbent uses electronic interfaces for its own internal purposes, or offers access to electronic interfaces to its customers or other carriers, the incumbent must offer at least equivalent access to requesting telecommunications carriers.

II. PETITIONS

3. Sprint and the Local Exchange Carrier Coalition (LECC)[3] both request that the Commission extend the mandatory date for providing access to OSS functions to January 1, 1998.[4] LECC asserts that the January 1, 1997 date "cannot realistically be met by all carriers for all support systems."[5] Sprint urges the Commission to delay the compliance date and to require the industry to adopt and implement national standards for access to OSS.[6] Both petitioners assert that the January 1, 1997 deadline does not realistically allow carriers to complete and implement national standards for access to OSS functions.[7] In addition, several *ex parte* presentations made by incumbent LECs sought clarification of their obligations to provide access to OSS functions.[8]

4. Several parties maintain that the Commission should retain the January 1, 1997

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[2] *First Report and Order* at paras. 316, 516-17.

[3] LECC consists of more than three hundred non-Bell Operating Company incumbent LECs throughout the United States.

[4] *See* Sprint petition at 5-7; LECC petition at 4-5.

[5] LECC petition at 4-5.

[6] Sprint petition at 5-7.

[7] Sprint petition at 5-7; LECC petition at 4-5.

[8] Letter from Dee May, Director, Federal Regulatory Issues, NYNEX, to William F. Caton, Acting Secretary, FCC (Sep. 8, 1996) (NYNEX Sep. 8 *Ex Parte*); Letter from Lawrence E. Sarjeant, Vice-President, U S West, to William F. Caton, Acting Secretary, FCC (Oct. 7, 1996) (U S West Oct 7 *Ex Parte*).

deadline for access to OSS functions.[9] MCI opposes allowing industry to set national standards before requiring access to OSS functions, arguing that incumbent LECs will abuse the standards setting process to delay and postpone new entrants' electronic access to OSS functions.[10] LECC responds that incumbents do not have an incentive to delay the standards-setting process, because implementation of national standards will avoid expensive manual or interim electronic solutions.[11] Other parties support Sprint's and LECC's petitions to delay the date by which access to OSS functions is required.[12] USTA and Ameritech argue that the Commission should not set a date certain for the establishment of national standards for access to OSS.[13]

III. DISCUSSION

5. Section 251(c)(3) of the Communications Act of 1934, as added by the Telecommunications Act of 1996,[14] requires incumbent LECs "to provide, to any requesting telecommunications carriers for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory."[15] The Commission was charged with identifying network elements and determining whether it is technically feasible for incumbent LECs to provide access to such elements on an unbundled basis.[16] The Commission identified OSS functions as a network element, and determined that it is technically feasible for incumbent LECs to provide access

[9] WorldCom opposition to petition for recon. at 7-8; MCI opposition to petition for recon. at 20-21; CompTel opposition to petition for recon. at 4; AT&T opposition at 3-5; GCI opposition to petition for recon. at 9.

[10] MCI reply at 1-2 ("Electronic access to OSS functions is essential to the ability of new entrants to compete effectively in the local exchange market").

[11] LECC reply at 4.

[12] NYNEX opposition to petition for recon. at 2; SNET opposition to petition for recon. at 11-12; USTA opposition to petition for recon. at 27; BellSouth opposition to petition for recon. at 7 (BellSouth anticipates meeting the Georgia commission's March 31, 1997 deadline, but notes that other incumbent LECs may not have made as much progress); GTE reply at 12 (arguing that incumbents need more time to resolve issues relating to consumer privacy concerns, and that new entrants themselves have yet to resolve what type of access they need).

[13] USTA opposition to petition for recon. at 27; Ameritech opposition to petition for recon. at 14.

[14] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 151 *et. seq.* (1996 Act).

[15] 47 U.S.C. § 251(c)(3).

