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FCC 99-54

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

In the Matters of)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the Telecommunications Act)	
of 1996)	
)	
Petition of Southwestern Bell Telephone Company,)	NSD File No. 98-121
Pacific Bell, and Nevada Bell for Expedited)	
Declaratory Ruling on Interstate IntraLATA Toll)	
Dialing Parity or, in the Alternative, Various Other)	
Relief)	

ORDER

Adopted: March 19, 1999

Released: March 23, 1999

By the Commission: Commissioner Furchtgott-Roth issuing a statement.

I. INTRODUCTION

1. On January 25, 1999, the United States Supreme Court, in *AT&T v. Iowa Utilities Board*,¹ reversed, in part, the rulings of the United States Court of Appeals for the Eighth Circuit that had vacated certain rules that this Commission had adopted pursuant to the Communications Act of 1934 (the Act),² as amended by the Telecommunications Act of 1996 (1996 Act),³ and held, *inter alia*, that the FCC has general jurisdiction to implement the 1996 Act's local competition provisions.⁴ In light of this decision, and for the reasons indicated below, we take

¹ *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).
² 47 U.S.C. §§ 151 *et seq.* (Communications Act or the Act).
³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
⁴ *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. at 730.

the following actions today. First, pursuant to section 1.3 of our rules,⁵ we extend the deadline of February 8, 1999, for full implementation of intraLATA toll dialing parity,⁶ and grant a limited waiver of the rules establishing a schedule for Commission review of intraLATA toll dialing parity plans where a state commission has not acted on a local exchange carrier (LEC) application to implement intraLATA toll dialing parity.⁷ We take this action to allow state commissions adequate time to review and act upon LEC intraLATA toll dialing parity plans. Second, we deny as moot the Petition for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity Or, in the Alternative, Various Other Relief filed by Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (SBC) on September 18, 1998.⁸

II. DISCUSSION

A. Waiver of Dialing Parity Implementation Schedule.

2. On August 8, 1996, the Commission adopted and released the *Local Competition Second Report and Order*,⁹ which, in part, promulgated rules and policies to implement the dialing parity requirement of section 251(b)(3) of the Act.¹⁰ In order to facilitate the orderly implementation of toll dialing parity, and to take full advantage of state experience and expertise, the Commission's rules require, among other things, that each LEC, including Bell Operating Companies (BOCs), submit a plan to the state regulatory commission for each state in which it provides telephone exchange service, setting forth the LEC's plan for implementing intraLATA

⁵ 47 C.F.R. § 1.3 (allowing the Commission to waive or suspend its rules on its own motion for good cause).

⁶ Id. § 51.211(a).

⁷ Id. § 51.213.

⁸ See Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief, filed Sept. 18, 1998 ("Petition").

⁹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Second Report and Order and Memorandum Opinion and Order*, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*).

¹⁰ Among other things, section 251(b)(3) imposes on all LECs the "duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service." With dialing parity, a telephone customer can presubscribe to and use any provider of telephone exchange service or toll service without having to dial extra digits to route a call to that carrier's network. See 47 U.S.C. § 153(15).

toll dialing parity.¹¹ The state, in turn, would administer the implementation of intraLATA toll dialing parity by the LEC. In the event that a state elected not to evaluate a LEC's dialing parity plan sufficiently in advance of the date on which a LEC is required by the Commission's rules to implement toll dialing parity, we required the LEC to file its plan with this Commission.¹² All LECs, including BOCs, were required to implement toll dialing parity by February 8, 1999.¹³

3. On August 22, 1997, the United States Court of Appeals for the Eighth Circuit vacated the Commission's dialing parity rules that pertained to intrastate, but not interstate, telecommunications traffic, holding that such rules exceeded the Commission's jurisdiction.¹⁴ In its January 25, 1999 decision, the United States Supreme Court reversed the Eighth Circuit, holding that the Commission has jurisdiction over intrastate intraLATA toll dialing parity,¹⁵ and subsequently reinstated the Commission's intraLATA toll dialing parity rules, including the February 8, 1999 deadline.¹⁶

4. Given that the February 8 date has come and gone, a strict enforcement of the deadline now that our rules are reinstated would not allow state commissions adequate time to have reviewed still-pending dialing parity plans by the deadline, and would cause LECs that have yet either to file or implement intraLATA toll dialing parity plans to be in violation of the Commission's deadline upon the date of reinstatement of our rules. We believe that it would serve no proconsumer or procompetitive purpose to impose a deadline that would prevent state commissions from reviewing and approving such plans, as originally contemplated in our rules, and that good cause exists to extend that deadline where necessary. Thus, on our own motion, we grant a limited waiver of the rule establishing a deadline for full implementation of intraLATA toll dialing parity¹⁷ and the rules establishing a schedule for Commission review of intraLATA toll dialing parity plans.¹⁸

¹¹ *Local Competition Second Report and Order*, 11 FCC Rcd at 19392.

