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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
 Petition of SBC Communications Inc.)
 for Forbearance of Structural Separation)
 Requirements and Request for Immediate)
 Interim Relief in Relation to the Provision of)
 Nonlocal Directory Assistance Services)
)
 BellSouth Petition for Forbearance)
 for Nonlocal Directory Assistance Service)
)
 Petition of Bell Atlantic for Further Forbearance)
 from Section 272 Requirements in Connection)
 with National Directory Assistance Services)

CC Docket No. 97-172

REPLY COMMENTS OF MCI WORLDCOM, INC.

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REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM, INC. (MCI WorldCom) files the following reply comments in response to the above-captioned Petitions.

I. Introduction and Summary

All commenters to this proceeding agree that the above-referenced Petitions do not meet the requirements necessary to receive forbearance for the provision of nonlocal directory assistance (NDA). Specifically, MCI WorldCom agrees that Bell Atlantic, BellSouth, and SBC (“Petitioners”) have not satisfied the requirements established by the Federal Communications Commission (Commission) in its *NDA Order*.¹ Moreover, none of the Petitioners have justified a

¹ *Petition of U S WEST Communications, Inc. for Declaratory Ruling Regarding the Provision of National Directory Assistance*, Memorandum Opinion and Order, CC Docket No.

grant of forbearance from the § 272 separate affiliate requirements.² Petitioners' national directory assistance services, as structured, are not incidental interLATA services pursuant to § 271(g)(4). Moreover, we do not believe that Bell Atlantic and BellSouth have the authority to provide regionwide directory assistance.³ Further, BellSouth and SBC have also failed to demonstrate that they comply with the nondiscrimination obligations pursuant to § 272. For instance, SBC has failed to provide nondiscriminatory access to its directory assistance services and listings while offering access at rates that are not only unreasonable, but are also grossly in excess of cost. Moreover, MCI WorldCom agrees that SBC must not be allowed to deny independent directory assistance providers access to its directory listings because of its misinterpretation of the nondiscrimination obligations in § 272.

MCI WorldCom reiterates its contentions that the Petitioners should all be sanctioned for having violated, and in certain instances, their continued violation of §§ 271 and 272. The Petitioners should also be liable for damages to other parties. As such, the Petitioners should be ordered to immediately cease their provision of national directory assistance until they each

97-172 (rel. September 27, 1999) (*NDA Order*).

² Pursuant to Section 10 of the Communications Act. 47 U.S.C. § 160.

³ SBC claims that Ameritech offers its NDA through exclusively owned databases which provide local, regional, and national directory listings. It also alleges that SWBT and PB own the databases which provide both local and regional DA listings, but do not own the storage facilities for the provision of national directory listing service. SBC Petition at 2-3. Therefore, assuming this representation is accurate, SWBT and PB are in violation of § 271(g)(4) and the Commission's *NDA Order* with respect to the nationwide directory assistance. Bell Atlantic claims, however, that it is the sole owner of the information storage facility used to provide its NDA. Bell Atlantic Petition at 1-2.

demonstrate to the Commission that they are in compliance with § 271(g)(4).⁴ Furthermore, BellSouth should be required to immediately cease the provision of its nonlocal directory assistance.⁵ Finally, we agree that the three year sunset provisions provided in § 272 (f)(1) cannot be extended to include the nondiscrimination obligations of the *NDA Order*. Such a determination would be contrary to the statute.

II. Petitioners Do Not Satisfy § 271(g)(4)

AT&T correctly contends that Petitioners do not provide sufficient information for the Commission to determine that their NDA services will be configured so as to ensure their compliance with § 271(g)(4). For instance, MCI WorldCom agrees that Bell Atlantic's disclosure of its purchase of one of its two information storage facilities from Nortel in order to provide NDA is not sufficient to determine whether Bell Atlantic's service is an incidental interLATA service.⁶ Even though it owns the facilities, Bell Atlantic admits that its NDA service might query a database that it does not own.⁷ The fact that it has purchased a storage facility does not mean that its queries are actually from that facility and thus, ignores the purpose and intent of the

⁴ Similarly, in the *NDA Order* the Commission ordered U S West to cease from providing its nationwide directory assistance until it structures that service in accordance with § 271(g)(4).

