

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Petition of Global NAPs South, Inc. for )  
Preemption of Jurisdiction of the Pennsylvania )  
Public Utility Commission Regarding )  
Interconnection Dispute with Bell Atlantic- )  
Pennsylvania )

CC Docket No. 99-169

COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM, Inc. (MCI WorldCom), pursuant to a Public Notice (DA 99-900) issued by the Federal Communications Commission (the Commission), hereby files its Comments in the above-captioned docket.<sup>1</sup>

I. INTRODUCTION AND SUMMARY

Global NAPs South, Inc. (Global NAPs) asks that the Commission preempt the Pennsylvania Public Utility Commission to declare that Global NAPs may elect to adopt an existing agreement between Bell Atlantic-Pennsylvania (Bell Atlantic-PA) and MFS. MCI WorldCom agrees that Global NAPs should be permitted to adopt an approved interconnection agreement; however, MCI WorldCom believes this type of action should be brought under the statutory provision that sets out the authority to elect to adopt an interconnection agreement or to "pick and choose" elements of an approved agreement -- section 252(i) of the Communications Act of 1934, as amended (the Act).

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<sup>1</sup> Petition of Global NAPs South, Inc. for Preemption of the Jurisdiction of the Pennsylvania Public Utility Commission Regarding Interconnection Dispute with Bell Atlantic-Pennsylvania (filed May 10, 1999) (Petition).

## II. NOTIFICATION OF ADOPTION PURSUANT TO SECTION 252(i) OF THE ACT IS ALL THAT IS REQUIRED TO "OPT IN" TO AN AGREEMENT

As MCI WorldCom has explained,<sup>2</sup> to "opt in" to an existing agreement between an incumbent local exchange carrier (ILEC) and another carrier, the electing carrier needs simply to submit a Notice of Adoption to the ILEC.<sup>3</sup> Additional steps -- including ILEC approval or denial of such an election or state commission review -- would be unlawful and unwarranted.

Under section 252(i) of the Act, a carrier is entitled to elect to "opt in" to or adopt approved interconnection agreements without ILEC concurrence. Indeed, section 252(i) contains nothing to permit any entity -- ILEC or state commission -- to approve or review the election to adopt.<sup>4</sup> Steps beyond simple election by the CLEC create incentives for ILECs to discriminate.

Section 252(i) simply states that a LEC "shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Further, the Commission's implementing rule provides that "[a]n incumbent LEC shall make available without unreasonable delay to any requesting carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state

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<sup>2</sup> See MCI Comments to Petition of Global NAPs Inc. for Preemption of the Jurisdiction of the New Jersey Board of Public Utilities Pursuant to Section 252(e)(5) of the Communications Act, CC Docket No. 99-154 (filed May 24, 1999) (appended hereto as Attachment 1).

<sup>3</sup> See Attachment, n. 3.

<sup>4</sup> See Attachment 1 at 4-5 (explaining that section 252(e) of the Act grants limited approval authority to the state commission, but does not extend that authority to relationships between carriers outside the scope of negotiation, mediation and arbitration).

commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement.”<sup>5</sup> 47 C.F.R. § 51.809.

In reaching its conclusions, the Commission has determined that the nondiscriminatory and pro-competitive goals of the Act would be circumvented if carriers were required to undergo lengthy and duplicative processes for negotiation of already approved agreements.<sup>6</sup> The Illinois Commerce Commission supports the view that ILECs and state commissions cannot disapprove a CLEC’s election to adopt an approved agreement,<sup>7</sup> and it has held that the “opt in” provision of section 252(i) applies to a matter at issue in this instant Petition -- reciprocal compensation.<sup>8</sup>

With respect to Bell Atlantic-PA’s attempt to revise the agreement Global NAPs chose to adopt,<sup>9</sup> such action is contrary to the statutory mandate of section 252(i). Under section 252(i), an ILEC is required to provide interconnection to a requesting carrier under the same terms and conditions that it has to any other carrier. Any change, however slight in appearance, is improper and violates section 252(i) of the Act.

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<sup>5</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1321 (*Local Competition Order*) (rel. Aug. 8, 1996) (subsequent history omitted).

<sup>6</sup> *Id.* ¶ 1321.

<sup>7</sup> See *QST Communications, Inc. v. Ameritech Illinois*, No. 98-0603, 1998 Ill. PUC LEXIS 986 (Nov. 5, 1998) (ruling that ILECs must provide requesting carriers with interconnection on the same terms and conditions as it provides other carriers).

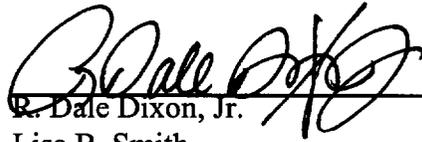
<sup>8</sup> *Id.* (stating that “the Federal Act does not preclude carriers from adopting the reciprocal compensation provisions of an agreement that has already been approved by [a state commission]” and “reciprocal compensation provisions are ‘terms and agreements’ of interconnection and are therefore part of the agreement that can be adopted under Section 252(i)”).

