

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

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In the Matter of

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JUN 03 1999

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

CC Docket No. 99-154

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

AMERITECH REPLY

The Ameritech Operating Companies (Ameritech) respectfully reply as follows to the Comments of AT&T Corp. and the Comments of MCI WorldCom, Inc., in the above-captioned proceeding:

1. AT&T is wrong to accuse incumbent LECs of engaging in delay tactics when they respond to carriers who opt into approved agreements under section 252(i) by indicating that the underlying agreement must be modified or clarified in certain respects.<sup>1/</sup> Every carrier that has been involved in a 252(i) adoption knows that *some* modifications are necessary (e.g., name and address of party; points of interconnection; dates by which certain events are to occur), and no one could argue with a straight face that it is always obvious, with no discussion needed, exactly what those modifications are. The fact is that there is often room for honest disagreement about particulars of the agreement that should emerge from a 252(i) adoption, and there is nothing untoward about the incumbent LEC responding to a 252(i) request by setting forth its position on those particulars. Indeed, in this very case it appears that the delay resulted

<sup>1/</sup> Comments of AT&T Corp. at 1-2.

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in large part from Global NAPs's dogged and indefensible insistence that it was entitled to tack an additional three years onto the agreement it wanted to opt into.<sup>2/</sup>

2. MCI argues:

In order to opt into an existing agreement [under section 252(i)], the electing CLEC needs simply to submit a Notice of Adoption to the ILEC. 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>3/</sup>

Furthermore, says MCI, the adoption is effective immediately upon the incumbent's receipt of the Notice of Adoption.<sup>4/</sup>

MCI's position is absurd on its face and contrary to the guidance this Commission has already given on how section 252(i) should be implemented.

The Commission has ruled that the incumbent LEC must make available interconnections, services and network elements under section 252(i) "without unreasonable

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<sup>2/</sup> Another example: Some requesting carriers have asked to 252(i) into reciprocal compensation provisions that would allow them to charge the tandem interconnection rate when they terminate traffic that originates on the incumbent's network *despite the fact that they do not yet have a switch*, let alone a switch that can pass the area/functionality test that this Commission has ruled it must pass to qualify for that rate. 47 C.F.R. § 51.711(a)(3); *Local Competition Order* at para. 1090. An incumbent LEC is not engaging in a delay tactic when it informs such a carrier that it is not entitled to a contract provision that allows it to charge that rate. *See Ameritech Reply, 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.

<sup>3/</sup> Comments of MCI WorldCom, Inc. at 2.

<sup>4/</sup> *Id.* at 5.

delay”<sup>5/</sup> and “on an expedited basis.”<sup>6/</sup> Neither of those phrases means “instantly.” If the Commission had meant instantly (or “immediately”), the Commission would have used one of those more definite terms, rather than the less definite (though certainly still meaningful) phrases that it did use.

And the Commission was correct when it decided that interconnections, services and network elements must be made available under section 252(i) “without unreasonable delay” or “on an expedited basis,” rather than “instantly” or “immediately.” It is silly to propose, as MCI does, that a section 252(i) adoption should be effective on the day the requesting carrier announces it. Apart from the fact that the requesting carrier and the incumbent inevitably need to work out some contract details before they can actually start doing business under the 252(i) agreement (*see* item 1 above), day-to-day operational realities reveal MCI’s vision of the 252(i) world for what it is — fantasy. Merely by way of example, the requesting carrier and the incumbent LEC typically must make carrier-unique operational arrangements concerning network architecture and trunking and ordering (*e.g.*, manual vs. EDI).<sup>7/</sup>

Most important, this Commission, in the very next sentence in the *Local Competition Order* after it noted that section 252(i) requestors should not be subjected to a lengthy

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<sup>5/</sup> 47 C.F.R. § 51.809(a).

<sup>6/</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (“*Local Competition Order*”) at para. 1321.

