

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

MAR 31 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter Of)
)
MCI Worldcom Inc.)
)
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.)

CC Docket 00-45

DOCKET FILE COPY ORIGINAL

COMMENTS OF THE
TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO

The Telecommunications Regulatory Board of Puerto Rico ("the Board"), by its attorneys, hereby submits its Comments in the above-captioned proceeding before the Federal Communications Commission ("FCC" or "Commission").

I. INTRODUCTION

A. The Board

The Telecommunications Regulatory Board of Puerto Rico was created in 1996 to exercise regulatory jurisdiction over intrastate operations of telecommunications carriers. The Board is the body responsible in Puerto Rico for the development of local exchange competition, consistent with the Communications Act of 1934, as amended by the Telecommunications Act of 1996.¹ Over the last four years the Board has constituted itself, has adopted rules, has conducted arbitration proceedings and has approved its first full-blown interconnection agreement between the Puerto Rico Telephone Company ("PRTC") and Sprint. In all of these activities the Board has been guided by the pro-competitive philosophy of the Telecommunications Act of 1996 and its own authorizing legislation, the Puerto Rico Telecommunications Act of 1996.

¹ See 47 U.S.C. § 151, *et seq.*

No. of Copies rec'd 014
List A B C D E

B. The MCI Worldcom Petition

On March 7, 2000 MCI Worldcom Inc. (“MCIW”) filed a Petition seeking a declaratory ruling from the FCC concerning a Competitive Local Exchange Carrier’s (“CLEC”) ability to “adopt” a previously-approved interconnection agreement under Section 252(i) of the Communications Act.² MCIW specifically asks the FCC to declare that:

- (1) a CLEC’s right to adopt an interconnection agreement is not subject to state commission approval;
- (2) adoption is effective upon Notice of Adoption to the Incumbent Local Exchange Carrier (“ILEC”);
- (3) if an ILEC challenges an adoption, it must promptly carry the burden of proof grounds for a challenge;³
- (4) if the ILEC challenge fails, the effective date of the agreement is retroactive to the date of the Notice of Adoption;
- (5) state commissions must establish an expedited process for a determination on the ILEC challenge; and
- (6) while the challenge is being litigated, the ILEC must honor the adoption of terms other than those being challenged.

MCIW contends that the terms of its proposed declaratory ruling are essentially a “given”, when one considers Congress’ desire to jump-start competition, a requesting carrier’s right to adoption under Section 252(i) of the Act and ILEC incentives to discourage competition.

² Section 252(i) provides that

A local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

³ Those grounds are:

- (1) the costs of providing a particular interconnection, etc. to the requesting carrier are greater than the costs of providing it to the original carrier;
- (2) provision of the requested interconnection, etc. is not technically feasible; or
- (3) that the carrier has failed to adopt related terms and conditions. *See* 47 C.F.R. § 51.809.

MCIW reviews the procedures for adoption of Section 252(i) agreements in thirteen states and concludes that the procedures are “time consuming, unpredictable and expensive.”⁴ These state procedures, claims MCIW, cannot be allowed to delay or prevent implementation of an agreement. National uniformity is essential to the development of competition. Otherwise, says MCIW, “chaos will reign.”

II. DISCUSSION

A. The Board Supports An Expedited Approval Process

A process by which a requesting CLEC can quickly “adopt” an already approved interconnection agreement would promote the development of competition in the local exchange market. The Board supports such an expedited process for unchallenged adoptions and intends to consider rules which would enhance the speed with which such agreements can go into effect in Puerto Rico.

B. The Board Opposes the MCIW Petition

Notwithstanding our support for an expedited adoption process, the Board does not believe that MCIW’s Petition should be granted. We do not believe, first, that the FCC should attempt to usurp state commission authority over the approval of interconnection agreements. The extension of federal power contemplated by the MCIW Petition exceeds the reach of the Telecommunications Act, the Commission’s Rules and the Supreme Court decision in *AT&T Corp., et al. v. Iowa Utilities Board*, 142 L.Ed.2d 834, 119 S.Ct. 721 (1999). Second, the record at this point simply does not justify such an extension of federal power.

1. State Authority

The Board strongly disagrees with MCIW’s characterizations of state authority as “ministerial” or “custodial” in connection with interconnection agreements. The Communications Act entrusts state commissions with the job of approving interconnection agreements. The Supreme Court, in upholding the Commission’s authority to implement certain provisions of the Act, recognized that the “1996 Act entrusts state commissions with the job of approving interconnection agreements”, while not precluding the FCC from issuing “rules to

⁴ *MCIW Petition*, p. 5.

guide the state commission judgments”.⁵ However, when that guidance effectively usurps a state’s authority to approve or disapprove an agreement, it goes beyond the proper role that Congress sought to have the FCC play.

The relief asked by MCIW is certainly more than guidance. For example, MCIW would require that a state commission essentially approve a partial agreement by allowing unchallenged terms to go into effect. The challenged terms may be changed, which would essentially create a new agreement, but the opportunity to approve or reject it *in toto* would be lost to the state commission.

The Board believes that the goal of an expedited process is a worthy one, but that MCIW’s suggested extension of federal power into the area of interconnection agreements is not appropriate.

2. No Justification

Second, there is no justification in the record for the draconian measure advocated by MCIW. The fact that states have different procedures for treatment of adoption of agreements is not particularly compelling. State commissions have different procedures for approval of agreements as well. Whatever inconvenience is caused by the need to observe the internal procedural rules of the state commissions would seem to be outweighed by each commission’s right to order its own processes.

Further, this Petition seems to be related closely to a series of complaints MCIW has pending against Ameritech. If this is the entire basis for MCIW’s Petition, it certainly does not justify the intrusion into state commission authority that MCIW seeks.

⁵ *AT&T Corp. v. Iowa Utilities Board*, 142 L.Ed.2d at 853.

III. CONCLUSION

For these reasons, the Board requests that the Commission deny the MCIW Petition.

Respectfully submitted,



Veronica M. Ahern
Nixon Peabody LLP
One Thomas Circle, NW – Suite 700
Washington, DC 20005
(202) 457-5510

Counsel for the Telecommunications
Regulatory Board of Puerto Rico

Dated: March 31, 2000

CERTIFICATE OF SERVICE

I, Susanne M. Gyldenvand, do hereby certify that on this 31st day of March 2000, I have caused to be delivered by hand a true and correct copy of the Comments of the Telecommunications Regulatory Board of Puerto Rico regarding the above-captioned case to the following:

Michelle Carey
Chief
Policy and Programming Planning Division
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

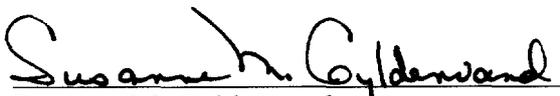
Robert Atkinson
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Julie Patterson
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Radhika Karmarkar
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

John M. Lambros
Kecia Boney Lewis
Lisa B. Smith
1801 Pennsylvania Avenue, NW
Washington, DC 20006
Counsel for MCI Worldcom, Inc.

ITS, Inc.
445 Twelfth Street, SW
Washington, DC 20554


Susanne M. Gyldenvand