⁵ BellSouth only claims that it will "ensure" it owns the information storage facility in the future to provide nonlocal directory service (both in-region and out-of-region). BellSouth Petition at 6. Such future and promised compliance is not sufficient to meet § 271(g)(4) nor is it enough to support a grant of forbearance from § 272.

⁶ Comments of AT&T Corp. (AT&T Comments), CC Docket No. 97-172, (filed Nov. 29, 1999) at 13.

⁷ See supra n. 3. See also AT&T Comments at 13; Comments on Petitions for Forbearance, Teltrust, Inc. (Teltrust Comments), CC Docket No. 97-172, (filed Nov. 29, 1999) at 6.

Commission's *NDA Order*.

As MCI WorldCom and AT&T emphasized in their initial comments, none of the Petitioners has provided information necessary to determine whether its provision of NDA services is configured to ensure the provision of an incidental interLATA service pursuant to § 271(g)(4). It is imperative that the Commission know the precise terms of the facility purchase agreement so that it may determine whether a Petitioner owns a facility to satisfy § 271(g)(4) and to ensure no discriminatory advantages have been conferred on the seller of the storage facility as part of the purchase.⁸ BellSouth's promises that it will own the information storage facilities at some undefined point in the future cannot be sufficient to ensure its compliance with § 271(g)(4).⁹ Indeed, to the extent any of the Petitioners do not satisfy § 271 (g)(4), the Commission does not need venture any further in its analysis to determine if the Petitioners have satisfied the forbearance criteria - the forbearance request from § 272 should simply be denied without any further consideration.

Further, Teltrust asserts that because Petitioners are currently providing NDA services in violation of § 271, (since they do not own the information storage facilities) that the Commission should refrain from determining whether their NDA services are incidental interLATA services pursuant to § 271(g)(4) until each proves that its NDA services are indeed structured in

⁸ Comments of MCI WorldCom, Inc. re. BellSouth Petition (MCI WorldCom Comments re. BST), CC Docket No. 97-172, (filed Nov. 29, 1999) at 3; Comments of MCI WorldCom, Inc. re. SBC Petition (MCI WorldCom Comments re. SBC), CC Docket No. 97-172, (filed Nov. 29, 1999) at 3; AT&T Comments at 14.

⁹ Teltrust Comments at 7.

accordance with the law.¹⁰ MCI WorldCom agrees that compliance with the law must be a prerequisite to any continued consideration of Petitioners' request for forbearance.

III. Forbearance Criteria and § 272

A. SBC Does not Currently Meet the Discrimination Obligations to Satisfy § 272(c)(1).

As MCI WorldCom detailed in its initial filing, SBC's performance record clearly demonstrates its refusal to provide directory assistance services and listings to competitive providers of NDA in a nondiscriminatory or just and reasonable fashion.¹¹ This fact undermines the validity of SBC claims that, if forbearance is granted, it will comply with the nondiscrimination provisions of § 272(c)(1).¹² AT&T correctly notes that SBC and BellSouth should be obligated to explain how they will comply with the discrimination obligations and to provide verification of this fact prior to the Commission's grant of forbearance.¹³

Incredibly, SBC has unilaterally narrowed the Commission's nondiscrimination obligation in the *NDA Order*. It claims that the BOCs must provide nondiscriminatory access to its in-region directory assistance listing information to unaffiliated entities. SBC determined that "unaffiliated entities" must mean that the BOCs only owed the nondiscriminatory access obligation to local exchange and toll carriers because third party directory assistance providers are not providers

¹⁰ Teltrust Comments at 4.

¹¹ MCI WorldCom Comments re. SBC at 5-7. Access to the directory assistance database and its listings are an unbundled network element or UNE. As such, and pursuant to § 251(c)(3), UNEs must be provided at cost-based rates. See MCI WorldCom Comments re. SBC at 6 and n. 17.

¹² AT&T Comments at 10.

¹³ AT&T Comments at 10-11.

under § 251(b)(3). There is no basis for this interpretation. As commenters point out, the statute refers to “competing providers”. The Commission’s interpretation, which we believe is correct, does not limit this term to telecommunications carriers.¹⁴ The purpose of the nondiscrimination obligation is to protect NDA competition from the adverse consequences of BOC control of directory assistance services and information. It is, therefore, logical that the nondiscriminatory provisions in the *NDA Order* must apply to all unaffiliated entities.¹⁵ The Commission should clarify this point to avoid any further creative interpretations by SBC. Moreover, it should consider this as evidence that SBC will make all efforts to circumvent the Commission’s nondiscrimination obligations.