<sup>9</sup> Petition ¶¶ 5, 6.

## CONCLUSION

For the foregoing reasons, the Commission should declare that ILECs and state commissions have no authority to approve or disapprove a carrier's election to adopt provisions of an agreement pursuant to section 252(i) of the Act. Further, the Commission should grant Global NAPs' request and order Bell Atlantic to recognize and accept Global NAPs' adoption of the Bell Atlantic-PA/MFS interconnection agreement.

Respectfully submitted,  
MCI WORLDCOM, INC.



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R. Dale Dixon, Jr.

Lisa B. Smith

Kecia Boney

1801 Pennsylvania Avenue, NW

Washington, D.C. 20006

202-887-2383

Dated: May 28, 1999

# Attachment 1

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Global NAPs, Inc. for Preemption of	)	
Jurisdiction of the New Jersey Board of Public	)	CC Docket No. 99-154
Utilities Pursuant to Section 252(e)(5)	)	
of the Communications Act	)	

**COMMENTS OF MCI WORLDCOM, INC.**

MCI WORLDCOM, INC.

R. Dale Dixon, Jr.  
Lisa B. Smith  
Kecia Boney  
1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
202-887-2383

Dated: May 24, 1999

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of Global NAPs, Inc. for Preemption of	)	
Jurisdiction of the New Jersey Board of Public	)	CC Docket No. 99-154
Utilities Pursuant to Section 252(e)(5) of the	)	
Communications Act	)	

**COMMENTS**

MCI WORLDCOM, Inc. (MCI WorldCom), pursuant to a Public Notice (DA 99-884) issued by the Federal Communications Commission (the Commission), hereby files its Comments regarding the Petition for Preemption filed by Global NAPs, Inc. (Global NAPs) in the above-captioned docket.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

Global NAPs asks that the Commission preempt the New Jersey Board of Public Utilities pursuant to section 252(e)(5) of the Communications Act of 1934, as amended (the Act), to declare that Global NAPs may elect to adopt the existing agreement between Bell Atlantic-New Jersey (Bell Atlantic-NJ) and MFS. As Global NAPs explains in its Petition, it failed, after more than thirteen months of repeated requests and extraordinary efforts, to get Bell Atlantic-NJ to permit Global NAPs to opt into the already approved and existing Bell Atlantic-NJ/MFS interconnection agreement.<sup>2</sup>

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<sup>1</sup> Petition of Global NAPs, Inc. for Preemption of the Jurisdiction of the New Jersey Board of Public Utilities Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 (filed May 5, 1999) (Petition).

<sup>2</sup> Petition ¶ 9.

While MCI WorldCom agrees with Global NAPs that Bell Atlantic-NJ should be ordered to recognize and accept Global NAPs' adoption of the Bell Atlantic-NJ/MFS interconnection agreement, MCI WorldCom disagrees with Global NAPs' choice of statutory provision under which it has chosen to file the Petition for Preemption. MCI WorldCom believes that, rather than bringing this action under section 252(e)(5) of the Act, Global NAPs should have brought the action under the statutory provision that sets out the authority to elect to adopt an interconnection agreement or pick and choose elements of an agreement -- section 252(i).

In order to opt into an existing agreement between an incumbent local exchange carrier (ILEC) and another carrier, the electing CLEC needs simply to submit a Notice of Adoption to the ILEC.<sup>3</sup> No additional steps are required. Indeed, any additional steps -- including ILEC approval or denial of such an election or state commission review -- are unlawful and unwarranted.<sup>4</sup>

## **II. NOTIFICATION OF ADOPTION PURSUANT TO SECTION 252(i) OF THE ACT IS ALL THAT IS REQUIRED TO "OPT INTO" AN AGREEMENT**

Section 252(i) of the Act affords LECs the right to "pick and choose" provisions of

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<sup>3</sup> Although MCI WorldCom is aware that the Commission's regulations do not specify the precise notice procedures for invoking rights under section 252(i) of the Act, MCI WorldCom believes that written notice provided to an ILEC's negotiation team and the ILEC's in-house counsel should be more than sufficient to satisfy the notice requirements under section 252(i).

<sup>4</sup> Global NAPs notes in its petition Bell Atlantic-NJ's specific argument that it is no longer required to pay reciprocal compensation following the *GTE ADSL Order*. See Petition ¶ 5. With respect to that argument, in its comments to a recent GTE petition, MCI WorldCom has explained that such an argument is meritless. See MCI WorldCom Comments to GTE's Request for Declaratory Ruling Regarding the Use of Section 252(i) to Opt into Provisions Containing Non-Cost-Based Rates, CC Docket No. 99-143 (filed May 17, 1999).

interconnection agreements between the ILEC and other carriers. This "opt in" provision of section 252(i) is a CLEC's unilateral right, not a matter to be negotiated. The provision permits a CLEC to immediately exercise its adoption rights without delay and without ILEC interference or state commission approval.

