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

In the Matter of	)	
	)	
MCI WORLDCOM, INC.	)	CC Docket No. ~~99-~~ 00-45
	)	
Petition for Expedited Declaratory Ruling	)	
Regarding the Process for Adoption of Agreements	)	
Pursuant to Section 252(i) of the Communications	)	
Act and Section 51.809 of the Commission's Rules	)	

REVISED PETITION OF MCI WORLDCOM, INC.

MCI WORLDCOM, Inc.

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Dated: March 7, 2000

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SUMMARY

MCI WorldCom asks the Federal Communications Commission to clarify rules relating to adoption procedures under Section 252(i) of the Act.

MCI WorldCom asks the Commission to declare that:

1. a CLEC's adoption of an agreement is effective upon it providing a notice of adoption to a state commission;
2. the adoption of a previously approved agreement is not contingent on state commission approval;
3. when an ILEC challenges an adoption under 47 C.F.R. Section 51.809(b), it can only be excuse from complying with adopted terms if it proves: 1) increased cost; 2) technical unfeasibility; or 3) the absence of legitimately related terms;
4. if an ILEC brings an unsuccessful challenge pursuant to the categories outlined above, the date of adoption is retroactive to the date the CLEC provided the notice of adoption;
5. when an ILEC brings a challenge pursuant to any of the categories outlined above, state commissions must establish expedited procedures;
6. during the pendency of any challenge, an ILEC must honor the adoption of terms other than those being challenged.

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REVISED PETITION OF MCI WORLDCOM, INC.

Pursuant to the Federal Communications Commission's (the "Commission's") Rule 1.2, MCI WORLDCOM, Inc. ("MCI WorldCom"), by its counsel, files this petition seeking a declaratory ruling concerning a requesting carrier's ability to adopt previously approved interconnection agreements under section 252(i) of the Communications Act of 1934, as amended (the "Act"). 47 U.S.C. § 252(i). Specifically, MCI WorldCom requests that the Commission declare that:

(1) a requesting carrier's right under section 252(i) of the Act and section 51.809(a) of the Commission's Rules to effectively adopt interconnection agreements previously approved by a state commission is not subject to state commission approval;

(2) a requesting carrier's adoption is effective on the date of notice of adoption ("Notice of Adoption") to the incumbent local exchange carrier ("ILEC");

(3) when an ILEC challenges an adoption pursuant to Commission Rule 51.809(b) , it only can be excused from complying with the adopted terms when it promptly carries its burden of proving one of the following: 1) that the cost of providing interconnection to the requesting carrier are greater than the costs of providing it the

carrier that originally negotiated the agreement; 2) that the proposed adoption is technically infeasible; or, in the "pick and choose" context, that the carrier has failed to adopt legitimately related terms and conditions. 47 C.F.R. § 51.809(b);

(4) unless a state commission affirmatively determines that an ILEC has satisfied its burden of proof with respect to the criteria concerning cost and/or technical feasibility set forth in section 51.809(b), or with respect to claims of legitimately related terms, the effective date of the agreement is retroactive to the date of the Notice of Adoption;

(5) when an ILEC raises claims of increased costs or technical feasibility pursuant to section 51.809(b), or claims regarding legitimately related terms, state commissions must establish an expedited process for a determination on the ILEC's showing; and

(6) during the pendency of such claims, an ILEC must honor the adoption of terms other

than those being challenged under the rubric of increased cost, technical unfeasibility or an absence of legitimately related terms.

Finally, the Commission has before it Complaints filed by MCI WorldCom against Ameritech related to the matters contained in this Petition.[1] Because the issues are similar to those raised in the Complaints, MCI WorldCom respectfully requests that the Commission hold the Complaints in abeyance pending the outcome of the Petition. Neither party to the Complaints would adversely be affected by this request. The *status quo* would be maintained, and Ameritech would not be required to concede any position

[1] MCI WORLDCOM Communications, Inc. v. Illinois Bell Telephone Company, d/b/a Illinois Bell, Indiana Bell Telephone Company, d/b/a Indiana Bell, Michigan Bell Telephone Company, d/b/a Ameritech Michigan, The Ohio Bell Telephone Company, d/b/a Ameritech Ohio, and Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin, File No. E-99-23 (filed July 9, 1999) (hereinafter referred to as "Complaints").

that it has taken or may take before the Commission in the future. Pending consideration of this Petition, MCI WorldCom further requests that this Commission deem the Complaints and the Petition subject to the Commission's "permit, but disclose" *ex parte* rules, as the Commission has done in prior instances.

I. Introduction and Background

Interconnection agreements established pursuant to section 252 of the Act provide the means by which competitive local exchange carriers ("CLECs") enter local markets. The Act affords new entrants the option of negotiating, arbitrating or adopting interconnection agreements pursuant to sections 251 and 252.