B. Section 272 is Still Necessary for the Protection of the Public Interest

Section 10(a)(3) requires that the Commission forbear from applying a requirement or regulation when it is consistent with the public interest. As MCI WorldCom and AT&T argued in their initial comments, to the extent Petitioners have been providing their NDA services in violation of §§ 271 and 272, the Commission cannot find that forbearance is warranted.¹⁶ Their willingness to ignore continued legal obligations must be deemed contrary to the public interest.

¹⁴ Consolidated Comments of INFONXX, Inc. on Petitions for Forbearance of SBC Communications Inc., Bell Atlantic, and BellSouth (INFONXX Comments), CC Docket No. 97-172 (filed Nov. 29, 1999) at 6; Excell Comments at 14; Teltrust Comments at 9-10. Additionally, the Commission specifically referred to INFONXX in its *NDA Order* as an “unaffiliated entity” when it concluded that U S West refuses to provide unaffiliated entities with access to its directory listings. INFONXX Comments at 6.

¹⁵ Further, MCI WorldCom concurs that a limitation of the nondiscrimination provisions to only certain directory assistance entities, as SBC suggests, would be discriminatory under § 272(c)(1). Teltrust Comments at 10.

¹⁶ MCI WorldCom Comments re. SBC at 7; MCI WorldCom Comments re. BST at 4; AT&T Comments at 12.

IV. Sanctions for Current Violations of the Act

MCI WorldCom agrees that the Petitioners have been providing their NDA services for an extended period of time in violation of the Act.¹⁷ Indeed, the information recently submitted in this docket by SBC proves that these violations have been on-going for some time. For SBC and its affiliates, the violations date back to September 9, 1996.¹⁸ The Commission must not ignore the flagrant violations and must sanction the parties. Any sanctions must run from the time the Petitioners began offering the service until they demonstrate to the Commission that they are compliant with the law.¹⁹ MCI WorldCom agrees that the Petitioners may also be liable for damage claims from competitors.²⁰

Specifically, MCI WorldCom agrees that the Petitioners have violated § 271 as a result of their provision of NDA by using databases they do not own.²¹ Both Bell Atlantic and SBC admit

¹⁷ AT&T Comments at 6, n. 12 (providing the exact date that each Petitioner began offering its NDA services - BellSouth (July 13, 1999), SBC (August 5, 1998), Bell Atlantic (March 1, 1999)). See also MCI WorldCom Comments re. Bell Atlantic at 2, n. 2.

¹⁸ See SBC Communications Inc.'s Clarification and Supplement to Its Petition for Forbearance Filed on November 2, 1999, CC Docket No. 97-172 (filed November 19, 1999). Ameritech began offering NDA services in Chicago on September 9, 1996. SWBT began offering NDA services in Missouri on July 15, 1998. Pacific Bell began offering NDA services on April 22, 1999.

¹⁹ MCI WorldCom Comments re. SBC at 3-4 ; MCI WorldCom Comments re. BST at 4 ; MCI WorldCom Comments re. Bell Atlantic at 2-3.

²⁰ AT&T Comments at 6. See also *In the Matter of MCI Telecommunications Corp. v. U S West Communications, Inc.*, File No. E-97-40, and *MCI Telecommunications Corp. v. Ameritech Communications, Inc.*, File No. E-97-19, Memorandum Opinion and Order, (rel. Nov. 8, 1999) at ¶ 17, 19, 37 (Commission stated that MCI WorldCom may file a supplemental complaint for damages regarding U S West and Ameritech's violations of the Act).

²¹ MCI WorldCom Comments re. SBC at 3 ; MCI WorldCom Comments re. BST at 4; MCI WorldCom Comments re. Bell Atlantic at 2; AT&T comments at 5; Comments of Excell

this in their respective Petitions.²² Further, while BellSouth is not as forthcoming, the conclusion is easily reached by BellSouth's willingness to comply with the requirement to own the storage facility at some point in the future.²³ Therefore, Petitioners must be sanctioned for these flagrant and intentional violations of §271.

