RECEIVED
JUN 1 - 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	DOCKET FILE COPY ORIGINAL
	)	
Competitive Telecommunications Association,	)	
Florida Competitive Carriers Association, and	)	
Southeastern Competitive Carriers Association	)	
	)	CC Docket No. 98-39
Petition On Defining Certain Incumbent LEC Affiliates	)	
As Successors, Assigns, or Comparable Carriers	)	
Under Section 251(h) of the Communications Act	)	

REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.

U S WEST Communications, Inc. ("U S WEST") submits its Reply Comments in opposition to the Petition in this docket for declaratory ruling or rulemaking regarding the regulatory treatment of Bell Operating Company ("BOC") affiliates who provide wireline local exchange services.[1]

I. THE COMMISSION HAS ALREADY DECIDED THE ISSUE RAISED BY COMPTEL'S PETITION

The Federal Communications Commission ("Commission") concluded in the Non-Accounting Safeguards Order that a BOC affiliate who provides local exchange service will not be regarded as an incumbent local exchange carrier ("ILEC") merely

[1] Competitive Telecommunications Association, Florida Competitive Carriers Association, and Southeastern Competitive Carriers Association (collectively "CompTel") Petition for Declaratory Ruling or, in the Alternative, for Rulemaking, filed Mar. 23, 1998 ("Petition"). Public Notice, Commission Seeks Comment on Petition Regarding Regulatory Treatment of Affiliates of ILECs, DA 98-627, rel. Apr. 1, 1998. Order Extending Time To File Reply Comments, CC Docket No. 98-39, DA 98-867, rel. May 8, 1998. Comments were filed May 1, 1998.

No. of Copies rec'd 0+12
List ABCDE

because it provides local exchange service within the BOC's in-region states.[2] Only where a BOC "transfers to an affiliated entity ownership of any network elements that must be provided on an unbundled basis pursuant to section 251(c)(3)" will such an entity be deemed to be a successor or assign of the BOC.[3]

The Commission has also recognized that a BOC affiliate may choose to become a competitive local exchange carrier ("CLEC") in order to provide local exchange service.[4] In fact, the Commission said that regulations prohibiting BOC affiliates "from offering local exchange service do not serve the public interest. The goal of the 1996 Act is to encourage competition and innovation in the telecommunications market."[5] The Commission also said that the ability of a Section 272 affiliate to offer both interLATA and local services "serves the public interest" because such flexibility will permit the affiliate "to provide innovative new services."[6]

Those conclusions were reached after a thoughtful consideration of the issues. CompTel has suggested no reason why those conclusions should be re-visited only a

---

[2] In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905 (1996) ("Non-Accounting Safeguards Order"), remanded Bell Atlantic Telephone Companies v. FCC, No. 97-1067 (D.C. Cir. 1997), pet. for rev. in abeyance, SBC Communications v. FCC, No. 97-1118 (D.C. Cir.); on recon. 12 FCC Rcd. 2297 (1997), on further recon., 12 FCC Rcd. 8653 (1997).

[3] Id. at 22054 ¶ 309; 47 C.F.R. § 53.207.

[4] BellSouth Corporation ("BellSouth") at 5; Bell Atlantic Telephone Companies at 3-4.

[5] Non-Accounting Safeguards Order at 22057-58 ¶ 315.

[6] Id.

little more than one year after they were made by the Commission.

U S WEST agrees with those commenters who recognize what the Commission concluded earlier: Allowing a BOC affiliate to provide local exchange service through resale or unbundled network elements will not disadvantage other CLECs, "because other telecommunications carriers will be able to provide local exchange service through unbundled elements [and resale] on the same terms and conditions."[7]

In the Non-Accounting Safeguards Order, the Commission recognized that a BOC is required by Section 251 to treat unaffiliated requesting carriers in the same manner that it treats its affiliate who provides local service.[8] For that reason U S WEST disagrees with those commenters who claim that ILECs intend to "sabotage," "evade," "avoid," or "end run" their Section 251 obligations when they create BOC affiliates to provide local exchange services.[9] Rather, U S WEST agrees with Frontier who recognizes the obvious: the BOC still exists as an ILEC, still serves the vast majority of customers served by the BOC affiliate, still owns the critical network infrastructure, and still owes the same Section 251 duties to other providers of local service.[10]

---

[7] Id. at 22056-57 ¶ 314.

[8] Id. at 22058 ¶ 316.

[9] Association for Local Telecommunications Services at 2; AT&T Corp. at 2-6; e.spire Communications, Inc. at 3-6; NEXTLINK Communications, Inc. at 1-6.

