ORIGINAL

RECEIVED
DEC 23 1998
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	
1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets	)	**CC Docket No. 98-183**

REPLY COMMENTS OF MCI WORLDCOM, INC.

Mary L. Brown
1801 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 887-2551

No. of Copies rec'd 0+8
List A B C D E

Dated: December 23, 1998

TABLE OF CONTENTS

Summary ii

Introduction 2

Almost All Non-ILEC Parties Confirm That Allowing Nondominant Carrier To Bundle CPE and Enhanced Services Promotes Competition 3

The ILECs' Request for "Symmetry" Should be Rejected 5

MCI WorldCom Supports Requirements that ILECs Must Offer Voice Mail Services to CLECs 9

GTE's Arguments on How Bundles Would Be Treated for Universal Service Purposes Is Beyond the Scope of This Proceeding 10

Conclusion 11

Summary

The overwhelming weight of the comments supports the Commission's proposal to dispense with these rules in the interexchange market. Almost all of the commenting parties agree with MCI WorldCom that the unbundling rules should be eliminated for interexchange services and local services offered by competitive local exchange carriers (CLECs). Such an approach recognizes and conforms to the economic rationale derived from antitrust law that underlies the unbundling rules set forth in the Computer II proceeding.

MCI WorldCom opposes allowing ILECs to bundle CPE and to offer enhanced services without restrictions. The ILEC arguments, grounded in the equitable concern that they be treated "fairly" compared to other telecommunications carriers, fail to demonstrate or persuade that their monopoly positions in the local exchange and exchange access market, combined with unfettered ability to bundle CPE and enhanced services, will produce more competition to benefit consumers in all three markets. The ILECs are far better positioned to offer CPE than new entrants. Unless the new entrants are clever enough to find a source of CPE that allows them to put the same "value proposition" to the customer as the ILECs can, the ILEC will more easily be able to defend their market share and competition in the local exchange and exchange access markets will be further delayed. As MCI WorldCom stated in its comments, so long as ILECs maintain market power, the existing bundling rules should continue to apply to them.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Policy and Rules Concerning the Interstate, Interexchange Marketplace	)	**CC Docket No. 96-61**
	)	
Implementation of Section 254(g) of the Communications Act of 1934, as amended	)	
	)	
1998 Biennial Regulatory Review -- Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets	)	**CC Docket No. 98-183**

REPLY COMMENTS OF MCI WORLDCOM, INC.

Introduction

MCI WorldCom, Inc. ("MCI WorldCom") hereby replies to the initial comments filed in response to the Further Notice of Proposed Rulemaking (Further Notice) in the above-referenced dockets concerning the Commission's rules for unbundling of customer premises equipment (CPE) from regulated telecommunications services and the provision of enhanced services in cases where a carrier also offers telecommunications services to customers.[1] The overwhelming weight of the comments supports the Commission's proposal to dispense with these rules in the interexchange market. As expected, the incumbent local exchange carriers (ILECs) argue for a

[1] FCC 98-258 (released Oct. 9, 1998).

false regulatory "symmetry," under which the unbundling rules would be eliminated for all carriers, irrespective of monopoly power. As explained below, there is no coherent rational for modifying the unbundling rules for ILEC local services, whether offered by the ILECs themselves or by their affiliates as part of the a package.

Almost All Non-ILEC Parties Confirm That Allowing Nondominant Carriers To Bundle CPE and Enhanced Services Promotes Competition

Almost all of the commenting parties agreed with MCI WorldCom that the unbundling rules should be eliminated for interexchange services and local services offered by competitive local exchange carriers (CLECs). As CompTel stated, nondominant carriers should be allowed to bundle CPE with basic services, and should also be allowed to offer enhanced services without any limitation on the nondominant carrier's offerings. Such an approach recognizes and conforms to the economic rationale derived from antitrust law that underlies the unbundling rules set forth in the Computer II proceeding.[2]

Even the two parties that oppose the elimination of the rules for any carriers do so in a manner that confirms the market power-based approach advocated by MCI WorldCom and others. America Online, Inc. (AOL) bases its opposition on any modification on the fact that

> transmission markets are not fully competitive, particularly with regard to 'last-mile' access to residential customers. On the contrary, these essential loop

---

[2] Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 c2d 384, 443n. 52 (1980) (Computer II Final Decision), mod. on reconsideration, c 2d 50 (1981) (Computer II Recon. Order), mod. On further reconsideration, 88 FCC .512 (1981), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 6 2d 198 (D.C. Cir. 1982) (CCIA), cert. denied, 461 U.S. 938 (1983).