<sup>7/</sup> Even AT&T, MCI’s customary ally in these matters, recognizes that MCI is going overboard when it argues that any additional steps beyond a Notice of Adoption are “unlawful and unwarranted.” (Comments of MCI WorldCom, Inc. at 2.) AT&T acknowledges that a 252(i) election necessarily calls for some response by the incumbent (Comments of AT&T Corp. at 2), and also concedes that the incumbent LEC may have occasion to “dispute the pick-and-choose election” when it argues that state commissions must act timely to resolve such disputes (*id.* at 3-4).

negotiation and approval process before being able to utilize the terms of a previously approved agreement, stated,

[W]e leave to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis.<sup>8/</sup>

Thus, the Commission (a) recognized that agreements would be made available to requesting carriers under section 252(i) in accordance with *some* procedure; and (b) left it to the state commissions to set those procedures. MCI's position flies in the face of the Commission's guidance in two ways: First, it posits that there should be *no* procedure for making agreements available on an expedited basis or resolving questions that will arise in the normal course when a carrier exercises its rights under section 252(i), but that instead, agreements are available on an *immediate* basis upon the mere transmittal of a Notice of Adoption. Second, it posits that the Commission should overrule its decision to leave the matter to state commissions — without even suggesting that state commissions have not established procedures of the sort the Commission contemplated.

3. MCI also asserts that “[n]othing in the Act, the Commission’s decisions or the Supreme Court’s decision limits a carrier’s right to “pick and choose.” (Comments of MCI WorldCom, Inc. at 4.) MCI is wrong. The truth is that this Commission’s rule implementing section 252(i), 47 C.F.R. § 51.809, does set limits on requesting carriers’ section 252(i) rights. Rule 809(b) provides that the requesting carrier cannot opt into the interconnection, service or network element provisions of an approved agreement when it would cost the incumbent LEC more to serve the requesting carrier than it costs it to serve the other party to the approved

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<sup>8/</sup> *Local Competition Order* at para 1321.

agreement, *or* when the provision of the interconnection, service or element is not technically feasible. And Rule 809(c) provides that the incumbent LEC is not required to make available the interconnections, services or elements in an approved agreement beyond “a reasonable period of time.” Not only is MCI dead wrong when it asserts there are no limits on section 252(i) rights, but the limits that the Commission has set necessarily contemplate some opportunity for the incumbent to assert those limits in response to a particular 252(i) request and, thus, demonstrate in one more way the absurdity of MCI’s position that 252(i) requests are effective immediately.

4. On a separate subject, the Commission should not take at face value AT&T’s unsupported assertion that “incumbent LECs have, in practice, often imposed substantial competition-foreclosing delay simply by refusing to agree to submit an agreement that conforms to the arbitrator’s ruling”<sup>2/</sup> To be sure, there have been instances where parties have come out of arbitrations with disagreements over such things as how the arbitration decision should be translated into contract language. In Ameritech’s experience, such disagreements have been timely resolved by the state commissions — as often as not in the incumbent LEC’s favor. In other words, what AT&T spins as an incumbent LEC “refusing to agree to submit an agreement that conforms to the arbitrator’s ruling” is actually (at least in the instances with which Ameritech is familiar), an incumbent LEC refusing to acquiesce in the competing LEC’s as often as not inaccurate view of how to give effect to the arbitrator’s ruling. There is no credible basis

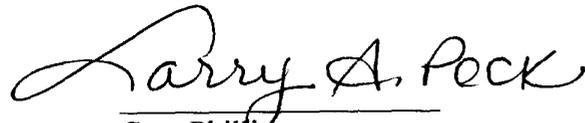
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<sup>2/</sup> Comments of AT&T Corp. at 4.

for AT&T's suggestion that there is a problem of incumbent LECs defying arbitration decisions *and* state commissions passively submitting to the defiance that requires this Commission's attention.

Dated: June 3, 1999

Respectfully Submitted,



A handwritten signature in cursive script that reads "Larry A. Peck". To the right of the signature is a small circle containing the initials "AK".

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CERTIFICATE OF SERVICE

I, Anisa A. Latif, do hereby certify that a copy of **Ameritech Reply** has been served on the parties attached via first class mail - postage prepaid on this 3<sup>rd</sup> day of June 1999.

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