Section 252(i) imposes an affirmative duty on ILECs to make interconnection arrangements available to requesting carriers. A requesting carrier that wishes to avail itself of these arrangements, therefore, has an unfettered statutory right to adopt an interconnection agreement that has previously been approved by a state commission pursuant to section 252(e)(1) of the Act. The Commission's corresponding implementing rule, 47 C.F.R. § 51.809(a), does not restrict this right, but rather clarifies that an ILEC must effect the adoption "without delay." Consistent with the statute and implementing rule, the Commission confirmed that requesting carriers should be able to exercise their opt-in rights under section 252(i) on an expedited basis.[2] In light of requesting carriers' statutory right to adopt agreements pursuant to section 252(i) of the Act, Congress' express desire to jump-start local competition, and the Commission's general concern regarding ILECs' incentives to discourage competition, the only possible interpretation of

[2] Global NAPs, Inc., Petition for Preemption of Jurisdiction of the New Jersey Board of Public Utilities Regarding Interconnection Dispute with Bell Atlantic-New Jersey, Inc., CC Docket No. 99-154, FCC 99-199 (rel. Aug. 3, 1999) at 10, ¶ 20 (Global NAPs).

the Act and the Commission's accompanying rules is that carriers have an immediate right of adoption.

This interpretation of CLECs' statutory rights, however, is not universally acknowledged. While neither the statute nor the Commission's Rule limit CLECs' right to immediate adoption (indeed, they mandate it), ILECs consistently have attempted to place unauthorized conditions on MCI WorldCom's right of adoption. The ILECs have pursued such tactics even when MCI WorldCom has requested the right to adopt an entire agreement previously approved by a state commission.[3] Unfortunately for competition, many states contend that they must approve all opt-in arrangements. As a result of the myriad of approaches, the situation has resulted in much confusion, uncertainty and waste, discussed below. Moreover, even when there is no adoption process established by a state commission, ILECs have argued that certain agreements are no longer available for adoption. None of these claims are justified by the Act or the Commission's Rules.[4]

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[3] See, e.g., Ameritech Answer to Complaint, File No. E-99-23 at 16.

[4] MCI WorldCom has experienced significant delay in the adoption process when seeking to exercise its rights under section 252(i). On April 21, 1999, MCI WorldCom served Notices of Adoption on several Ameritech companies to effect adoption of various state approved interconnection agreements. In response to the Notices, Ameritech asserted that MCI WorldCom's claim of adoption pursuant to the Notices was void and premature because MCI WorldCom failed to follow the respective state commission adoption processes for the subject agreements. To date, Ameritech's anti-competitive behavior has prohibited MCI WorldCom from adopting the agreements. To delay and/or preclude the adoption of agreements, Ameritech argues that it is stuck between its willingness to effectuate the adoptions and alleged state commission processes requiring approval of the adoptions. MCI WorldCom believes, however, that Ameritech's motive is clear -- it simply does not wish to honor MCI WorldCom's requests for adoption because it believes it will be disadvantaged by doing so. As a result of Ameritech's intransigence, MCI WorldCom was compelled to initiate actions before this Commission. The Complaints are currently pending.

A. State Approval Procedures

MCI WorldCom's experience with state approval procedures has been time consuming, unpredictable and expensive. Below is an outline of MCI WorldCom's understanding of the procedures for adoption of 251(i) agreements in several states:[5]

Ohio Public Utilities Commission:

- A staff letter[6] suggests opt-in agreements are treated no differently from negotiated agreements;
- Ohio requires state regulatory approval for all opt-in arrangements;
- Ohio requires a joint filing by the parties.
- There is no retroactive adoption for agreements ultimately approved.[7]

Similarly, for the Illinois Commerce Commission, recent case law suggests:

- Adopted agreements are treated no differently from negotiated agreements;
- The parties must jointly file the agreement to be adopted;
- State regulatory approval is required even for all adoptions;
- Approval has been known to take over nine months from the time of the CLEC's filing of its Notice of Adoption.[8]

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[5] This non-exhaustive list is a random sampling of state commission adoption procedures. A more thorough list has not yet been prepared simply because there are no enumerated procedures in the overwhelming majority of states. This, obviously, raises its own issues. Absent Commission action, CLECs eventually will have to litigate the issues raised in this Petition at the expense of competing with the incumbents.

[6] When compiling the following summary, MCI WorldCom relied on as many sources it could gather. In some jurisdictions, MCI WorldCom relied on staff letters. In others, MCI WorldCom relied on its course of dealing with the approval process. Finally, in a minority of jurisdictions, MCI WorldCom relied on state commission opinions and rules.

[7] See generally July 27, 1999 letter from Kerry Stroup, Director, Utilities Department, Public Utilities Commission of Ohio, to Kecia Boney, MCI Telecommunications Corporation.

