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Federal Communications Commission
Washington, DC 20554

OCT 23 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters of)	
Deployment of Wireline Services Offering)	
Advanced Telecommunications Capability)	CC Docket No. 98-147
)	
and)	
)	
Implementation of the Local Competition)	CC Docket No. 96-98
Provisions of the)	
Telecommunications Act of 1996)	

COMMENTS OF WORLDCOM, INC. IN OPPOSITION TO VERIZON'S PETITION FOR A CONDITIONAL WAIVER

Verizon seeks a waiver of the 90-day provisioning rule set forth in the Commission's Order on Reconsideration¹, and permission from the FCC to file tariffs and SGATs with the states that reflect the provisioning guidelines of New York, rather than those required by the Commission.² The Commission should deny Verizon's request, and reaffirm its commitment to developing facilities-based competition in the consumer marketplace.

I. THE COMMISSION CORRECTLY HELD IN THE ORDER ON RECONSIDERATION THAT ILECS MUST PROVIDE COLLOCATION SPACE WITHIN A 90 DAY PERIOD

Verizon requests a conditional waiver that would allow it to apply New York's collocation timeline on a nationwide basis, as the Commission considers the comments

¹ In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Further Notice of Proposed Rulemaking, CC Docket Nos. 98-147, 96-98, (August 10, 2000) (Collocation Order).

² Verizon Petition for Conditional Waiver, CC Docket No. 98-147, dated October 11, 2000 (Verizon Petition).

submitted in the collocation docket. WorldCom strongly urges that the Commission refrain from adopting Verizon's proposal.

It has been four years since the enactment of the 1996 Act, and CLECs are still faced with unreasonable delays in provisioning new space for collocation. The Commission was correct in deciding, in response to Sprint's petition, that an ILEC must deliver physical collocation space within 90 days of receiving an application. However, due to the number of issues raised and concerns expressed in recent ex parte filings³, WorldCom emphasizes its support for the Commission's conclusion that national provisioning guidelines are appropriate, and encourages the Commission to enforce penalties against ILECs that fail to comply with the Commission's Order.

A. WorldCom Supports The Commission's Use Of National Provisioning Standards

As the Commission recognized, the timely ability to provision collocation space is essential to the deployment of broadband services to all Americans.⁴ Since 1992, ILECs have been obligated to provide both physical and virtual collocation. Congress expressly provided for both physical and virtual collocation in § 251(c)(6) in the Telecommunications Act of 1996,

³ See Letter from Hance Haney, Executive Director, Federal Regulatory, Qwest, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 98-147 (Sept. 26, 2000); see also letters from Dee May, Executive Director, Federal Regulatory, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 98-147 (Sept. 12, and Sept. 21, 2000); see also letter from Jared Craighead, Associate Director, Federal Regulatory, SBC, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 98-147 (August 28, 2000); see also letter from W. Scott Randolph, Director - Regulatory Matters, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket Nos. 96-98, 98-47 (Oct. 4, 2000).

⁴ Collocation Order at ¶ 17.

requiring ILECs to provide just and reasonable collocation as a matter of law.⁵

Four and a half years since the 1996 Act, we are still faced with the reality that the ILECs “have an economic incentive to interpret regulatory ambiguities to delay entry by new competitors.”⁶ Verizon’s claim that CLECs would benefit if the Commission adopted the New York standard is another example of the ILECs’ attempt to delay competitive entry.⁷ There is not evidence that, despite any perceived open market conditions in New York, that those conditions exist elsewhere, and that all states should be forced to adhere to the New York standard. A 90 day national standard, in the absence of state action, is a fair and reasonable position for the Commission to promote facilities-based competition.

The Commission has jurisdiction to set national provisioning standards for collocation, as the Supreme Court held in AT&T v. Iowa Utilities Board, 525 U.S. 366, 378 (1990). Accordingly, WorldCom agrees that it is an appropriate exercise of the Commission’s authority to establish provisioning standards in the absence of state action or contractual agreement by parties.⁸ As the Commission notes, ILECs “can take advantage of collocation provisioning delays to lock-up customers in advance of competitive entry.”⁹

⁵ 47 U.S.C. § 251(c)(6).