¹² *Id.*, 11 FCC Rcd at 19415.

¹³ *Id.*, 11 FCC Rcd at 19401.

¹⁴ *California v. FCC*, 124 F.3d 934 (8th Cir. 1997).

¹⁵ *AT&T v. Iowa Utils. Bd.*, 119 S.Ct. at 732.

¹⁶ *FCC, et al., v. Iowa Utils. Bd. et al.*, No. 97-1519, 1999 WL 80281 (U.S. Feb. 22, 1999).

¹⁷ 47 C.F.R. § 51.211(a).

¹⁸ *Id.* § 51.213.

5. We note, furthermore, that in the SBC proceeding, we have gathered an extensive public record on the importance of requiring timely implementation of intraLATA toll dialing parity. We agree with numerous commenters that expeditious implementation of intraLATA toll dialing parity is in the public interest.¹⁹

6. We believe that only a small minority of states will require this limited waiver. According to the record, most states have either implemented intrastate intraLATA toll dialing parity, or planned to do so by February 8, 1999.²⁰ In approximately eleven states intraLATA toll dialing parity is either not yet implemented, or is at some stage of administrative or judicial review.²¹ We believe that these states must be allowed sufficient time to review and approve

¹⁹ See, e.g., Excel Telecommunications, Inc. Comments at 6-7; Qwest Communications Corp. Comments at 3; Telecommunications Resellers Association Reply Comments at 3-4; Letter from Jonathan B. Sallet, Chief Policy Counsel, MCI Communications Corp., to William Kennard, Chairman, FCC, dated February 22, 1999 (MCI February 22 ex parte).

²⁰ See Letter from Frank S. Simone, Government Affairs Director, AT&T, to Magalie Roman Salas, Secretary, FCC, dated January 13, 1999 (AT&T January 13 ex parte) and letter from Mary De Luca, Senior Policy Advisor, Federal Regulatory, MCI Worldcom, Inc. to Magalie Roman Salas, Secretary, FCC, dated January 15, 1999 (MCI January 15 ex parte). According to these letters, these states include: Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois (intrastate only), Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts (by 4/20/99), Michigan (implemented in 70% of Ameritech territory; Ameritech is contesting obligation as to remainder.), Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Vermont, Washington (state), West Virginia, Wisconsin, and Wyoming.

²¹ *Id.* According to the AT&T January 13, 1999 ex parte and the MCI January 15 ex parte, as of January 15, 1999, these states included: Alabama, Arkansas, California, Idaho, Kansas, Maryland, Missouri, Nevada, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. Jurisdictions with no BOC intraLATA toll are Alaska, the District of Columbia, and Hawaii. No proceeding is pending in North Dakota and South Dakota. *Id.*

We note that, subsequent to the AT&T and MCI January ex parte letters, states have continued to require the implementation of intraLATA toll dialing parity. For example, as of February 8, 1999, Bell South implemented intraLATA toll dialing parity in all of the states in its region. See Letter from Cynthia Cox, Executive Director, Federal and State Relations, BellSouth, to Anna M. Gomez, Chief, Network Services Division, Common Carrier Bureau, FCC, dated February 8, 1999 (BellSouth February 8 ex parte). Further, on February 16, 1999, the Kansas State Corporation Commission ordered SBC to implement intraLATA toll dialing parity "immediately." See *Matter of the Petition of AT&T Communications of the Southwest, Inc. to Require SWBT to Implement IntraLATA Toll Presubscription No Later Than February 8, 1999*, Order, Docket No. 99-AT&T- 216- MIS (Feb. 16, 1999) (Kansas February 16 Order). Thus, the eleven states where intraLATA toll dialing parity has not yet been implemented are: Arkansas, California, Idaho, North Dakota, South Dakota, Maryland, Missouri, Nevada, Oklahoma, Texas, and Virginia.

intraLATA toll dialing parity plans within a reasonable, and enforceable, federal deadline.²² Our extension of the February 8, 1999 deadline and our limited waiver of the Commission's toll dialing parity implementation schedule sets forth the outside parameter for implementation of intraLATA toll dialing parity. We emphasize that the reinstatement of our jurisdiction over intraLATA toll dialing parity does not deprive state commissions of the authority to require LECs to comply with an earlier deadline for the implementation of intraLATA dialing parity. We encourage state commissions to do so where they deem appropriate, particularly where a plan is close to approval.