It follows that Petitioners have violated § 272 separate affiliate requirements for an extended period of time as well.²⁴ The Petitioners were at least on notice of a potential violation over two years ago when U S West and Ameritech filed petitions for declaratory ruling. The Petitioners knew they were in violation of the Commission's *NDA Order* as early as June of 1999 and yet chose to file their petitions for forbearance months later.²⁵ In certain instances, these filings were submitted years after the company began offering NDA. MCI WorldCom concurs with AT&T that this failure to file forbearance petitions while it was providing this service illegally should be deemed a violation of the § 272 transaction disclosure requirements.²⁶

Additionally, BellSouth and SBC should face sanctions for their refusal to comply with the

Agent Services, L.L.C. (Excell Comments), CC Docket No. 97-172 (filed Nov. 29, 1999) at 15.

²² Bell Atlantic Petition for Further Forbearance at 2-3; SBC Petition at 3 (admits they do not own the storage facilities for SWBT and PB's provision of national directory assistance).

²³ BellSouth Petition at 5-6 (only states it will "ensure" that it owns the storage facility for both out-of-region and in-region listing information)

²⁴ AT&T Comments at 6-7; MCI WorldCom Comments re. SBC at 3-4 ; MCI WorldCom Comments re. BST at 4; MCI WorldCom Comments re. Bell Atlantic at 2.

²⁵ On June 9, 1999 the Commission adopted its *NDA Order* and issued a press release which clearly provided that NDA is an interLATA service. *Id.*; see also AT&T Comments at 6.

²⁶ AT&T Comments at 7.

nondiscrimination obligations under § 272(c).²⁷ BellSouth only states that it will comply with these obligations in the future.²⁸ Moreover, as MCI WorldCom overwhelmingly demonstrated in its initial comments, SBC has steadfastly refused to comply with this obligation throughout its region without fear of reprisal.²⁹

Finally, MCI WorldCom reiterates that Petitioners should be ordered to immediately cease their provision of NDA until each proves to the Commission that it is in compliance with §§ 271 and 272 of the Act.³⁰ These parties should not be permitted to compete for and receive revenue from the provision of services that they provide unlawfully.

V. Commission Must Ensure Reasonable Pricing of Directory Assistance

MCI WorldCom agrees with the arguments that in accordance with the nondiscrimination requirements of § 272(c)(1) and the *NDA Order*,³¹ the BOCs should not be able to charge any rate, no matter how unreasonable, to unaffiliated entities as long as they impute those same rates to themselves.³² Indeed, MCI WorldCom cited a glaring example of BOC assessment of a grossly

²⁷ AT&T Comments at 8.

²⁸ BellSouth Petition at 8. See also AT&T Comments at 8.

²⁹ See MCI WorldCom Comments re. SBC at 5-7.

³⁰ MCI WorldCom Comments re. SBC at 2-3; MCI WorldCom Comments re. BST at 5; Excell Comments at 16.

³¹ The Commission addressed the potential for price discrimination by the BOCs, and its obvious adverse affect on competition, by expressly providing in its *NDA Order* that U S West must “make available to unaffiliated entities all of the in-region directory listing information it uses to provide region wide directory assistance service at the same rates, terms and conditions it imputes to itself.” *NDA Order* ¶ 37.

³² Excell Comments at 9.

inflated rate in excess of its cost-based rate for the directory assistance listing information.³³ Any refusal to offer directory listings at nondiscriminatory or imputed rates provides a clear basis for the Commission's denial of the Petitioners' forbearance requests.

MCI WorldCom concurs that the BOC's obligation to provide its directory listings at reasonable cost-based rates that it imputes to itself is absolutely critical to ensuring a level playing field.³⁴ Directory assistance providers are at the mercy of the "price floor" created by the BOCs because competitors must establish their rates based on the need to obtain subscriber data.³⁵

SBC asserts that MCI WorldCom, AT&T and Sprint charge more for their NDA services than a BOC, and that this supports SBC's argument that "vigorous competition" will ensure that the BOC prices for directory listings are reasonable. This statement does not prove that SBC's rates are reasonable. To the contrary, Teltrust correctly notes that this only proves that a BOC's ability to undercut competition stems from its ability to control access to data listings and the price. Thus SBC's example serves only to cast doubt on whether SBC can be trusted to adhere to its obligation to impute the same costs to itself that it charges to others for directory listing information.³⁶

³³ MCI WorldCom Comments re. SBC at 6 (It costs SWBT \$.0011 to provide each directory assistance listing, but SWBT charges competitors \$.0585 per listing - a rate SBC claims it imputes to itself.)