[8] See generally QST Comm., Inc. v. Ameritech IL, 1998 Ill. PUC Lexis 986, 98-0603, IL Commerce Comm'n. (Nov. 5, 1998).

MCI WorldCom has gleaned the following from Michigan Public Service Commission case law:

- An ILEC's objection (even for issues not related to increased cost, technical unfeasibility or a CLEC's failure to include legitimately related terms) results in a 90-day arbitration and a 30-day approval period until a decision;
- There is no clear process for approval when an ILEC does not object.[9]

The Indiana Utilities Regulatory Commission's process is far from settled:

- When a CLEC files its letter of intent to adopt an agreement, state regulatory approval is required;
- There is a 30-day comment cycle;
- There is no period by which the state commission must approve or disapprove an adoption.
- There is no retroactive treatment for agreements ultimately approved.[10]

New Jersey Board of Public Utilities' procedure requires two tiers of review:

- An administrative law judge ("ALJ") must review the adoption request;
- The adoption request must be approved by the NJ BPU;

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[9] See generally, CCCMI, Inc. d/b/a CONNECT! v. Ameritech et al., Case No. U-11886 Mich. Public Serv. Comm'n (March 22, 1999).

[10] See generally Petition of WorldCom Technologies, Inc. f/k/a/ MFS Intelenet for the Adoption of the Interconnection Agreement, Cause No. 41268-INT13, Indiana Util. Reg. Comm'n, (May 26, 1999).

- There is no time frame within which the NJ BPU must act. Indeed, in *Global Naps*, the state commission took more than nine months to act;
- No retroactive adoption of the agreement should it be approved.[11]

Minnesota's and Pennsylvania's Public Utilities Commissions, as far as MCI WorldCom can discern, take similar approaches:

- The time frame for approval of adopted agreements is unclear;
- An ALJ must approve the adoption;
- Adopted agreements are treated as ordinary, negotiated agreements;
- There is no retroactive treatment of the adoption when the agreement is adopted.[12]

Oklahoma Corporation Commission's procedures also are far from clear:

- Approval for adopted agreements is required, albeit the process is ministerial;
- If, however, an ILEC objects to terms, there is no guarantee of an expedited process.
- Here, too, the time period for approval is not established.
- There is no retroactive treatment for agreements ultimately approved.

Missouri Public Service Commission:

- The effective date of an adopted agreement is when the state commission signs the order or 90 days after its submission;

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[11] See generally In re: Global Naps, Dkt. No. T098070426, New Jersey Bd. of Pub. Utils., (Jul. 12, 1999).

[12] See generally Focal Comm. Corp. v. Bell Atlantic-PA, Inc., Opinion and Order, C-00981641, Pennsylvania Pub. Utils. Comm'n (September 15, 1999).

- All ILEC challenges to adopted agreements should be resolved within 90 days.
- There is no retroactive treatment for agreements ultimately approved.

Kansas Corporation Commission:

- The KCC's staff requires state approval of all adoptions;
- There is no clear process for ILEC challenges;
- There is no retroactive treatment of agreements ultimately approved by the commission.
- The time period for adoption is not established.

Arkansas Public Service Commission:

- The CLEC's notice of election and a conformed copy of the agreement to the state commission effectuates the agreement;
- For the adoption of an entire agreement, the parties need not sign the agreement for it to become effective;
- There is no clear process when an ILEC objects to the adoption of an agreement.

The California Public Utilities Commission has addressed these issues:

- An ILEC is given 15 days to contest an adoption from the date of the Notice of Adoption;
- The California PUC must resolve any dispute within 10 days;
- The effective date of an agreement is not retroactive to the date of notice;

- The California PUC permits uncontested portions of an agreement to go into effect when notice of the adoption is given.
- There is no retroactive adoption for agreements ultimately approved.[13]

Similarly, the Texas Public Utilities Commission has addressed these issues:

- An ILEC has five days to challenge the adoption of an opt-in agreement;
- The Texas PUC has 30 days to issue its decision;
- There is a limitation on acceptable challenges an ILEC can bring;
- If there is no ILEC objection in five days, the adoption is successful;
- There is no retroactive treatment for agreements ultimately approved.[14]

Various state procedures and time frames for decisions result in increased costs, delays in market entry or prohibition of market entry for CLECs. The foregoing canvas of various states' commission actions illustrates numerous CLEC concerns. In some states, like New Jersey, where the New Jersey Board of Public Utilities requires ALJ oversight and a protracted approval process, transaction costs are prohibitively high. The CLEC and ILEC must expend considerable resources in regulatory proceedings – no matter how frivolous the challenge. Moreover, the CLEC cannot effectively create a business plan and properly allocate its resources until approval is obtained from the state commissions. The ILEC, on the other hand, has its transaction costs offset by monopolistic profits that it continues to reap as a result of unnecessary and strategic delays it encourages in the adoption process.