> facilities remain a key bottleneck that can impede competition. Moreover, as the carriers roll out advanced services, such as DSL, new concerns are emerging involving improper use of market power and anticompetitive conduct.[3]

Thus, the problems specified by AOL pertain only to ILECs, not to the interexchange market. Nowhere does AOL mention any interexchange carrier (IXC) or competitive local exchange carrier (CLEC) conduct or market position that might require continuation of the unbundling rules for such carriers. Similarly, Team Centrex opposes elimination of the rules for IXCs primarily because that "will pave the way for the unbundling prohibition to be lifted in the local exchange market. Such prohibition is necessary to avoid unreasonably discriminatory practices."[4] Although Team Centrex does say at one point that it agrees with IDCMA that IXCs also could force customers to buy CPE through bundling, its entire discussion of the discriminatory practices resulting from bundling focuses solely on ILECs.[5]

In short, even the rational presented by the only parties opposing elimination of the unbundling rules for nondominant services is consistent with the elimination of those rules for those services and provides direct support for continuation of those rules only as to ILEC local exchange and exchange access services.

---

[3] AOL Comments at 8. AOL's footnote to the quoted discussion (id. at 8, n. 16), elaborates on the discriminatory and other anticompetitive conduct that characterizes Bell Operating Company (BOC) and other large ILEC participation in DSL services to date, there is no mention of other categories of carriers.

[4] Nationwide Business Telephone Systems, L.L.C. d/b/a Team Centrex Comments at 2.

[5] Id. at 2-4.

The ILECs' Request for "Symmetry" Should be Rejected

ILECs argue for the elimination of the rules as to all carriers and services, including their local services. They assert that, instead of reviewing the unbundling rules to determine whether they should be modified, the Commission ought to examine whether there would be any reason to impose such rules now if they were not already in place. They conclude that, under such an approach, unbundling rules could not be justified for any carriers.[6] According to the ILECs, the intense competition in the CPE and enhanced services markets will prevent the exercise of market power by any carrier in those markets by means of bundling[7] and that they could not possibly dominate those markets, any more than IXCs could. They point out that those markets are characterized by vigorous competition among many large firms, some of them larger than the ILECs, precluding any predation strategy.[8] BellSouth asserts that the unbundling rules in Computer II were promulgated in a unique context, at a time when the Bell System was the overwhelmingly dominant vertically integrated carrier in all telecommunications markets and that there is now no risk that the ILECs, most of the which are not vertically integrated, could harm the CPE market.[9]

---

[6] USTA Comments at 3-4; US West Comments at 2-3. US West argues that while State Farm previously may have required a status quo-based approach toward the review of existing regulations, Section 11 of the Communications Act, added by the 1996 Act, reversed that presumption. US West Comments at 4.

[7] US West Comments at 2.

[8] Ameritech Comments at 10-14; BellSouth Comments at 4-8.

[9] BellSouth Comment at 4.

Several of the ILECs cite the Cellular Bundling Order as precedent for the approach that they say should be taken now with regard to the bundling of CPE and enhanced services with their local services. They assert that requiring that the basic service portion of any bundle be made available separately on an unbundled basis, as was required in the Cellular Bundling Order, will be sufficient to prevent discrimination or any adverse effect on the CPE or enhanced service market,[10] arguing that the local service market is as competitive now as the cellular service market was at the time of that order.[11] They argue that, just as the Commission allowed cellular carriers to bundle in spite of the absences of full competition in the cellular market, since on service provider could significantly affect the CPE market, the consumer benefits from bundling justify bundling with ILEC local services.[12]

The ILECs assert that they will be disadvantage if CLECs and IXCs are allowed to bundle their services with CPE and enhanced services while ILECs are prohibited from doing so.[13] They claim that there is no justification for different rules for different categories of carriers, as long as the basic service portion of any bundle is available separately, which ensures nondiscrimination and the inability to exercise market power. They assert that different rules for

---

[10] Ameritech Comments at 10-14; BellSouth Comments at 4-5.