⁶ First Report and Order, In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 and Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185 (August 8, 1996) at ¶ 558 (Local Competition Order).

⁷ Verizon Petition at 5.

⁸ Collocation Order at ¶ 21.

⁹ Collocation Order n.54, citing In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and

The Commission provisioning schedule for ILECs requires a response to a CLEC application for collocation space within ten days of such an application.¹⁰ WorldCom strongly supports the Commission's reasoning that the ILECs have had "more than ample time since the enactment of section 251(c)(6) to develop internal procedures sufficient to meet this deadline."¹¹ Barring extremely exigent circumstances, ten days is sufficient to respond to a CLEC application for collocation. In the event those circumstances were to arise, state commissions are well equipped to arbitrate such disputes.

In order to implement collocation more effectively and to eliminate further anti-competitive action by the ILECs, the FCC determined that the ILEC

Should be able to complete any technically feasible physical collocation arrangement, whether caged or cageless, no later than 90 calendar days after receiving an acceptable collocation application, where space, whether conditioned or unconditioned, is available in the incumbent LEC premises and the state commission does not set a different interval or the incumbent and requesting carrier have not agreed to a different interval.¹²

In absence of a showing to a state commission, the provisioning period should not take any longer than 90 days, in any instance.¹³

Additionally, the FCC must impose penalties on ILECs that fail to comply with these deadlines. As the Commission noted, "interval[s] of relatively short duration are necessary to

Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, (released Nov. 5, 1999 (UNE Remand)).

¹⁰ Collocation Order at ¶ 24.

¹¹ Collocation Order at ¶ 24.

¹² Id. at ¶ 27.

¹³ Id. at ¶ 31.

help ensure timely deployment of advanced services and other telecommunications.”¹⁴ This action, the Commission should keep in mind, is necessary because the ILECs, including Verizon, failed to comply with the 1996 Act. Therefore, the Commission must use sufficiently strong penalties to create an economic incentive to force compliance with the 1996 Act and the Commission’s rulings, because the word of the law is clearly not enough.

The Commission recognized that, even with new collocation provisioning standards in place, ILECs would be loathe to commit to the Commission’s standards. Thus, the FCC created penalties for 271-approved ILECs, which include enforcement actions that would result in monetary penalties or the suspension or revocation of interLATA approval,¹⁵ which must be enforced rigorously by the Commission. In addition, the Commission should encourage CLECs to bring collocation disputes before state PUCs, and encourage monetary penalties or other restrictions imposed on ILECs that fail to meet collocation deadlines. Any waiver by the Commission would only derail deployment of facilities-based services and fail to address the Commission’s goals in fostering collocation.

B. The Collocation Order’s Requirements That ILECs Must File Amendments To SGATs Or Tarriffs Is Entirely Reasonable

Verizon has failed to present sufficient justification for its claim that it would be unduly burdensome for it to comply with the state tariff and SGAT amendment filing requirements of ¶ 36 of the Collocation Order. Verizon claims that “by relying on New York’s intervals, a waiver would also give states a model of how one state has addressed in detail the issues associated with

¹⁴ Id. at ¶ 27.

¹⁵ Collocation Order at ¶ 31.

setting an interval.”¹⁶ However, Verizon fails to offer up other states that provide shorter collocation periods as a model, choosing instead to offer a state that has deployment timelines longer than what is offered as a national standards, and significantly longer than the provisioning period adopted in other states. As the FCC noted, the 90 day timeline is the “outer limit of incumbent LEC performance that we would generally find consistent with the reasonableness standard in section 251(c)(6)” and that ILECs can provide turn-key collocation “in periods significantly shorter than 90 calendar days.”¹⁷

Verizon itself provides ample reason as to why a federal provisioning standard is necessary. By way of example, WorldCom has been attempting to provision collocation space in Beaverton, Oregon, since March 24, 2000. By letter dated October 13, from Steven J. Pitterle, Director-Negotiations of Verizon Network Services, Verizon noted “project in jeopardy. Cage is built but DS3 will not be available until 2/28/01 and DC power will not be available until 1Q01. Currently, no additional space is available in the office for a new DSX bay to terminate the DS3s.”¹⁸ At best, Verizon will usurp almost a year to provision collocation space for a 100 square foot cage! Of course Verizon seeks a waiver of the provisioning guidelines - it is using every possible avenue to delay CLEC entry into the facilities-based consumer marketplace. However, the Commission should not be swayed by Verizon’s claims that a waiver is good for

¹⁶ Verizon Petition at 5.