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[13] See generally Resolution 178, Cal. Pub. Utils. Comm'n, (Nov. 23, 1999).

[14] See generally Order on Appeal of Order No. 4, Dkt. No. 21100, Tex. Pub. Utils. Comm'n (October 13, 1999).

In light of this Commission's limited grant of authority to state commissions with regard to the section 252(i) process, state procedures permitting challenges unrelated to cost, technical feasibility or legitimately related terms cannot be allowed to delay or prevent implementation of an agreement. The Commission's rule, as affirmed by United States Supreme Court, gave state commissions the right to review section 252(i) agreements, when a challenge is made by an ILEC, solely for increased cost, technical feasibility and legitimately related terms.

Finally, the panoply of state procedures for the adoption of already approved agreements is an inherent deterrent to healthy competition. So long as there are diverse, confusing and often non-existent state adoption procedures for a process that Congress intended to have national application, chaos will reign. CLECs will be forced to limit the scope of their business forecasts. CLECs will have to expend often limited resources on knowing or divining state approval processes. Moreover, CLECs will be forced to litigate every agreement or succumb to an ILEC's unreasonable demands so that they might adopt an agreement, even if it is not the agreement to which the CLEC is legally entitled. In short, at best, under the current procedures, CLECs are delayed from market entry; at worst, the entropic procedures prohibit CLECs from market entry.

B. The Need for National Uniformity is Integral to Competition

The need for national uniformity in the adoption of interconnection agreements was not lost on this Commission when it adopted its implementing rules. Uniform rules bring a measure of predictability that requesting carriers need to effectively devise and implement their business plans. As this Commission has determined, it is critical that requesting carriers are able to exercise their adoption rights under section 252(i) without

delay.[15] The Commission's reasoning was sound. Requesting carriers should have certainty when seeking the adoption of state approved agreements. ILECs have no incentive to facilitate the adoption process for requesting carriers, particularly where they perceive that the adopted agreement, or portions thereof, would be disadvantageous.

MCI WorldCom files this Petition, therefore, seeking a definitive declaration by this Commission that, in accordance with section 252(i) and the Commission's implementing rule 51.809, requesting carriers need not undergo state commission approval processes to adopt state approved interconnection agreements.[16] This Commission has recognized and limited the states' role in the adoption process. First, this Commission acknowledged in its Local Competition Order that states would need to establish a process for filing adopted agreements so as to make them available for adoption by other carriers.[17] This makes sense. Under section 252(h) of the Act, all interconnection agreements must be filed with the respective state commissions. To the extent this rule gives state commissions procedural authority to determine the form of a filing and other purely administrative issues, the state commissions would be acting consistently with Congressional intent and the Commission's rules.

Here, MCI WorldCom does not ask the Commission to do anything extraordinary. It is the Commission, through Rule 51.809 that delegated the federal authority to the state commissions for review of cost and technical feasibility claims. MCI WorldCom simply

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[15] See, e.g., In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499 (1996).

[16] While MCI WorldCom believes that the Commission's Rule 47 C.F.R. 51.809(a) clearly contemplates the adoption of interconnection agreements without the need for state approval, ILECs have used any perceived ambiguity to improperly delay adoptions under section 252(i).

[17] Local Competition Order, at 16141, ¶ 1321.

asks the Commission to clarify the states' limited role in the 252(i) adoption process. The Commission, by this Petition, is asked to declare that it did not intend for states to adopt anything but procedural rules regarding the adoption of agreements, beyond the state commissions' ability to substantively review issues of cost, technical feasibility and legitimately related terms. To the extent the Commission already has limited substantive review to the three discrete issues, making the declaration sought by this petition simply is a reiteration or clarification of the limitations on the Commission's previous grant of authority.

C. There Must Be Expedited Review for Section 51.809(b) Claims

Similarly, MCI WorldCom acknowledges that this Commission authorizes state commissions to review and consider objections to the adoption of either an entire agreement or portions thereof on three limited issues: claims of increased cost such that implementing the agreement or provisions therein would cost the ILEC more for the requesting carrier than for the original carrier, where technical feasibility is at issue and where the ILEC claims that requesting carriers must adopt certain legitimately related terms and conditions.[18] These issues, however, are the only issues properly raised by an ILEC objecting to an adoption under section 252(i). As the Commission has recognized (and we agree), it is nonsensical to believe that the adoption of an already approved agreement (or any provision therein) would require approval again from the same agency that approved it in the first instance. To discourage anti-competitive behavior that would unreasonably delay section 252(i) adoptions, the Commission properly limited the acceptable reasons that an ILEC could object to an adoption. To its credit, the

[18] 47 C.F.R. Section 51.809(b); Local Competition Order, at 16139, ¶ 1315.