³⁴ Teltrust at 13. MCI WorldCom emphasizes Teltrust's point that the BOC's control all the essential pieces to provision directory assistance: the majority of the subscriber data, the information of the other carriers' subscribers, (often at no charge) as well as the rates for the access to that data. *Id.*

³⁵ Teltrust at 13.

³⁶ Telturst at 13.

Finally, many commenters assert that forbearance must not be granted until the Petitioners provide clear evidence that they are in fact providing directory listings to competitors at the same rates they impute to themselves.³⁷ MCI WorldCom agrees.³⁸ Petitioners should make this additional showing prior to a grant of forbearance as a result of anti-competitive evidence such as SBC's assessment of rates far in excess of costs.³⁹ MCI WorldCom agrees that BOCs seeking forbearance from § 272 for the provision of NDA must attest to and provide evidence as to the reasonableness of its rates, that it is imputing the same costs to itself, and that the method used to substantiate the imputation are appropriate and do not reflect inflated costs.⁴⁰

VI. Sunset Provisions of § 272(f)(1) Do Not Apply to the Nondiscrimination Provisions

In its comments, Excell expresses concern that the 3 year sunset provision in § 272(f)(1)⁴¹ may be incorrectly interpreted to include a 3 year sunset for the Commission's nondiscrimination

³⁷ INFONXX Comments at 8; Teltrust Comments at 14.

³⁸ Teltrust Comments at 14.

³⁹ See MCI WorldCom Comments re. SBC at 6.

⁴⁰ INFONXX Comments at 9. As INFONXX correctly points out, given the record of BOC failed compliance with the Telecommunications Act and the provision of NDA, any grant of forbearance must be tied to an actual offering of directory listing information at nondiscriminatory and imputed costs. MCI WorldCom concurs with the comments of Teltrust that any inflated BOC rates for directory listings may be a violation of the prohibition against unreasonable discrimination in § 202(a) and may constitute unreasonable practices and charges pursuant to § 201(b). Teltrust Comments at 15.

⁴¹ Section 272(f)(1) states that [t]he provisions of this section . . . shall cease to apply with respect to the manufacturing activities or the interLATA telecommunications services of a Bell operating company 3 years after the date such Bell operating company or any Bell operating company affiliate is authorized to provide interLATA telecommunications service under section 271(d), unless the Commission extends such 3-year period by rule or order.

requirements set forth in its *NDA Order*.⁴² We agree. The 3 year sunset provision only applies to BOC activities that fall under § 271(d). Because the Commission concluded that NDA services, if structured properly, are the equivalent of incidental interLATA services pursuant to § 271(g)(4), the sunset provisions are not applicable to the *NDA Order*'s nondiscrimination provisions.

VII. Conclusion

The Commission should not grant the requested relief until all the BOCs have certified and provided evidence that they have complied with the law. Until such time, Petitioners should be prohibited from providing NDA service. Additionally, the Commission should sanction these parties for providing NDA services without owning the information storage facilities in violation of § 271. Similarly, the Commission should sanction the Petitioners for their provision of NDA without a separate affiliate in violation of §272. To the extent the structure of the Petitioners' NDA services do not satisfy § 271 (g)(4), the Commission does not need to go any further in its analysis to determine if the Petitioners have satisfied the forbearance criteria - the forbearance request must simply be denied. In any event, an analysis of the forbearance factors provided in §10 of the Act must lead the Commission to conclude that the Petitioners' forbearance petitions are wholly inappropriate in these instances. Specifically, SBC and its affiliates' unwillingness to

⁴² Excell Comments at 17.

provide directory assistance services and listing information in a manner which is not discriminatory, or unjust and unreasonable provides an additional basis for the Commission's denial of the requested relief in that case.

Respectfully submitted,
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Dated: December 8, 1999

Certificate of Service

I, Lonzena Rogers, do hereby certify, that on this eighth day of December 1999, I caused by first class United States Postage, a true and correct copy of the foregoing Reply Comments concerning SBC Communications, BellSouth Corporation and Bell Atlantic to be served on the following:

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