7. Accordingly, pursuant to section 1.3 of our rules, we waive the section 51.211(a) February 8, 1999 deadline for the implementation of intraLATA toll dialing parity and the section 51.213 schedule for the implementation of intraLATA toll dialing parity as follows:

- No later than May 7, 1999, all LECs must implement intraLATA toll dialing parity plans already filed and approved by the state regulatory commission for each state in which the LECs provide telephone exchange service. LECs must implement such intraLATA toll dialing parity plans by May 7, 1999, whether or not the state regulatory commission has ordered implementation of the approved plan, and notwithstanding any date subsequent to May 7, 1999, that may have been ordered by the state commission.

Further, a few states have tied the implementation of intraLATA toll dialing parity to the date on which the incumbent BOC begins to offer in-region interLATA service, a result that needs to be revised in light of the Commission's reinstated rules. We note that states are rapidly making such reconsideration. On January 28, 1999, the Public Utility Commission of Texas (Texas PUC) released a revised proposed final order in PUC Docket No. 19919 that, in part found that the Supreme Court's January 25 decision implicitly preempted inconsistent Texas law. Further, in the Kansas February 16 Order, the Kansas Corporation Commission found that because its State Act required intraLATA dialing parity to be implemented "consistent with the terms of the federal act," the State Act did not prohibit the Kansas Corporation Commission from requiring SWBT to implement intraLATA toll dialing parity prior to SBC's obtaining authority to provide interLATA service.

²² We adopt this order in the spirit of cooperation between the FCC and state commissions called for in the resolution adopted on February 24, 1999 by the NARUC Board of Directors, and believe that the schedule for intraLATA toll dialing parity that we adopt today responds to NARUC's request that the Commission "expeditiously establish a new deadline for states that have not implemented dialing parity" in a manner that acknowledges states' experience and expertise in implementing intraLATA dialing parity. We also acknowledge the NARUC concern that the Commission needs to clarify whether states implementing dialing parity have the authority to condition customer default to the incumbent local service provider. The issue of whether a LEC may default its current (as opposed to new) customers is the subject of petitions for reconsideration of the *Local Competition Second Report and Order*, and will be resolved in a separate order.

- No later than April 22, 1999, all LECs must file intraLATA toll dialing parity plans with the state regulatory commission for each state in which the LEC provides telephone exchange service if a plan has not yet been filed with such state commissions. Once a state commission has approved a plan, the LEC must implement its plan no later than 30 days after the date on which the plan is approved. Any plan that provides for the implementation of intraLATA dialing parity by a date subsequent to 30 days after approval by the state commission will be deemed in violation of Commission rules.

- On June 22, 1999, if a state commission has not yet acted on a LEC's intraLATA toll dialing parity implementation plan, the LEC must file that plan with the Common Carrier Bureau (Bureau).²³ By June 23, 1999, the Bureau will release a public notice initiating a comment cycle for the Bureau's consideration of any LEC plan filed with the Bureau. A state commission may continue to act on a plan until the Bureau has acted upon that plan. A LEC's failure to file a plan with the state commission or this Commission in the manner required by this order will be deemed a violation of this Commission's rules that will allow interested parties to seek relief pursuant to section 401(b) of the Act.²⁴

- On July 21, 1999, any unopposed plan will be deemed approved unless the Bureau notifies the LEC that the plan will not be deemed approved. All LECs whose plans are approved in this manner will implement their plans no later than 30 days after the date on which the plan is approved.

- No later than August 5, 1999, the Bureau will act upon any opposed plan and, as necessary, any unopposed plans that were not deemed approved.

- On August 6, 1999, any unopposed plan on which the Bureau or a state has not acted will be deemed approved.²⁵

- All LECs whose plans are approved or deemed approved under this compressed schedule must implement their plans no later than 30 days after the date on which the plan is approved or deemed approved.

²³ The Commission, in section 51.213 of its rules, has delegated authority to the Bureau to approve intraLATA toll dialing parity plans. 47 C.F.R. § 51.213.

²⁴ 47 U.S.C. § 401(b).