[16] 47 U.S.C. §§ 251(c)(3), (d)(1), (d)(2).

to OSS functions for unbundling and resale.[17] This determination reflects the Commission's conclusion that access to OSS functions is necessary for meaningful competition, and that failing to provide such access would impair the ability of requesting telecommunications carriers to provide competitive service.[18]

6. In the *First Report and Order*, we concluded that obligations imposed by section 251(c)(3) to provide access to unbundled network elements require the incumbent LEC to make modifications to the extent necessary to accommodate a request from a telecommunications carrier.[19] In the case of access to OSS functions, we recognized that, "although technically feasible, providing nondiscriminatory access to operations support systems functions may require some modifications to existing systems necessary to accommodate such access by competing providers."[20] For example, incumbent LECs may need to decide upon interface design specifications and modify and test software.

7. We further concluded in the *First Report and Order*, based on the record, that January 1, 1997 was a reasonable date by which most, if not all, incumbent LECs could provide access to OSS functions. We concluded that:

> in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4). Incumbent LECs that currently do not comply with this requirement of section 251(c)(3) must do so as expeditiously as possible, but in any event no later than January 1, 1997.[21]

The Commission found it "reasonable to expect that by January 1, 1997, new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations support systems functions."[22] Thus, under our rules, incumbent LECs must have made modifications to their OSS necessary to provide access to OSS functions by January 1, 1997.

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[17] *First Report and Order* at paras. 516, 524. The Commission defined OSS functions as consisting of pre-ordering, ordering, provisioning, maintenance and repair, and billing. *Id.* at para. 523 n.1273. *See also* 47 C.F.R. § 51.319.

[18] *First Report and Order* at para. 516. *See* 47 U.S.C. § 251(d)(2).

[19] *First Report and Order* at para. 198.

[20] *Id.* at para. 524.

[21] *Id.* at para. 525.

[22] *Id.*

8. In order to comply with its obligation to offer access to OSS functions as an unbundled network element by January 1, 1997, an incumbent LEC must, at a minimum, establish and make known to requesting carriers the interface design specifications that the incumbent LEC will use to provide access to OSS functions. Information regarding interface design specifications is critical to enable competing carriers to modify their existing systems and procedures or develop new systems to use these interfaces to obtain access to the incumbent LEC's OSS functions. For example, if an incumbent LEC adopted the Electronic Data Interchange (EDI) standard[23] to provide access to some or all of its OSS functions, it would need to provide sufficiently detailed information regarding its use of this standard so that requesting carriers would be able to develop and maintain their own systems and procedures to make effective use of this standard. As with all other network elements, the obligation arises only if a telecommunications carrier has made a request for access to OSS functions pursuant to section 251(c)(3), and the actual provision of access to OSS functions by an incumbent LEC must be governed by an implementation schedule established through negotiation or arbitration.

9. The issue of nondiscrimination under several provisions of sections 251(c)(3) and (c)(4) is independent of the issue of access to unbundled network elements under section 251(c)(3). We concluded in the *First Report and Order* that section 251 establishes a separate basis for requiring incumbent LECs to provide access to their OSS functions. Specifically, we found that the obligation to offer access to OSS functions was an essential component of an incumbent LEC's duty to offer nondiscriminatory access to all network elements under section 251(c)(3), and to provide services for resale without conditions or limitations that are unreasonable or discriminatory under section 251(c)(4).[24] We observed that the "just, reasonable and nondiscriminatory" standard of section 251(c)(3) requires incumbent LECs to provide network elements on terms and conditions that "provide an efficient competitor with a meaningful opportunity to compete."[25] Incumbent LECs must offer network elements on terms and conditions equally to all requesting carriers, and, where applicable, those terms and conditions must be equal to the terms and conditions on which an incumbent LEC provisions such elements to itself or its customers.[26] Therefore, we held that the duty to provide nondiscriminatory access imposed by section 251(c)(3) and the duty to provide resale services under nondiscriminatory conditions imposed by section 251(c)(4) mandates equivalent access to OSS functions that an incumbent uses for its own internal purposes or offers to its customers or other carriers.[27] By January 1, 1997, to the extent that

[23] The EDI standard is defined by the Telecommunications Industry Forum. *First Report and Order* at para. 513.

[24] *Id.* at paras. 316, 517.