[11] Ameritech Comments at 10-14; Bell Atlantic Comments at 3-7; SBC Comments at 6.

[12] Bell Atlantic Comments at 2; BellSouth Comments at 11-12; SBC Comments at 7-9. See also BellSouth Comments at 9 (citing Commission decisions allowing ILECs to price bundling video services with local services, as long as the unbundling tariffed rate imputed to the bundled sales, and to the local service with CMRS provided by the ILEC's affiliate).

[13] See, e.g., USTA Comments at 2.

different carriers prevents the benefits of bundling to be made available to all consumers,[14] contrary to the competitive neutrality goal of the Telecommunications Act of 1996, which was intended to open up markets to new entrants.[15] SBC goes so far as to argue that ILECs should not be denied the right to bundle CPE and enhanced services with local services while IXCs are permitted to bundle those products with interexchange services, even in a situation where an IXC may not include (resold BOC) local service in the bundle.[16] The ILECs claim that unless all carriers are permitted to bundle CPE and enhanced services with whatever basic services they are authorized to provide, ILECs cannot hope to compete against the bundled offerings of IXCs.[17]

Next Level Communications also appears to take the position that the rules should be eliminated for all carriers, asserting that there is significant competition in all service markets and CPE. Next Level's argument, however, is limited to the high speed data and video markets. It claims that, as in cellular service and DBS, bundling is an effective promotional vehicle in the high speed data market, thus allowing ILECs to compete with video and cable modem services -- the current "incumbent" broadband service providers offering bundled video and data services. Next Level concludes that, as the new entrants into HDSL, ILECs should be allowed to bundle video and data services with broadband CPE.[18]

---

[14] BellSouth Comments at 13-15.

[15] SBC Comments at 4-5.

[16] SBC Comments at 11.

[17] SBC Comments at 8; USTA Comments at 3.

[18] Next Level Communications at 2-7.

In evaluating the arguments advanced by those parties supportive of allowing ILEC bundling, MCI WorldCom suggests that the Commission identify and adhere to its stated goals of furthering competition. The outcome of this proceeding should be tested against the standard of whether consumers of services and products in all three markets will be benefited by the removal of relaxation of any particular bundling rule.[19] Stated differently, the test for whether a bundling prohibition or restriction should be lifted for a particular segment of the telecommunicaions industry is whether consumers in all three affected markets -- telecommunications services, CPE and enhanced services --will be benefited by greater choices, innovative services and products, increased convenience, and competitive pricing. The ILEC arguments, grounded in the equitable concern that they be treated "fairly" compared to other telecommunications carriers, fail to demonstrate or persuade that their monopoly positions in the local exchange and exchange access market, combined with unfettered ability to bundle CPE and enhanced services, will produce more competition to benefit consumers in all three markets.

MCI WorldCom's Comments in this proceeding addressed most of the arguments put forth by the ILECs to support their assertion that they should be allowed to freely bundle enhanced services and CPE.[20] Our comments discuss a number of anticompetitive concerns that arise should a monopolist in one market be allowed to bundle its services with competitive offerings in adjacent markets. In the past, the Commission itself identified the problem of forcing the monopolist's customers to take the monopolist's CPE, as well as the problem of ILECs

---

[19] Notice at para. 5.