Commission requires ILECs bear the burden of proving that the ILEC should not be required to meet an obligation under section 252(i).

As such, MCI WorldCom requests that the Commission clarify that a state commission's ability to approve an adoption is only invoked when an ILEC raises one of these objections. Accordingly, to ensure expeditious treatment of a request for adoption where an ILEC raises claims under section 51.809(b), and to further avert an ILEC's ability to delay an adoption for improper reasons, MCI WorldCom requests that the Commission declare that any state process to review an ILEC's claims under section 51.809(b), or claims of legitimately related terms and conditions, must be conducted as expeditiously as possible. Consistent with this approach, MCI WorldCom respectfully requests that the Commission mandate that if a state determines that an ILEC has not proven that it should be excused from its obligation, the effective date of the adoption be the date the Notice of Adoption was served on the ILEC and/or the state commission.

Finally, because this Petition affords the Commission an opportunity to resolve questions regarding the establishment of state adoption processes under section 252(i) and Commission Rule 51.809, MCI WorldCom respectfully requests that the Commission deem the Complaints and the Petition subject to the Commission's "permit, but disclose" *ex parte* rules as it has for proceedings under similar circumstances in the past.[19]

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[19] See Ex Parte Procedures Established for Formal Complaint Filed by Ameritech Corporation Against MCI Telecommunications Corporation (File No. E-97-17), and for MCI Petition for Declaratory Ruling Regarding the Joint Marketing Restriction in Section 271, Public Notice, 12 FCC Rcd. 18046, 18047 (1997). The Commission concluded, "[t]he declaratory ruling proceeding raises legal and policy issues that have widespread impact and importance. We believe that the public interest in fully and expeditiously resolving the significant issues raised by the declaratory ruling proceeding would best be served by conducting the declaratory ruling proceeding as a 'permit but disclose' proceeding, as contemplated by the Commission's ex parte rules. . . Because the declaratory ruling and the complaint proceedings raise the same issues, however, as a practical matter, we will be unable to do so if the

II. A Requesting Carrier's Right Under Section 252(i) of the Act and the Commission's Rules to Adopt Previously-Approved Interconnection Agreements is Not Subject to State Commission Approval

Neither the language in section 252(i) nor section 51.809(a) permits or authorizes state commission approval of a requesting carrier's adoption of an already approved agreement. Section 252(i) directs ILECs to make available any interconnection, service or network element provided under an approved agreement upon the same terms and conditions as provided in the original agreement. Section 51.809(a) of the Commission's Rules, in accordance with the statutory mandate, requires ILECs to make available, without delay, terms and conditions of previously-approved interconnection agreements. The Commission carved out express and very limited exceptions to this requirement that are set forth in section 51.809(b) and the Commission's Local Competition Order.

MCI WorldCom is astounded that certain ILECs have objected to the adoption of entire agreements in light of these same ILECs' contrary position during consideration of the Local Competition Order and appeals before the Eighth Circuit Court of Appeals and the United States Supreme Court. Historically and repeatedly these ILECs have argued that requesting carriers should be required to take an entire agreement and not be allowed to pick and choose certain provisions from various agreements when seeking adoption.[20] Now, MCI WorldCom asks that the Commission address with particularity the process surrounding adoption of approved agreements pursuant to section 252(i). The parties did not comment on the adoption process because no one could have anticipated the problems MCI WorldCom and other carriers have encountered in their attempts to adopt

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complaint proceeding continues to be conducted as a restricted proceeding. Therefore . . . we find, in this particular instance, that the public interest would be served by applying to both proceeding the 'permit but disclose' ex parte rules applicable to non restricted proceedings." Id.

agreements. Moreover, because most parties did not have interconnection agreements at the time the Local Competition Order was adopted, the parties could not have anticipated the level of ILEC resistance during the adoption process. Therefore, parties should not have been expected to submit comments addressing the adoption process in this regard.

The Commission, in its Local Competition Order and its rules, also determined that the states would have two basic roles in the adoption process under section 252(i). First, the state commissions would establish ministerial rules to make approved agreements available on an expedited basis. In its Local Competition Order, the Commission noted that it "leaves to state commissions in the first instance the details of the procedures for making agreements available to requesting carriers on an expedited basis."[21] This statement taken in the context of the Commission's rules can only be construed to mean that the Commission, to ensure expedited treatment of the adoption, only foresaw the need for state commissions to establish processes by which requesting carriers must file (as opposed to secure approval for) agreements adopted pursuant to section 252(i). In short, the Commission was only making the reasonable assertion that, because the states were custodians of interconnection agreements, they were empowered to implement limited, procedural rules to ensure that the agreements were properly filed. No more.

As discussed above, state commissions have the authority to consider ILEC claims under section 51.809(b). Here, no state action was authorized for adoptions premised on proper filing of notice to the ILEC and/or the state commission. Instead, the

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[20] AT&T Corp. v. Iowa Utils. Bd., 119 S.Ct. at 738 ("A carrier who wants one term from an existing agreement, [the ILECs] say, should be required to accept all the terms in the agreement.").

