

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

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

OPPOSITION OF GTE

GTE Service Corporation and its affiliated domestic communications companies¹ ("GTE") respectfully submit their Opposition to MCI WorldCom's Revised Petition for a declaratory ruling in the above-captioned docket.² MCI WorldCom asks the Commission to adopt a number of rules governing the adoption of interconnection agreements under Section 252(i) of the Communications Act. It has failed, however, to establish any need for sweeping, nationwide pronouncements. As MCI WorldCom acknowledges, several states already have established procedures for Section 252(i) adoptions, and there is no justification for the Commission to preempt these rules. The

¹ GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc.

² Revised Petition of MCI WorldCom, Inc., CC Docket No. 00-45 (filed Mar. 7, 2000) ("Petition").

other issue raised by MCI WorldCom, appropriate grounds for denying adoption of an interconnection agreement under Section 252(i), already is answered in large part by the plain language of the Commission's Rules, while the few remaining questions are pending in another proceeding. Therefore, GTE urges the Commission not to adopt the declaratory ruling requested by MCI WorldCom.

I. NO ADDITIONAL RULES REGARDING SECTION 252(i) ADOPTIONS ARE NECESSARY.

In its Petition, MCI WorldCom describes the procedures in place in several states for adoption of agreements under Section 252(i),³ but then claims that “the panoply of state procedures for the adoption of already approved agreements is an inherent deterrent to healthy competition.”⁴ MCI WorldCom is effectively asking the Commission to preempt these state processes – even those of California and Texas which “MCI WorldCom cites favorably” – because they are not uniform.⁵

The fact that so many states have already considered these issues shows that Commission intervention is unnecessary. At bottom, MCI WorldCom has failed to identify a widespread problem requiring national rules. If MCI WorldCom believes that a particular state's procedures are inconsistent with Section 252(i), it should file a targeted, state-specific petition requesting preemption.

³ Petition at 5-9.

⁴ Petition at 10.

⁵ For example, requiring that an agreement be effective upon the filing of notice at the state commission is inconsistent with the fifteen-day process already in place in California.

A. Adopted agreements should be effective upon filing of notice by the ILEC, not the CLEC, with the state commission.

MCI WorldCom 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.”⁶ Such a rule is both unnecessary and unworkable.

First, the current system does not produce any significant delay. In most cases, GTE receives notice from the CLEC that it intends to adopt an agreement. GTE then prepares a Section 252(i) adoption letter for both GTE and the CLEC to sign, files the letter with the state commission, and makes the adoption effective upon filing. This process is expeditious, and to date, 404 agreements have been adopted under Section 252(i) in GTE’s local service areas. If the CLEC wishes to take arrangements from several agreements under the “pick and choose” rule, identifying the terms to be adopted is more complicated and takes slightly longer than when the CLEC adopts one agreement in its entirety. In those cases, GTE must identify all legitimately related provisions from each underlying agreement and ensure that they are included in the adoption. GTE believes that providing the CLEC with its letter within 15 days from receiving notice when a CLEC adopts an entire agreement and within 30 days when the CLEC adopts provisions from a number of agreements is reasonable.

Second, requiring that an agreement be effective upon the CLEC’s filing of notice is not practical. Implementation of an interconnection arrangement requires both

⁶ Petition at 13.

parties to undertake numerous steps. For example, before a CLEC can place orders with GTE, the CLEC must complete a profile that provides the data for several GTE system tables and contact information. In addition, if the CLEC chooses to take advantage of electronic access for pre-ordering, ordering, billing, or repair, a connection between GTE and the CLEC must be established. For facilities-based CLECs, a trunk planning meeting is required prior to GTE processing the CLEC's orders. If a CLEC were to file a notice of adoption of a GTE agreement with a state commission and that same afternoon attempt to place orders, there is no way that the GTE ILEC could meet its obligations. The GTE ILEC would likely not even know about the adoption notice. In addition, as described above, GTE needs substantial information from the CLEC before any type of order can be processed. The result would be even more troublesome if a CLEC wanted to adopt provisions from several agreements, as the ILEC would have no time to determine which provisions had been adopted.

MCI WorldCom has neither shown that national rules are necessary nor provided a workable alternative to current state procedures. If the Commission nonetheless does adopt national rules, it should require that: (1) CLECs notify ILECs at the same time as the state commission of their intention to adopt an agreement under Section 252(i) and (2) ILECs have a reasonable period in which to prepare and file the adoption letter, with additional time if arrangements from more than one agreement are being adopted under "pick and choose."