²⁵ This situation would occur if, following release of the public notice, the Bureau notifies the LEC that its plan will not be deemed approved, and the Bureau subsequently fails to act by July 9, 1999.

B. SBC Petition For Declaratory Ruling

8. On September 18, 1998, SBC filed a Petition with the Commission that requested a declaratory ruling that, in light of the Eighth Circuit decision vacating the intrastate portion of the Commission's intraLATA toll dialing parity rules, there is no current obligation to implement interstate intraLATA toll dialing parity for interstate intraLATA toll calls on February 8, 1999. In the alternative, SBC sought a waiver of the interstate intraLATA toll dialing parity rules to coincide with the date on which SBC implements intrastate intraLATA toll dialing parity in its respective states. The SBC Petition is premised on the Eighth Circuit's ruling that the Act does not grant the Commission jurisdiction over intrastate dialing parity, and thus is moot in light of the Supreme Court's decision. SBC has conceded that its networks are prepared to provide full 2-PIC interstate and intrastate intraLATA presubscription.²⁶ We therefore deny SBC's petition and expect it to implement intraLATA toll dialing parity in accordance with this order.²⁷

III. CONCLUSION

9. Because the timing of the Supreme Court's decision reversing the Eighth Circuit's vacation of the Commission's intraLATA toll dialing parity rules would prevent some states from reviewing and approving intraLATA toll dialing parity plans prior to the Commission's deadline and would cause some LECs to be in violation of those rules once they are reinstated, good cause exists to warrant a limited waiver of Commission's rules. Thus, on our own motion, we adopt a limited waiver of the Commission's February 8, 1999 deadline for the implementation of intraLATA toll dialing parity and prescribe a compressed schedule for state commissions or this Commission to approve, and LECs to implement, intraLATA toll dialing parity. We also deny SBC's request for declaratory ruling and waiver as moot in light of the Supreme Court decision.

IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that, pursuant to section 1.3 of the Commission rules, 47 C.F.R. § 1.3, a limited waiver of sections 51.211(a) and 51.213 of the Commission's intraLATA toll dialing parity implementation rules, 47 C.F.R. §§ 51.211(a), 51.213, IS GRANTED in the manner indicated in paragraph 6, *supra*.

²⁶ SBC Petition at 5.

²⁷ On January 27, 1999, MCI WorldCom, Inc. (MCI/WorldCom) filed an emergency motion to dismiss the SBC Petition in light of the Supreme Court's January 25, 1999 decision. On February 8, 1999, SBC filed comments in opposition to the MCI/WorldCom motion. Because we deny the SBC petition in this order, we do not need to decide the MCI motion.

11. IT IS FURTHER ORDERED that, pursuant to section 251(b)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. § 251(b)(3), and pursuant to section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, that the Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity Or, in the Alternative, Various Other Relief IS DENIED as moot.

12. IT IS FURTHER ORDERED, pursuant to 47 C.F.R. section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(b), that the decisions adopted herein SHALL BE EFFECTIVE immediately.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

**STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH**

Re: In the Matters of: Implementation of the local Competition provisions of the Telecommunications Act of 1996; Petition of Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief; (CC Docket No. 96-98, NSD File No. 98-121).

I support today's Order establishing a new implementation schedule for intraLATA toll dialing parity, but write separately to express my concern with two related issues. First, while I support the general time-frames outlined in today's order, I acknowledge that there are some parties that have asked for an opportunity to discuss the specific circumstances faced in individual states that might warrant some deviation. While I do not know whether or not the details of their situations would warrant such relief, I prefer to provide parties with such an opportunity where possible. In this case, however, the extremely tight implementation schedule precludes a meaningful opportunity even to request such a waiver. As such, I would have favored allowing an individual *State* to file such a waiver petition, with the Commission tolling the time limitations while it considers the merits of that petition.

In addition, I note that some of my concerns in this area could have been alleviated if the Commission had merely sought some general comments immediately after the Supreme Court issued its opinion. The Commission should have issued a Public Notice promptly after the Supreme Court issued its opinion on January 25, 1999, simply asking for any and all comments on how the Court's opinion should impact all Commission policies. Such a Public Notice would have provided any party with an appropriate procedural vehicle for expressing their concerns with the re-instatement of some and the invalidation of other Commission rules. Unfortunately, that is not the path the Commission chose. I fear, however, that the Commission may be falling behind in its effort to address even the issues specifically remanded to us as it has now been almost two months since the court issued its opinion.

* * *