[25] *Id.* at para. 315.

[26] *Id.*

[27] *Id.* at paras. 316, 517. *See also* 47 C.F.R. §§ 53.311(b)-(c).

an incumbent LEC provides electronic pre-ordering, ordering, provisioning, maintenance and repair, or billing to itself, its customers, or other carriers, the incumbent LEC must provide at least equivalent electronic access to requesting carriers in the provision of unbundled network elements or services for resale that it is obligated to provide pursuant to an agreement approved by the state commission.

10. In the *First Report and Order*, we noted the progress that had been made by several incumbent LECs toward meeting their obligation to provide nondiscriminatory access to OSS functions to requesting carriers.[28] We are encouraged by reports that this progress has continued since the release of our Order.[29] Further, for the most part, incumbent LECs have set implementation schedules for themselves that would bring them into compliance with section 251(c) by early 1997.[30] Therefore, we find no basis in the record for postponing the date by which access to OSS must be offered. We believe that many individual carriers are taking actions to modify their systems to provide the necessary access to OSS functions required by the 1996 Act. We also note that several state arbitrations completed thus far have adopted schedules that require substantial implementation of access to OSS functions by January 1, 1997.[31]

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[28] *First Report and Order* at para. 525.

[29] Letter from Bruce Cox, Government Affairs Director, AT&T, to William Caton, Acting Secretary, FCC (Nov. 21, 1996) (AT&T Nov. 21 *Ex Parte*); Letter from Antoinette Cook Bush, Counsel for Ameritech, to William Caton, Acting Secretary, FCC (Nov. 15, 1996) (Ameritech Nov. 15 *Ex Parte*) ; Letter from Dee May, Director, Federal Regulatory Issues, NYNEX, to William Caton, Acting Secretary, FCC (Nov. 15, 1996) (NYNEX Nov. 15 *Ex Parte*); Letter from Bruce Cox, Government Affairs Director, AT&T, to William Caton, Acting Secretary, FCC (Nov. 8, 1996) (AT&T Nov. 8 *Ex Parte*); Letter from Lawrence Sarjeant, Vice President, Federal Regulatory, U S West, to A. Richard Metzger, Jr., Deputy Bureau Chief (Nov. 8, 1996) (U S West Nov. 8 *Ex Parte*); Letter from Whit Jordan, Executive Director, Federal Regulatory, BellSouth, to William Caton, Acting Secretary, FCC (Sept. 25, 1996) (BellSouth Sept. 25 *Ex Parte*); Letter from Jay Bennett, Director, Federal Regulatory Relations, Pacific Telesis, to William Caton, Acting Secretary, FCC (Aug. 22, 1996) (Pacific Telesis Aug. 22 *Ex Parte*).

[30] Letter from Joseph Mulieri, Director, FCC Relations, to William Caton, Acting Secretary, FCC (Nov. 20, 1996) (Bell Atlantic, by January 1, 1997, plans to provide access to most pre-ordering (except for "address verification"), repair and maintenance and billing. It will provide some ordering and provisioning functions for services for resale, but it is still developing these functions for unbundled network elements.); BellSouth Sept. 25 *Ex Parte* (BellSouth plans to provide access to most OSS functions by March 31, 1997, although it has developed some interim solutions that will be available by January 1, 1997.); Pacific Telesis Aug. 22 *Ex Parte*) (Pacific Bell has indicated that it will implement access to OSS functions during 1997.); Letter from Todd Silbergeld, Director, Federal Regulatory, SBC Communications, to William Caton, Acting Secretary, FCC (Oct. 8, 1996) (SBC Communications stated that it will comply in Texas with the Texas commission's implementation schedule for access to OSS functions in its arbitration award.); Ameritech Nov. 15 *Ex Parte* (Ameritech states that it will provide access to OSS functions by January 1, 1997); NYNEX Nov. 15 *Ex Parte* (NYNEX states that it provides access to OSS functions for resold services and unbundled network elements by January 1, 1997.).

