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EX PARTE OR LATE FILED

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OFFICE OF THE SECRETARY

EX PARTE PRESENTATION

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98*

Dear Ms. Salas:

Please be advised that the attached letter was delivered by hand to the Chairman, the Commissioners and their respective staffs. The letter addresses a recent letter filed by MCI WorldCom regarding a proposal for third party testing of Bell operating company operations support systems.

In accordance with the Commission's rules concerning ex parte presentations, two copies are provided herewith. Please contact me should you have any questions concerning the foregoing.

Respectfully submitted,

Todd F. Silbergeld

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April 28, 1999

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
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Washington, D.C. 20554

Dear Chairman Kennard:

On April 9, 1999, Jonathan Sallet of MCI WorldCom (MCIW) wrote you advocating a fundamental departure from the Commission's approach to verifying the operational readiness of a BOC's operations support systems (OSS). Essentially, MCIW suggests that the Commission mandate independent third party testing by a "pseudo CLEC" – like that undertaken in New York – as the best evidence that a BOC's OSS are "operationally ready." Mandating a New York-style test, however, would be inconsistent with Commission precedent outlining what is necessary to demonstrate that OSS are "operationally ready," and would do nothing but impose additional costs and delays on BOC efforts to obtain interLATA relief – with no commensurate benefit.

As the Commission has explained, a BOC's burden is to show that its OSS are "operationally ready." In other words, a BOC must demonstrate that its OSS "are actually handling current demand" and are scalable to meet reasonably foreseeable future demand.[1] "The most probative evidence that OSS functions are operationally ready is actual commercial usage."[2] Testing is the next best solution. "[S]uch evidence may include carrier-to-carrier testing, independent third-party testing, and internal testing of operations support systems functions."[3]

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[1] Memorandum Opinion and Order, Application of Ameritech Mich. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Mich., 12 FCC Rcd 20543, 20616-18, ¶¶ 137-138 (1997) ("Michigan Order").

[2] Memorandum Opinion and Order, Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services In La., 13 FCC Rcd 20599, 20655, ¶ 86 (1998) ("Second Louisiana Order").

[3] Michigan Order, 12 FCC Rcd at 20601-02, ¶ 110.

In Texas, using the documentation provided by Southwestern Bell, both MCIW and AT&T have developed the interfaces necessary to pass orders to Southwestern Bell's EDI gateway. In fact, MCIW and AT&T both volunteered their EDI interfaces for use in the carrier-to-carrier test currently underway in Texas. Therefore, carrier-to-carrier testing is appropriate.

In addition to conducting a test using actual carrier-to-carrier interfaces, the Public Utility Commission of Texas also retained Telcordia Technologies (formerly Bellcore) to assess and monitor the Texas test and to evaluate the results. The state commission selected Telcordia after reviewing test proposals from five different potential evaluators. But despite Telcordia's complete independence from Southwestern Bell, its duty to its client in this testing (the Texas PUC), and notwithstanding AT&T's acceptance of Telcordia as an independent tester,[4] both MCIW and AT&T have attempted to discredit the testing by making veiled references to Telcordia's former affiliation with the BOCs. Mr. Sallet continues that campaign in his letter.[5] Yet, any independent third party monitor with expertise in telecommunications information systems will have ties of some kind to a wide range of industry participants. Based on Mr. Sallet's theories, one could argue that Telcordia has "a serious conflict of interest" in favor of MCIW and AT&T, who also are current clients of Telcordia.

MCI WorldCom's Proposal

Mr. Sallet urges the Commission, the U.S. Department of Justice, and state commissions to "encourage the implementation of OSS tests that rely on . . . a neutral, independent third-party." Sallet Letter at 1. Mr. Sallet says that the important thing is not that the third party actually be independent, but that it "will be seen," presumably by MCIW and others that seek to block BOC interLATA entry, "as objective and unbiased." Id. Then Mr. Sallet suggests that the third party's tests must duplicate steps already taken by actual CLECs. Id. at 2. As for the scope of testing, Mr. Sallet claims it must cover all interfaces the incumbent voluntarily makes available for use by any carrier, regardless of whether those interfaces are

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[4] Letter from Nancy M. Dalton, AT&T, to Kathy Hamilton and Howard Siegel, Texas Public Utility Commission, Docket No. 20000 (Texas Pub. Util. Comm'n filed Nov. 30, 1998).