[21] Local Competition Order at 16141, ¶ 1321 (emphasis added).

absence of any delineated state role pursuant to either the statute or the Commission's Rule 51.809(a) is evidence that neither Congress nor the Commission believed that the adoption of an already approved agreement required any review or approval of the requested terms and conditions. Indeed, the establishment of state approval processes for 252(i) adoptions will prohibit or have the effect of prohibiting a carrier from providing telecommunications services in violation of the Act's section 253. This is particularly evident when either a new entrant does not have an existing agreement or where a carrier's existing agreement has expired. Further, where a requesting carrier seeks to adopt certain provisions of an agreement, the Commission authorized the state commissions to consider whether certain terms are legitimately related to the provisions a requesting carrier seeks to adopt.[22]

[22] Local Competition Order, at 16139, ¶ 1315.

The simplicity of the adoption process as contemplated by this Commission is further substantiated by the Commission's decision in Global NAPs.[23] In Global NAPs, the Commission noted that state commissions, by federal law, have approval authority pursuant to section 252(e)(1) over "arbitrated" or "negotiated" agreements and that "adopted" agreements are neither.[24] This statement is significant. It represents the Commission's acknowledgment that there is no statutory mandate or support for state approval of adopted agreements. Further, this interpretation is consistent with the statute. Section 252(e)(1) of the Act ("Approval by State Commission"), by its terms, concerns only negotiated and arbitrated agreements:

> (1) Approval Required.—Any interconnection agreement adopted by *negotiation or arbitration* shall be submitted for approval to the state commission. A state commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

47 U.S.C. § 252(e)(1) (emphasis added). Section 252(i), in contrast, does not even mention state commission oversight in the adoption process.

In Global NAPs, the Commission also focused attention on an ILEC's responsibility to honor an adoption, as long as certain information was provided by the requesting carrier. Here again, the simplicity of the process contemplated by the Commission is evident. According to Global NAPs, to effect a section 252(i) adoption, a requesting carrier need only make a notice filing to the ILEC.[25] Indeed, after providing

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[23] Global NAPs, at 10, ¶ 20.

[24] "As the Commission observed three years ago, a party seeking interconnection 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.'" Global NAPs, ¶ 4, *citing* Local Competition Order, 11 FCC Rcd at 16141, ¶ 1321.

[25] "Thus, for example, a carrier should be able to notify the local exchange carrier that it is exercising this right by submitting a letter to the local exchange carrier identifying the agreement (or the

this guidance on acceptable adoption *procedures*, the Commission opined that the petitioner Global NAPs "should have been able to exercise its opt-in right under section 252(i) on an expedited basis."[26] By way of illustration, the Commission explained that a requesting carrier that follows this process ". . . takes all the terms and conditions of that agreement.[27] Clearly, the process contemplated by this Commission for adoptions pursuant to section 252(i) is simple, straight forward, and unencumbered by the need for state commission approval. Undoubtedly, as the Commission previously found, the pro-competitive purpose of section 252(i) would be defeated if a carrier were required to undergo the potentially protracted section 251 review process to adopt an interconnection agreement already approved by a state.[28] In short, the Commission already has spoken on this issue. Certain state commissions, however, have refused to honor the Commission's plain and unequivocal edict.

Finally, a determination that state approval for adoptions made under section 51.809(a) is unnecessary and will in no way undermine state commissions' authority to approve and enforce section 252 interconnection agreements. State commission approval of agreements that carriers seek to adopt is a pre-requisite to the adoption of a section 252(i) agreement. Moreover, this Commission has carefully and thoughtfully confined the states' role for adoptions to the consideration of objections raised pursuant to section

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portions of the agreement) it will be using and to whom invoices, notices regarding the agreement, and other communications should be sent." Global NAPs at 5 n.25.

[26] Id., at 5 n.26.

[27] Global NAPs at 5 n.25.

[28] Id. at 3 ¶ 4 *citing* Local Competition Order, 11 FCC Rcd at 16141, ¶ 1321 ("Otherwise, the 'non-discriminatory, pro-competition purpose of section 252(i) would be defeated were the requesting carriers required to undergo a lengthy negotiation approval process pursuant to section 251.'").

51.809(b) and to those concerning the issue of legitimately related terms and conditions. In light of requesting carriers' unequivocal statutory right to adopt agreements pursuant to section 252(i) of the Act, and Congress's express desire to jump-start local competition, MCI WorldCom believes that the Commission correctly interpreted section 252(i) when it determined that adoptions be effective without the need for state approval.