[10] Frontier Corporation at 6-7.

II. CLAIMS THAT BOC AFFILIATES ARE ESTABLISHED TO ALLOW THE BOC TO EVADE ITS SECTION 251 DUTIES ARE NOT CREDIBLE

Many of the commenters supporting CompTel's Petition attack the BOC and BOC affiliate who both provide retail telecommunications services to end users, contending that this is an obvious ploy by the BOC to evade the resale duty under Section 251(c)(4).[11]

Curiously, however, only a little over one month ago many of these same commenters were enthusiastically endorsing LCI's "Fast Track" proposal[12] which would have eliminated resale at wholesale rates altogether.[13] Under LCI's proposal, after the BOC reorganized, neither NetCo (the wholesale carrier's carrier) nor ServCo (the retail provider) would offer telecommunications services which are subject to the resale duty in Section 251(c)(4).[14] Even though this result would seem to eliminate local resale as a practical alternative for local market entry, they did

---

[11] See, e.g., ICG Telecom Group at 8-10; KMC Telecom Inc. at 1-5; MCI Telecommunications Corporation at Section B.

[12] Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings, CC Docket No. 98-5 ("LCI Petition"), filed Jan. 22, 1998.

[13] U S WEST Reply Comments to the LCI Petition, CC Docket No. 98-5, filed Apr. 22, 1998 at 6-9.

[14] Under LCI's proposal, NetCo would be a carrier's carrier who would be regarded as an ILEC and who would be subject to the resale duty in Section 251(c)(4); however, it would offer no end-user customer retail services which are subject to the resale duty. ServCo (the BOC affiliate providing local service) would offer end-user customer retail services, but it would not be subject to the resale duty in Section 251(c)(4), because it would not be regarded as an ILEC. Accordingly, resellers who were able to purchase local services at wholesale rates from the former integrated BOC before implementing LCI's proposal would be unable to purchase services at wholesale rates from either NetCo or ServCo, because NetCo would offer no services at retail which would be subject to the resale duty and because ServCo would not be

not object.

In the instant docket, even though the BOC is plainly obligated by Section 251(c)(4) to offer telecommunications services at wholesale rates to CLECs and to its BOC affiliate who provides local service on the same terms and conditions, they accuse the BOC of attempting to evade its Section 251(c)(4) resale duty. That is nonsense. When Section 251(c)(4) resale at wholesale rates was effectively eliminated if a BOC chose to implement LCI's "Fast Track" proposal, they applauded. That also is nonsense. U S WEST submits that they had it wrong in the LCI docket and they have it wrong in this docket.

III. COMPTEL'S PETITION IS PROCEDURALLY IMPROPER

U S WEST agrees that CompTel's request for declaratory ruling is procedurally defective. CompTel obviously disagrees with the Commission's conclusions in the Non-Accounting Safeguards Order about BOC affiliates who provide local exchange service. However, CompTel's Petition is nothing more than an untimely petition for reconsideration filed more than 1-1/2 years after the Commission released that Order.[15]

---

subject to that resale duty at all. Resale at wholesale rates would be eliminated under LCI's proposal.

[15] BellSouth at 2-7; GTE at 10-12; Ameritech at 19-23.

IV. CONCLUSION

For all of the above reasons, the Commission should summarily dismiss the Petition.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By: John L. Traylor (RW)

John L. Traylor
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2798

Its Attorney

Of Counsel,
Dan L. Poole

June 1, 1998

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 1st day of June, 1998, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served, via first class United States Mail, postage pre-paid, upon the persons listed on the attached service list.

Rebecca Ward

Rebecca Ward

*Served via hand delivery

*William E. Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Gloria Tristani
Federal Communications Commission
Room 826
1919 M Street, N.W.
Washington, DC 20554

*Michael K. Powell
Federal Communications Commission
Room 844
1919 M Street, N.W.
Washington, DC 20554

*Harold Furchtgott-Roth
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

*Susan P. Ness
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

*Chief, Common Carrier Bureau
Federal Communications Commission
Room 500
1919 M Street, N.W.
Washington, DC 20554

*Carol E. Mattey
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*Janice M. Myles
Federal Communications Commission
Room 544
1919 M Street, N.W.
Washington, DC 20554

*International Transcription
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Catherine R. Sloan
Richard L. Fruchterman III
Richard S. Whitt
David N. Porter
WorldCom, Inc.
Suite 400
1120 Connecticut Avenue, N.W.
Washington, DC 20036