[5] Sallet Letter at n.1. Mr. Sallet claims that "SBC and Bellcore initially proposed that the contract for OSS testing be made an addendum to the current 'market contract' between the two parties." Id. Southwestern Bell suggested this to facilitate getting a testing contract signed quickly. But in the very meeting to which MCIW refers, Southwestern Bell also suggested that a separate contract could also be signed for the tests, and left the decision to the Technical Advisory Group (TAG). That same day, the decision was made collectively by the PUC, Telcordia, MCIW, other CLECs, and Southwestern Bell that a separate contract be negotiated.

required under the law and are part of the BOC's showing of nondiscriminatory access. Id. Lastly, Mr. Sallet argues that the third party must test the same versions of OSS that other carriers will use, thus requiring the BOC either to freeze its systems for all time (which MCIW surely would not accept) or to conduct repetitive and possibly never-ending testing. Id. at 2-3. Although merely reciting Mr. Sallet's points may be enough to rebut them, I address the issues raised by MCIW, one-by-one, below.

Use of "Pseudo CLEC" Systems

MCIW asserts that "it is necessary for the third party to go through the actual steps to develop and conduct the test, not merely to review work done by others." Id. at 2. It appears that MCIW is trying to set up a federal requirement that third party testing follow the model used in New York, where a consulting firm placed orders into Bell Atlantic's systems as a "pseudo CLEC," rather than using existing CLEC systems. See id. at n.2.

Once again, MCIW's argument does not make sense. Since commercial readiness can be shown through carrier-to-carrier testing or internal testing, among other ways, there obviously is no requirement that incumbent LECs incur the delay and expense of having a "pseudo CLEC" develop an interface. Using actual CLEC production interfaces also eliminates the need to test documentation, an additional step urged by MCIW, because the testing itself will demonstrate whether the BOC has provided the information necessary for a real CLEC to construct and use a working interface to the BOC's systems. See Sallet Letter at n.4.

Range of Interfaces and Orders to Be Tested

MCIW tries to put the burden on the BOC to prove, through third party testing, that its OSS are "able to support each strategy" that could be imagined, "at commercial volumes." Sallet Letter at 2. MCIW again stretches this Commission's orders to an illogical conclusion. What the Commission has actually held is that a BOC's systems must "support each of the three modes of entry" contemplated by Congress – resale, use of UNEs, and construction of facilities – "and must not favor one strategy over another."[6] This can be shown in any of the ways outlined by the Commission (commercial usage, carrier-to-carrier testing, third party testing, or internal testing), and possibly in other ways as well. Third party testing of hypothetical entry strategies, at hypothetical "commercial volumes," is not required.

Nor is the BOC necessarily required to process test orders for "a full range of products (both voice and data) using various service delivery methods," or for "all OSS functions." Sallet Letter at 2-3. The design of an appropriate test methodology will depend upon the particular systems used by the BOC and the availability of

[6] Michigan Order, 12 FCC Rcd at 20615, ¶ 133.

other evidence, such as commercial usage, regarding the readiness of particular interfaces for particular purposes. A BOC need not test the operational readiness of interfaces and procedures that are successfully meeting actual commercial demand.[7] In Texas, for instance, the Texas PUC determined that it was not necessary for Telcordia to test Southwestern Bell's EASE preordering/ordering interface, where that interface already has been used by CLECs for hundreds of thousands of commercial orders, including nearly 52,000 orders during March 1999. The Texas test will, however, include both Southwestern Bell's LEX graphical user interface for ordering and Southwestern Bell's EDI ordering system, for a full range of resale and UNE products, based on the commercial volumes predicted by the CLECs themselves in usage forecasts required by the Texas PUC.

Testing of Multiple Versions of Interfaces

Finally, MCIW opposes updating OSS once they have been tested. Sallet Letter at 3-4. This is very odd, given that MCIW routinely asks Southwestern Bell to offer new versions of its systems. The Commission, moreover, has commended BOCs for implementing enhanced versions of existing interfaces.[8] MCIW may really be suggesting that a BOC can never implement a new version of a system without third party testing. The relevant question, however, is whether the BOC offers nondiscriminatory access through the version or versions it offers. In Texas, for example, Southwestern Bell ensures ongoing satisfaction of this requirement through formal change management procedures approved and overseen by the Texas PUC. Such procedures render repetitive and expensive testing unnecessary.

The Commission should reject MCIW's transparent scheme for what it really is, simply another effort to delay further long distance relief for the BOCs. For its part, MCIW should be focusing on getting its own systems up and running at commercial volumes so that it can offer both residential and business customers a competitive local exchange alternative to Southwestern Bell.

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[7] See Michigan Order, 12 FCC Rcd at 20618, ¶ 138.

[8] See Second Louisiana Order, 13 FCC Rcd at 20688-89, ¶¶ 136-137.

I would be happy to discuss these matters with you or the Commission's staff.

Sincerely,

Dale (Zeke) Robertson
Senior Vice President

cc: The Honorable Susan Ness
The Honorable Gloria Tristani
The Honorable Michael K. Powell
The Honorable Harold W. Furchtgott-Roth