III. A State's Consideration of an ILEC's Objection to Adoptions Should Be Concluded as Expeditiously as Possible, and State Commissions Must Not Consider Any Objections With the Exception of Increased Cost, Technical Feasibility and Legitimately Related Terms and Conditions

As MCI WorldCom demonstrated above, the language of the Act and the Commission's Rule 51.809(a) affords requesting carriers an immediate right to adopt state approved interconnection agreements. As the Supreme Court recognized, section 51.809(b) provides only three exceptions to requesting carriers' unfettered right to adopt agreements pursuant to section 252(i).[29] Indeed, when an ILEC challenges an adoption under section 51.809(b), a state commission has authority to review the proposed adoption. In addition, where requesting carriers attempt to adopt certain provisions of an agreement, ILECs must prove to state commissions any claims that requesting carriers must accept certain terms and conditions as legitimately related to those provisions.[30]

The Commission has granted state commissions the limited authority to consider issues of increased cost, technical feasibility and legitimately related terms when a carrier

[29] AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721, 738 (1999).

[30] Some ILECs have argued that state commissions have authority to consider ILEC claims under the reasonable period limitation in section 51.809(c). That is incorrect. The Commission was clear in its Local Competition Order that the imposition of a "reasonable period of time" limitation on adoptions under section 252(i) had nothing to do with a measure of time remaining before an interconnection agreement expires, but rather, was intended to address concerns about increased costs and technical compatibility that may have developed over time. Local Competition Order, at 16140, ¶ 1319. ILECs have the opportunity to prove that the proposed adoption is technically infeasible under section 51.809(b). The duration of an

requests the adoption of another agreement or provisions therein. To successfully excuse itself of the obligation to honor a request for adoption, the ILEC must prove its claim. Any other claims raised by an ILEC in an attempt to justify its refusal to honor a request for adoption may not be entertained.[31]

Because the language that limits a state commission's authority to review ILEC objections to adoptions to three factors — increased cost, technical feasibility, and legitimately related terms and conditions — MCI WorldCom believes that a state commission must resolve objections as soon as possible. The agreement or provisions that a requesting carrier seeks to adopt have already been reviewed by the state commission. In fact, were an ILEC to raise such objections, in light of a state commission's prior review of the specific term, it would need only request and review a minimal amount of evidence provided by each party to the proceeding. Therefore, to satisfy the statutory mandate as well as the Commission's Rules, any process established by a state commission to review objections raised by an ILEC to a proposed adoption must still afford a carrier the ability to exercise its rights under section 252(i) in an expeditious fashion.[32]

The Texas Public Utilities Commission (TXPUC), for example, enacted a process for proceedings involving claims of legitimately related terms. Under the TXPUC's

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agreement is irrelevant. The statutory language of the Act provides no limitation on the time by which adoption of an agreement must be sought.

[31] For example, ILEC claims that certain agreements are not available for adoption, that reciprocal compensation provisions cannot be adopted, that information pertaining to the points and dates of interconnection must be provided, or that new agreements must be executed before an adopted agreement can be deemed effective are unsubstantiated and are not legitimate claims for consideration by the state commission.

[32] "An expedited process for section 252(i) opt-ins would necessarily be substantially quicker than the time frame for negotiation, approval, of a new interconnection agreement since the underlying agreement has already been subject to state review under section 252(e)." Global NAPs, at 3, n. 14.

rules, ILECs would have five days within which to respond to an adoption with a list of legitimately related provisions, discussed above. The TXPUC would then conduct an arbitration that should take no more than three weeks. The entire process should be completed in one month. In California, as outlined above, an ILEC has 15 days to contest a Notice of Adoption. If the ILEC challenges the adoption, the California PUC has 10 days to resolve the dispute. Because the statutory right for adoption is an immediate one, we believe that this Commission should provide guidance on how other state commissions should expedite proceedings involving objections to adoptions. MCI WorldCom cites favorably the California and Texas Commissions' expedited processes.

There are also practical reasons for expediting a state commission's review of ILEC objections to adoptions. First, a streamlined, expedited process will provide certainty for requesting carriers as they consider strategic business planning. By choosing to adopt an agreement, a requesting carrier may believe that the more favorable terms will allow it to build out facilities or allow it to provide services to a greater number of consumers. If a state commission takes an excessive amount of time to review an ILEC's objections under section 51.809(b), even where the requesting carrier is receiving the benefit of the terms in that agreement pending state commission consideration, the requesting carrier could find that it pursued a wrong or inferior business strategy if it is faced with a state commission's adverse decision. Moreover, in the end, a requesting carrier might be forced to cease providing service to customers it acquired during the time the erroneous terms were presumed to be in effect. In addition, ILECs may stall the state's review process solely to ensure that the agreement a carrier seeks to adopt expires before the adoption is approved by the state commission. In these

circumstances, an ILEC that dislikes the terms of an agreement would have the incentive to oppose its adoption by raising frivolous claims, all the while knowing the imminence of the expiration of the adopted agreement. Finally, ILECs will be forced to raise their objections in a timely fashion if a state process must be completed within an expedited period of time from the date of the Notice of Adoption. Otherwise, an ILEC could refuse to honor a request for adoption while failing to raise any affirmative claims pursuant to section 51.809(b) or the Commission's Local Competition Order.[33] In this situation, it is likely that the question of adoption will altogether never be resolved by the state commission.