[20] MCI WorldCom Comments at 12-23.

subsidizing CPE through monopoly profits. In addition, our comments identify how the bundled provision of CPE can promote strategic pricing that harms competition. In its comments SBC confirms MCI WorldCom's fears of well-funded ILEC strategic pricing by means of bundling when it states that "[s]ince bundling allows a larger revenue base, inclusive of network services and CPE, pricing arrangements and discounts can be uniquely tailored.[21] "Uniquely tailored" is clearly a reference to the ILECs' ability to target large business customers that are so critical to a CLEC's ability to enter a market. Finally, we also discussed the leveraging problems if ILEC section 272 affiliates or "ILEC-CLEC" affiliates are allowed to leverage ILEC market power into the CPE and enhanced services markets. The issues identified are substantial, and require the Commission to proceed first to eliminate bundling restrictions for telecommunications carriers who are nondominant.

MCI WorldCom Supports Requirements that ILECs Must Offer Voice Mail Services to CLECs

In its comments, Network Plus discusses at length the competitive inequities that exist in the local exchange market, where the ILEC currently offer a bundle of local telecommunications service and voice mail (an enhanced service), while simultaneously refusing to sell voice mail to CLECs for resale to their customers or as an unbundled element.[22] MCI WorldCom concurs in Network Plus' view that many consumers consider voice mail a critical service, and are reluctant to change providers if the new entrant does not offer voice mail. Yet the ILECs have refused to

[21] SBC Comments at 9.

[22] Network Plus Comments at 7-17.

offer voice mail for resale or as an unbundled element -- even though they are bundling their local service with voice mail and offering the package in the marketplace.[23] In the instant proceeding, the Commission should find, as a matter of federal law, that ILECs must offer enhanced services that they are bundling with local services pursuant to the requirements of section 251 -- for resale or as an unbundled element.

GTE's Arguments on How Bundles Would Be Treated for Universal Service Purposes Is Beyond the Scope of this Proceeding

GTE raises a question concerning the eligibility of carriers for universal service fund (USF) support where they offer only one bundle of service containing local services, CPE and interexchange toll.[24] GTE argues that such a carrier should receive universal service support for serving customers who purchase the bundle. GTE forsees a problem, however, if that bundle is priced for high-end customer, in which case, the carriers would be getting support without serving low-end subscribers. GTE's solution is to require all eligible carriers to offer at least one set of services that meets or exceeds the list of supported services, but is available at a price no greater than the maximum affordable rate determined by the state commission. How universal service support is paid, and on what basis it should be paid, is currently the subject of an ongoing

[23] A separate petition, concering the availability of voice mail for resale, has been pending for nearly a year. Petition of the Telecommunications Resellers Association for a Declaratory Ruling, filed March 5, 1998.

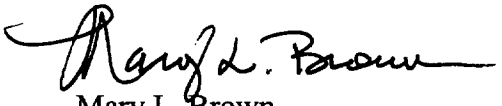
[24] GTE Comments.

rulemaking that has not reached resolution.[25] It is far from clear that there will be any need to reconcile universal service support payments with specific carrier offerings in order to ensure that universal service policy is achieving its goal. The Commission should defer consideration of this question to its universal service docket.

Conclusion

MCI WorldCom requests that the Commission eliminate its bundling restrictions as those apply to nondominant carriers, while maintaining those restrictions for dominant carriers and their affiliates.

Respectfully submitted,
MCI WORLDCOM, INC.



Mary L. Brown
1801 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 887-2551
Its Attorney

Dated: December 23, 1998

[25] In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, FCC 98J-7, Nov 25, 1998.

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing Reply Comments of MCI WorldCom, Inc. were sent via first class mail, postage paid to the following on the 23rd day of December, 1998.

