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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission	)	CC Docket No. 97-163
	)	
Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with BellSouth Before the Georgia Public Service Commission	)	CC Docket No. 97-164
	)	
Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina	)	CC Docket No. 97-165

OPPOSITION OF AMERITECH ILLINOIS TO PETITION FOR RECONSIDERATION

Illinois Bell Telephone Company ("Ameritech Illinois"), by its attorneys, respectfully submits its response to the Petition for Reconsideration filed by Low Tech Designs, Inc. ("LTD").

On October 8, 1997, the Federal Communications Commission ("FCC") released its Memorandum Opinion and Order ("Opinion"), denying LTD's request that the FCC assume jurisdiction over the arbitration between LTD and Ameritech Illinois conducted by the Illinois Commerce Commission ("ICC"). The FCC concluded that LTD had not established that the ICC "failed to act" under Section 252(e)(5) of the Telecommunications Act of 1996 ("the Act") when the ICC dismissed LTD's petition for arbitration with Ameritech Illinois on the ground that LTD was not a "telecommunications carrier" as defined in the Act. Opinion, ¶ 31. On the contrary,

the FCC found, the ICC did not "fail to act" under the rules adopted by the FCC to implement § 252(e)(5) because the ICC responded to LTD's request for arbitration and issued a final decision within the time period prescribed by the Act. Id., ¶ 32. LTD now requests that the FCC reconsider its decision denying LTD's petition to assume jurisdiction.[1/]

Reconsideration of an FCC decision "is only appropriate where the petitioner either shows a material error or omission in the original order or raises additional facts not known or not existing until after a petitioner's last opportunity to present such matters." WWIZ, Inc., 37 FCC 685, 686 (1964), aff'd sub nom., Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965), cert. denied, 383 U.S. 967 (1966); In re Application of D.W.S., Inc., 11 FCC Rcd 2933, 1996 WL 91505, *2 (1996). LTD's petition for reconsideration fails under both of these tests.

First, LTD's petition for reconsideration does not point to any new facts to suggest that the FCC's decision to deny LTD's request to assume jurisdiction was wrong. Indeed, given the ground for LTD's petition for assumption of jurisdiction, there are not, and could not be, any "facts not known or not existing until after a petitioner's last opportunity to present such matters." In any event, the facts alleged in the petition for reconsideration are the same ones found in LTD's petition to assume jurisdiction. And as the FCC found in its well-reasoned opinion, the facts presented by LTD do not support a finding that the ICC "failed to act" with respect to the LTD/Ameritech Illinois arbitration. (Opinion, ¶¶ 31-38.)

[1/] The FCC's Opinion also rejected LTD's request that the FCC assume jurisdiction of LTD's arbitrations with BellSouth before the Georgia Public Service Commission and GTE before the Public Service Commission of South Carolina. LTD seeks reconsideration of all three denials of its petitions to assume jurisdiction.

Second, LTD's petition for reconsideration fails to demonstrate that the FCC's ruling was based on any material error or omission. In its Opinion, the FCC addressed the two principal arguments that LTD presented in its petition to assume jurisdiction. LTD presents nothing in its reconsideration petition to suggest that the FCC's decision was wrong on either of these two points.

In its petition to assume jurisdiction, LTD first argued that the ICC "failed to act" because it did not conduct an arbitration that resolved the issues raised in LTD's arbitration petition. Id., ¶ 33. The FCC rejected this argument. In its Opinion, the FCC noted that it had declined to take an "expansive view" of what constitutes a "failure to act" in adopting rules to implement § 252(e)(5) and that its rules provide that a state commission "fails to act" only when "a state commission fails to respond, within a reasonable time, to a request for arbitration, or fails to complete arbitration within the time limits of Section 252(b)(4)(C)." Id., ¶¶ 33-34, citing Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 16128 (1996), ¶ 1285, aff'd in part and vacated in part sub nom., Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), aff'd in part and vacated in part sub nom., Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997); 47 C.F.R. § 51.801(b). Under this analysis, the FCC found that the ICC's dismissal of the arbitration petition did not constitute a "failure to act."

The present petition all but ignores this part of the Opinion. Except for a single restatement of its original argument, LTD is silent as to how the FCC erred in finding that the ICC did not "fail to act" for purposes of § 252(e)(5). LTD does not take issue with 47 C.F.R.

§ 51.801(b), the FCC's rule implementing Section 252(e)(5) of the Act. Nor does LTD take issue with the FCC's application of that rule to the facts of the case.

LTD's attempt to refight the battle that it lost earlier is not sufficient to warrant reconsideration. All that LTD argues in its reconsideration petition is that the ICC failed to complete the LTD/Ameritech Illinois arbitration because it did not resolve the issues between Ameritech Illinois and LTD, and that LTD therefore did not obtain an arbitrated interconnection agreement with Ameritech Illinois. (Petition for Reconsideration, p. 16.)[2/] This same argument was made by LTD in it petition for assumption of jurisdiction (Petition for Assumption of Jurisdiction, ¶¶ 7,10), and was addressed and rejected by the FCC (Opinion, ¶¶ 33-34). "As we have repeatedly stated, reconsideration will not be granted for the purpose of debating matters on which we have already deliberated and spoken." D.W.S., Inc., 1996 WL 91505, *2. "It is well settled [FCC] policy that 'bare disagreement [with the FCC], absent new facts and arguments, properly submitted, is insufficient grounds for reconsideration.'" In the Matter of the Petition of California, 11 FCC Rcd 796, 1995 WL 468206, * 12 (1995)(citations omitted).

Similarly, LTD offers nothing in its reconsideration petition to suggest that the FCC erred in declining to address the merits of the underlying arbitration decision by the ICC. In its petition to assume jurisdiction, LTD challenged the substantive grounds upon which the ICC dismissed LTD's petition for arbitration, but the FCC properly declined to address that issue. The FCC noted that 47 C.F.R. § 51.801 does not focus on the validity of the state commission's

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[2/] Such an argument is baseless. Under LTD's view, a state commission that dismissed a party who filed its petition later than 160 days after its request for negotiations or who filed a petition without identifying any issues to be arbitrated would have "failed to act" if the party did not end up with an arbitrated interconnection agreement. Such a result would render meaningless the requirements for arbitration set forth in § 252(b).

decision and, thus, held that it would not undertake to examine the underlying decision of the ICC. Id., ¶ 36.

In its reconsideration petition, LTD fails to offer a single reason that the FCC should review the ICC's arbitration decision. Rather, LTD has put the cart before the horse. It spends nearly all of its 25-page petition for reconsideration again arguing the merits of the ICC's arbitration decision. However, all of that is irrelevant to the pending motion to reconsider, and irrelevant to the question whether the FCC should assume jurisdiction. LTD first would have to clear the hurdle of justifying FCC review of the underlying arbitration as a proper part of a Section 252(e)(5) request. The FCC determined that it was not required to address the merits of the ICC's decision, and LTD has presented nothing to suggest that that decision was wrong.

CONCLUSION

For the foregoing reasons, LTD's petition for reconsideration of the FCC's denial of LTD's petition to assume jurisdiction of the LTD/Ameritech Illinois arbitration should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Artie King, hereby certify that I have this day served one copy of Opposition of Ameritech Illinois to Petition for Reconsideration upon the following parties:

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via first class U.S. mail, postage prepaid, this 19th day of November, 1997.

Artie King

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*** Hand Delivered**