[31] *See In re Arbitration of: AT&T Communications of the Midwest, and MCI Metro Access Transmission Services and U S West Communications*, Final Arbitration Decision, Docket Nos. ARB-96-1, ARB-96-2, Iowa Department of Commerce Utilities Board (Nov. 27, 1996); *In the Matter of the Petition of AT&T Communications of Ohio for*

11. Although the requirement to provide nondiscriminatory access to network elements and services for resale includes an obligation to provide access to OSS functions no later than January 1, 1997, we do not anticipate initiating enforcement action against incumbent LECs that are making good faith efforts to provide such access within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission. We do not, however, preclude initiating enforcement action where circumstances warrant. We further note that providing access to OSS functions is a critical requirement for complying with section 251, and incumbent LECs that do not provide access to OSS functions, in accordance with the *First Report and Order*, are not in full compliance with section 251.[32]

12. We also note that, if an incumbent LEC with fewer than two percent of the subscriber lines nationwide is unable to offer nondiscriminatory access to OSS functions by January 1, 1997, it may seek a suspension or modification of this requirement from the relevant state commission.[33] In addition, rural telephone companies are exempt from the requirements of section 251(c), as set forth in section 251(f)(1), except when and to the extent otherwise determined by state commissions.[34]

13. Finally, it is apparent from arbitration agreements and *ex parte* submissions that access to OSS functions can be provided without national standards.[35] We therefore reject the petitions of LECC and Sprint to delay the requirement to provide nondiscriminatory access to OSS functions until national standards have been fully developed. We conclude that such a

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Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with GTE North, Arbitration Panel Report, Case No. 96-832-TP-ARB, Public Utilities Commission of Ohio (Nov. 16 1996); *Petition by AT&T Communications of the Southern States for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications Concerning Interconnection and Resale Under the Telecommunications Act of 1996, et. al.*, Docket No. 960833-TP, Florida Public Service Commission (Nov. 14, 1996); *In the Matter of AT&T Communications of the Midwest's Petition for Arbitration with Contel of Minnesota, d/b/a GTE Minnesota, Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996,* Arbitration Decision, OAH 78-2500-10733-2, MPUC P-442, 407/M-96-939, State of Minnesota Public Utilities Commission, (Nov. 12, 1996); *In the Matter of the Petition of AT&T Communications of the Mountain States for Arbitration of Interconnection Rates, Terms, and Conditions with U S West Communications, Pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996,* Opinion and Order, Docket No. U-2428-96-417, Docket No. E-1051-96-417, Arizona Corporation Commission (Nov. 11, 1996); *Petition of MFS Communications Company for Arbitration of Pricing of Unbundled Loops, et. al.*, Arbitration Award, PUC Consolidated Docket Nos. 16189, 16196, 16226, 16285, and 16290, Public Utility Commission of Texas, FTA96 § 252 Arbitration Panel (Nov. 7, 1996).

[32] *See, e.g.*, 47 U.S.C. § 271(c)(2)(B) (requiring compliance with provisions of section 251 as a precondition for Bell Operating Company (BOC) entry into in-region interLATA markets).

[33] 47 U.S.C. § 251(f)(2).

[34] 47 U.S.C. § 251(f)(1).

[35] *See supra* para. 10.

requirement would significantly and needlessly delay competitive entry. In the *First Report and Order*, we stated that, in order to ensure continued progress in establishing national standards, we would "monitor closely the progress of industry organizations as they implement the rules adopted in this proceeding."[36] We continue to encourage parties to develop national standards for access to OSS functions, but decline to condition the requirement to provide access to OSS functions upon the creation of such standards.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to sections 1-4, 201-205, 214, 251, 252, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154, 201-205, 251, 252, and 303(r), the Second Order on Reconsideration is ADOPTED.

15. IT IS FURTHER ORDERED, pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. § 405, and section 1.106 of the Commission's rules, 47 C.F.R. § 1.106 (1995), that the petitions for reconsideration filed by the Local Exchange Carrier Coalition and the Sprint Corporation are DENIED, to the extent that they seek deferral of the January 1, 1997 date regarding access to OSS functions.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[36] *First Report and Order* at para. 528.