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

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

*Kathryn C. Brown
Office of Chairman Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

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

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

Michael S. Pabin
Ameritech
Room 4H82
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196-1025

George Vradenburg, III
Bill Burrington
Jill A. Lesser
Steven N. Teplitz
America Online, Inc.
1101 Connecticut Ave., N.W.
Suite 400
Washington, DC 20036

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

Donna N. Lampert
Donna N. Lampert Assoc., P.C.
701 Pennsylvania Ave., N.W.
Washington, DC 20004-2608

Wayne V. Black
C. Douglas Jarrett
Sana D. Coleman
Keller and Heckman LLP
1001 G Street, N.W.
Suite 500 West
Washington, DC 20001

Mark C. Rosenblum
Seth S. Gross
AT&T Corp.
Room 3252F3
295 North Maple Ave.
Basking Ridge, NJ 07920

Peter D. Keisler
James P. Young
AT&T Corp.
1722 Eye Street, N.W.
Washington, DC 20006

Lawrence W. Katz
Bell Atlantic Telephone Co.
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

M. Robert Sutherland
A. Kirven Gilbert III
BellSouth Corporation
Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Christopher J. Wilson
Frost & Jacobs LLP
2500 PNC Center
201 East Fifth Street
Cincinnati, OH 45202

Thomas E. Taylor
Cincinnati Bell Telephone Co.
201 East Fourth Street
Cincinnati, OH 45201

Ronald L. Plesser
Mark J.O'Connor
Stuart P. Ingis
Piper & Marbury L.L.P.
1200 Nineteenth Street, N.W.
Suite 1200
Washington, D.C. 20036

Robert J. Aamoth
Todd D. Daubert
Kelley Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

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

David A. Nall
Benigno E. Bartolome
Squire, Sanders &
Dempsey L.L.P.
1201 Pennsylvania Ave., N.W.
Post Office Box 407
Washington, DC 20044

Gary S. Klein
Michael Petricone
Consumer Electronics
Manufactures Assoc.
2500 Wilson Blvd
Arlington, VA 22201

Jeffrey M. Lewis
Enterprise Networking
Technologies Users Association
100 Bright Meadow Blvd.
Enfield, CT 06083

Mitchell Lazarus
Fletcher, Heald &
Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Arlington, VA 22209

Kathryn A. Kleiman
Internet Matters
601 Madison Street
Suite 222
Alexandria, VA 22314

Russell M. Blau
Kathleen L. Greenan
Patrick Donovan
Swidler Berlin Shereff
Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007

Stephen A. Weiswasser
Gerard J. Waldron
Alane C. Weixel
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, DC 20044-7566

Heidi Pearlman
Philip C. Jones
Burch & Cronauer, P.C.
1200 19th Street, N.W.
Suite 401
Washington, DC 20036

Steven T. Nourse
Public Utilities Section
180 E. Broad St., 7th Floor
Columbus, OH 43215

Robert M. Lynch
Roger K. Toppins
Hope E. Thurrott
SBC Communications, Inc.
One Bell Plaza, Room 3023
Dallas, TX 75202

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, DC 20036

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
United States Telephone Assoc.
1401 I Street, N.W., Suite 600
Washington, DC 20005

Robert B. McKenna
Jeffry A. Brueggeman
US West Communications, Inc.
Suite 700
1020 19th Street,N.W.
Washington, DC 20036

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

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

R. Michael Senkowski
Jeffrey S. Linder
April G. Dawson
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

*Michael Pryor
Deputy Division Chief
Policy and Program
Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

*Janice Myles
Common Carrier Bureau
Policy and Program Planning
Division
Federal Communciations Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

*Carol E. Mattey
Policy and Program Planning
Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 544
Washington, DC 20554

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

*Robert M. Pepper
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W.
Room 822
Washington, DC 20554

*Thomas C. Power
Office of Chairman Kennard
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, DC 20554

*Kyle D. Dixon
Office of Commissioner Powell
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

*Kevin Martin
Federal Communications Commission
Room 802
1919 M Street, N.W.
Washington, DC 20554

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

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

*James Casserly
Federal Communications Commission
Room 832
1919 M Street, N.W.
Washington, DC 20554

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

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

*Jane E. Jackson
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
2033 M Street, N.W. Room 518
Washington, DC 20554

*Peyton L. Wynns
Common Carrier Bureau
2033 M Street, N.W.
Room 518
Washington, DC 20554

Heidi Peralman
Philip C. Jones
Burch & Cronauer, P.C.
1200 19th Street, N.W., Suite 401
Washington, DC 20036

Sylvia Chukwuocha

Sylvia Chukwuocha