Genevieve Morelli
Competitive Telecommunications
Association
Suite 800
1900 M Street, N.W.
Washington, DC 20036

David L. Sieradzki — CTA, *et al.*
Jennifer A. Purvis — LCI
Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson, LLP
555 13th Street, N.W.
Washington, DC 20004

(2 Copies)

Rachael J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Danny E. Adams — CWI
Rebekah J. Kinnett — E.SPIRE
Brad E. Mutschelknaus
John J. Heitmann
Kelley, Drye & Warren, LLP
Suite 500
1200 19th Street, N.W.
Washington, DC 20036
(2 copies)

Mary McDermott
Linda Kent
Keith Townsend
Lawrence E. Sarjeant
United States Telephone Association
Suite 600
1401 H Street, N.W.
Washington, DC 20005

Cindy Z. Schonhaut
ICG Communications, Inc.
161 Inverness Drive West
Englewood, CO 80112

Albert H. Kramer — ICG
Michael Carowitz
Dickstein, Shapiro, Morin & Oshinsky
2101 L Street, N.W.
Washington, DC 20037

Charles C. Hunter — TRA
Catherine M. Hannan
Hunter Communications Law Group
Suite 701
1620 I Street, N.W.
Washington, DC 20006

Madelyn M. DeMatteo
Alfred J. Brunetti
The Southern New England
Telephone Company
227 Church Street
New Haven, CT 06510

Mark L. Evans — SNETC
Geoffrey M. Klienberg
Rebecca A. Beynon
Kellogg, Huber, Hansen,
Todd & Evans, PLLC
Suite 1000 West
1301 K Street, N.W.
Washington, DC 20005

Robert M. Lynch
Durward D. Dupre
SBC Communications, Inc.
Suite 3703
One Bell Plaza
Dallas, TX 75202

Patricia L.C. Mahoney
SBC Communications, Inc.
Room 1523
140 New Montgomery Street
San Francisco, CA 94105

Richard J. Metzger
Emily M. Williams
Association for Local
Telecommunications Services
Suite 900
888 17th Street, N.W.
Washington, DC 20006

Gary L. Phillips
Ameritech Corporation
Suite 1020
1401 H Street, N.W.
Washington, DC 20005

Mark C. Rosenblum
Leonard J. Cali
James W. Grudus
AT&T Corp.
Room 3250G3
295 North Maple Avenue
Basking Ridge, NJ 07920

James G. Pachulski
Bell Atlantic
8th floor
1320 North Court House Road
Arlington, VA 22201

William B. Barfield
M. Robert Sutherland
David G. Richards
BellSouth Corporation
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Michael J. Shortley III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Gail L. Polivy
GTE Service Corporation
Suite 1200
1850 M Street, N.W.
Washington, DC 20036

John F. Raposa
GTE Service Corporation
HQE03J27
600 Hidden Ridge
Irving, TX 75038

R. Michael Senkowski
Jeffrey S. Linder
Timothy J. Simeone
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

GTE

Anne K. Bingaman
Douglas W. Kinkoph
LCI International Telecom Corp.
Suite 800
8180 Greensboro Drive
McLean, VA 22102

David W. Zesiger
Donn T. Wonnell
Independent Telephone &
Telecommunications Alliance
Suite 600
1300 Connecticut Avenue, N.W.
Washington, DC 20036

Andrew D. Lipman
Mary C. Albert
Swidler & Berlin, Chtd.
Suite 300
3000 K Street, N.W.
Washington, DC 20007

KMC

Frank W. Krogh
Mary L. Brown
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Chérie R. Kiser
A. Sheba Chacko
Mintz, Levin, Cohn, Ferris,
Glovsky and Popeo, PC
Suite 900
701 Pennsylvania Avenue, N.W.
Washington, DC 20004

INTERMEDIA

Riley M. Murphy
e.spire Communications, Inc.
Suite 200
133 National Business Parkway
Annapolis Junction, MD 20701

Cathleen A. Massey
NEXTLINK Communications, Inc.
Suite 1000
1730 Rhode Island Avenue, N.W.
Washington, DC 20036

Daniel M. Waggoner
James S. Bitz
Robert S. Tanner
Davis Wright Tremaine, LLP
Suite 700
1155 Connecticut Avenue, N.W.
Washington, DC 20036

L. Marie Guillory
National Telephone Cooperative
Association
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
11th Floor
1850 M Street, N.W.
Washington, DC 20036

Teresa Marrero
Teleport Communications Group, Inc.
Two Teleport Drive
Staten Island, NY 10311

(CC98-39.doc)
Last Update: 6/1/98