IV. When an ILEC Unsuccessfully Challenges the Adoption of an Agreement, the Effective Date of Adoption Should Be Retroactive to the Date of the Notice of Adoption

With these issues in mind, MCI WorldCom further requests that this Commission declare that if a state determines that an ILEC has failed to meet its burden of proving its claims under section 51.809(b) or paragraph 1315 of the Local Competition Order, the effective date of adoption be retroactive to the date of notice of the adoption. We believe that such a declaration will serve to discourage ILECs from pursuing frivolous claims under section 51.809(b). Moreover, this rule makes sense. If a CLEC adopts terms of an agreement on January 1 that are proper, January 1 should be the effective date of the adopted agreement. The ILEC should not get the windfall received by stalling the

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[33] ILECs have every incentive to keep their competitors out of the local market as long as possible by driving up competitors' costs. As this Commission has recognized,

> "[I]ncumbent LECs have little incentive to facilitate the ability of new entrants, including small entities, to compete against them and thus, have little incentive to provision unbundled elements in a manner that would provide efficient competitors with a meaningful opportunity to compete."

Local Competition Order, at 15656, ¶ 307.

adoption of an agreement for reasons later deemed to have no merit. Moreover, such an approach will deter ILECs from raising meritless claims as CLECs seek to adopt agreements.

V. Even When a State Commission Considers an ILEC's Claims with Respect to Section 51.809(b), a Requesting Carrier's Adoption of the Remaining Portions of the Agreement Must be Honored by the ILEC

A state's determination as to whether adoption of an agreement or provisions therein would cause the ILEC to incur greater costs or whether the adoption is technically feasible, or whether additional terms and conditions should be adopted should not delay adoption of an entire agreement. If, for example, a carrier seeks to adopt an entire agreement, only the specific provisions challenged by the ILEC pursuant to section 51.809(b) need be considered by a state commission. This is the California PUC's approach, outlined above. The remaining terms and conditions of the agreement must be honored by the ILEC as adopted by the requesting carrier.

Because section 51.809(b) only enunciates exceptions to the absolute right of adoption under section 252(i), ILECs must not be able to delay the effectiveness of an entire adopted agreement simply by raising the specter of section 51.809(b) objections to certain provisions. This would essentially eviscerate a requesting carrier's adoption rights before the ILEC meets the requisite burden of proving its claims. MCI WorldCom's interpretation is only logical. If the ILECs are able to delay adoption of the remaining portions of the agreement by raising section 51.809(b) objections for other portions of the agreement or arguing that certain terms are legitimately related to those the requesting carrier seeks to adopt, requesting carriers would be delayed or prohibited in their quest to provide services. Effective adoption of provisions not subject to a

section 51.809(b) objection or where no claim is raised as to legitimately related provisions are justified under section 51.809(a) and the Act and is the only way to combat the potential for ILEC malfeasance.

VI. Conclusion

For the reasons stated, MCI WorldCom respectfully asks the Commission to determine that requesting carriers need not undergo a state commission approval process when adopting previously-approved interconnection agreements pursuant to section 252(i) of the Act and section 51.809(a) of the Commission's Rules. Moreover, MCI WorldCom also asks that the Commission urge state commissions to review ILEC claims raised pursuant to section 51.809(b) and as to legitimately related provisions as expeditiously as possible. MCI WorldCom further requests that the Commission mandate that if a state determines that an ILEC has not met its burden of proving that it should be excused from its obligation under rule 51.809(b), the effective date of the adoption is the date the Notice of Adoption was served on the ILEC. In addition, MCI WorldCom requests that this Commission declare that an ILEC that raises section 51.809(b) objections to specific provisions of an agreement must immediately honor the adoption of the unchallenged terms of the adopted agreement.

Finally, MCI WorldCom requests that the Commission find that the public interest will be served by establishing "permit but disclose" ex parte status for this Petition and Complaints pending before the Commission, because both the Complaints and the Petition raise related policy and legal issues regarding section 252(i) adoptions.

Respectfully submitted,

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Dated: March 7, 2000

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that on this seventh day of March, 2000, I have caused to be delivered by hand, a true and correct copy of MCI WorldCom, Inc.'s Revised Petition for Expedited Declaratory Ruling Regarding the Process of Agreement Pursuant to Section 252(I) of the Communications Act and Section 51.809 of the Commission's Rule on the following:

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