Under section 252(i) of the Act, a carrier is entitled to elect to "opt into" or adopt approved interconnection agreements without any concurrence from the ILEC. The "opt in" provision of section 252(i) is not open for negotiation. Indeed, section 252(i) contains no requirement that any entity -- either ILEC or state commission -- approve the election to adopt. Further, there is no review "process" that accompanies section 252(i) of the Act. Additional steps, other than simple election by the CLEC, would create incentives for ILECs to discriminate against carriers and would increase barriers to CLEC entry. Indeed, the very problem with Bell Atlantic-NJ described by Global NAPs in its Petition demonstrates the strong incentives for ILECs to create delay and impeded competition.

Section 252(i) of the Act simply states that a LEC "shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). Further, in its *Local Competition Order* implementing section 252(i) of the Act, the Commission adopted section 51.809, which provides that "[a]n incumbent LEC shall make available without unreasonable delay to any requesting carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as

those provided in the agreement.” 47 C.F.R. § 51.809. Moreover, the Commission’s implementing rule accompanying section 252(i) of the Act -- section 51.809 -- has been reaffirmed by the Supreme Court.<sup>5</sup>

Nothing in the Act, the Commission’s decisions or the Supreme Court’s decision limits a carrier’s right to “pick and choose.” The statutory rights afforded LECs under section 252(i) are independent of a state commission’s jurisdiction to approve negotiated or arbitrated agreements under section 252(e) of the Act. Indeed, the Commission has concluded that “a carrier seeking interconnection, network elements or services pursuant to section 252(i) need not make such requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis.”<sup>6</sup> In reaching its conclusion, the Commission determined that the nondiscriminatory and pro-competitive goals of the Act would be circumvented if carriers were required to undergo lengthy and duplicative processes for negotiation and approval of already approved agreements.<sup>7</sup>

With respect to interconnection agreements, however, section 252(e) of the Act grants limited approval authority to the state commission, and does not extend that authority to relationships between carriers outside the scope of negotiation, mediation and arbitration. Neither the statute nor the Commission’s implementing rules grant state commission’s the authority to require that arrangements established under section 252(i) be approved at the state

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<sup>5</sup> *AT&T Corp., et al. v. Iowa Utils. Bd. et al.*, 119 S. Ct. 721 (1999).

<sup>6</sup> *Local Competition Order* ¶ 1321.

<sup>7</sup> *Id.*

level. Had Congress intended state commissions to monitor section 252(i) adoptions, it would have included that specific provision under section 252(e), the provision that establishes the scope of state commission authority to approve carrier-to-carrier relationships.

Equally important is the fact that, following a carrier's notification to the ILEC that it intends to adopt a certain agreement or provisions, the effective date for such adoption should be the date on which notice is provided to the ILEC. Accordingly, on the date notice is provided to the ILEC, the terms of the adopted agreement are accepted and adopted as the CLEC's own. In the case of Global NAPs, its agreement should have an effective date of August 1998,<sup>8</sup> and the terms of the agreement are effective as they existed on that day.

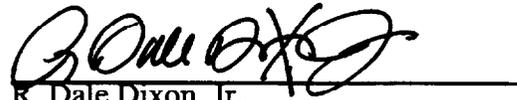
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<sup>8</sup> Petition ¶ 2.

## CONCLUSION

For the foregoing reasons, the Commission should declare that ILECs and state commissions have no authority to approve or disapprove a carrier's election to adopt provisions of an agreement pursuant to section 252(i) of the Act. Furthermore, the Commission should grant Global NAPs' request and order Bell Atlantic to recognize and accept Global NAPs' adoption of the Bell Atlantic-NJ/MFS interconnection agreement.

Respectfully submitted,  
MCI WORLDCOM, INC.



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1801 Pennsylvania Avenue, NW  
Washington, D.C. 20006  
202-887-2383

Dated: May 24, 1999

## CERTIFICATE OF SERVICE

I, Lonzena Rogers, hereby certify that a true copy of the foregoing "COMMENTS" was served this 24<sup>th</sup> day of May, 1999, by hand delivery or first-class United States Mail, postage prepaid, upon each of the following persons:

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Frank Lamancusa\*  
Chief, Accelerated Documents Branch  
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\* - denotes hand delivery

  
Lonzena Rogers

**CERTIFICATE OF SERVICE**

I, R. Dale Dixon, Jr., hereby certify that a true copy of the foregoing "COMMENTS" was served this 28<sup>th</sup> day of May, 1999, by hand delivery or first-class United States Mail, postage prepaid, upon each of the following persons:

Janice M. Myles\*  
Common Carrier Bureau  
Federal Communications Commission  
Room 5-C327  
445 Twelfth Street, SW, TW-A325  
Washington, D.C. 20554

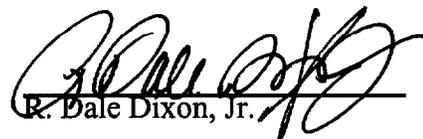
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