B. MCI WorldCom’s reading of Rule 51.809(c) is unreasonably narrow.

MCI WorldCom asserts that the Commission permits states to consider only three issues when reviewing a proposed adoption under Section 252(i): increased cost, technical feasibility, and legitimately related terms.⁷ It specifically argues that ILECs may not raise, and states may not consider, claims under Rule 51.809(c) that the “reasonable period of time” during which an agreement must be made available has expired.⁸ According to MCI WorldCom, that rule “has 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.”⁹

MCI WorldCom’s position impermissibly renders Rule 51.809(c) superfluous. The economic and technical issues associated with making individually negotiated agreements broadly available are expressly dealt with by Rule 51.809(b). Just as all sections of a statute must be given meaning,¹⁰ Rule 51.809(c) must be given meaning

⁷ Petition at 19-20.

⁸ *Id.* at 19 n.30. Rule 51.809(c) states that “[i]ndividual interconnection, service or network element arrangements shall remain available for use by telecommunications carriers ... for a reasonable period of time after the approved agreement is available for public inspection under section 252(f) of the Act.”

⁹ *Id.*

¹⁰ *See, e.g., Dunn v. Commodity Futures Trading Commission*, 117 S.Ct. 913 (1997); *Bennet v. Spear*, 520 U.S. 154 (1997); *Mackey v. Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988); *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237 (1985).

independent from the preceding subsection. That meaning, of course, is plain on the face of the rule: after a reasonable period of time, an ILEC may withdraw an agreement from the scope of Section 252(i) for any number of legitimate, non-technical and non-economic reasons, including its imminent expiration.¹¹

In any event, this aspect of MCI WorldCom's petition is being dealt with in large part in Docket No. 99-68. In the *Notice* in that proceeding, the Commission asked "whether and how section 252(i) and MFN rights affect parties' ability to negotiate or renegotiate terms of their interconnection agreements."¹² In making this inquiry, the Commission expressly noted that, if an ILEC were unable to prevent CLECs from opting into an expiring agreement, "the incumbent LEC might be subject to the obligations set forth in that agreement for an indeterminate period of time, without any opportunity for renegotiation"¹³ As GTE explained in its comments, the prospect of such a Section 252(i) daisy-chain would unreasonably burden ILECs and undermine the integrity of the Act's negotiation process.¹⁴ This issue is ripe for decision in Docket No.

¹¹ MCI WorldCom suggests that ¶ 1319 of the *Local Competition Order* makes it clear that Rule 51.809(c) is limited to economic and technical issues. The *Order* certainly recognizes that agreements may become economically or technically unreasonable over time, but it does not limit the reach of Rule 51.809(c) as MCI WorldCom contends. Again, the Commission would have had no need to adopt subsection (c) if its scope was no broader than subsection (b).

¹² *Inter-Carrier Compensation for ISP-Bound Traffic, Notice of Proposed Rulemaking*, 14 FCC Rcd 3689, 3709 (1999).

¹³ *Id.*

¹⁴ Comments of GTE, CC Docket No. 99-68 at 24-27 (filed Apr. 12, 1999); Reply Comments of GTE, CC Docket No. 99-68 at 21-24 (filed Apr. 27, 1999).

99-68, and MCI WorldCom should not be permitted another bite at the same apple here.

C. Agreement provisions subject to challenge by an ILEC should not be made retroactive.

MCI WorldCom asks “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.”¹⁵ Such a rule is unnecessary. In most cases, states are using expedited procedures to review challenges to the adoption of agreements under Section 252(i). After a state commission makes its determination, agreements are quickly put into effect. Contrary to MCI WorldCom’s claims, CLECs are not experiencing unreasonable delays, and there is no detrimental effect on competition. If MCI WorldCom believes that the procedures in a particular state are frustrating the goals of the Act, it should file a petition for preemption of those rules with the Commission.

II. CONCLUSION

MCI WorldCom has not provided any basis for the Commission to preempt state procedures governing adoption of interconnection agreements under Section 252(i). Moreover, the declaratory rulings MCI WorldCom requests are either unworkable in practice, already settled by the Commission’s existing rules, or under consideration in an on-going proceeding. Most states examine challenges to adopted agreements

¹⁵ Petition at 13.

expeditiously. If MCI WorldCom believes that a particular state's procedures are inconsistent with the provisions of the Act, it should ask the Commission to preempt that state's rules under Section 253. The Commission should not adopt national rules and preempt existing state procedures without good reason, which MCI WorldCom has not provided.

Respectfully submitted,

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March 31, 2000

CERTIFICATE OF SERVICE

I, Helene Marshall, hereby certify that on this 31st day of March, 2000, I caused copies of the foregoing attached Opposition of GTE to be sent via hand-delivery or via first-class mail, postage pre-paid to the following:

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