¹⁷ Collocation Order at ¶ 31 n.79, (also recognizing the shorter provisioning timelines of North Carolina and Texas).

¹⁸ See letter from Steven J. Pitterle, Director-Negotiations of Verizon Network Services, to John A. Trofimuk, Regional Executive, Central Region, WorldCom, dated October 13, 2000, at 1, annexed as Attachment A.

competition, and for CLECs.¹⁹ If Verizon's efforts were in good faith, as required under the Commission's Order, WorldCom would not be forced to wait for a year to gain access to collocation space.²⁰

Moreover, Verizon offers up no support for its claim that filing tariff or SGAT amendments to comply with the New York standards is sufficiently more efficient than filing SGAT or tariff amendments to comply with the ¶ 36 requirements. As required under 47 C.F.R. § 1.3, Verizon must put forth sufficiently "good cause" to justify a waiver request. However, a "good cause" showing requires "special circumstances" that establishes that the waiver request is (1) in the public interest; and (2) serves the underlying principles at issue.²¹ Neither of these concerns are addressed by Verizon's waiver. This waiver is not in the public interest, especially in light of the fact that, as the Commission noted, there are alternative state standards for consideration, that provide shorter time periods than those offered by New York. Moreover, the underlying principle that prompted the FCC's provisioning requirements is that the ILECs will use provisioning delays to their advantage, and to prevent CLECs from accessing collocation space that can be used to provide service to consumers.

The fact that Verizon must now file amendments to tariffs or SGATs does not constitute sufficient "good cause" to permit a waiver of the FCC's rule. Verizon continues to manufacture

¹⁹ Verizon Petition at 5.

²⁰ Collocation Order at ¶ 35.

²¹ See FPC v. Texaco, Inc., 377 U.S. 33, 39 (1964) (permitting agencies to deviate from rules only upon sufficient public interest; see also Northeast Cellular Tel.Co. v. FCC, 897 F.2d 1164 (D.C. Cir. 1990) (requiring the FCC to provide sufficient justification for permitting deviation from prior rule and to "articulate the special circumstances to prevent discriminatory application . . .").

impediments to its ability to satisfy the 90 day provisioning guidelines is equally nonpersuasive.²² In its underlying comments, Verizon goes so far as to claim that it can require 41 additional days to comply with asbestos or lead abatement requirements.²³ This concern, like others detailed by Verizon in its comments in the collocation proceeding, are manufactured for the purpose of delaying CLECs' entry into facilities-based competition, and are not permitted under the Commission's present rules. Verizon itself acknowledged that the "average date given to the collocator was 82.42 business days, and the average completion was 78.54 business days."²⁴ Clearly, Verizon can comply with the deadlines that it seeks to delay, and in light of Verizon's failure to satisfy the "good cause" standard, Verizon's tariff and SGAT amendment waiver request should be denied.

²² Verizon Petition at 2-3.

²³ See Comments of Verizon at Carey Attachment B, p.1 (Verizon Comments) dated October 10, 2000, in In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Order on Reconsideration and Second Further Notice of Proposed Rulemaking and Fifth Further Notice of Proposed Rulemaking, CC Docket Nos. 98-147, 96-98, (August 10, 2000).

²⁴ Declaration of Karen Maguire at 3, annexed as Attachment B to Verizon Comments.

II. CONCLUSION

Verizon has failed to set forth sufficient "good cause" to support its request for a waiver of the collocation provisioning rules set by the Commission. Given the lack of sufficient support for Verizon's petition, and the lack of public interest in modifying the Commission's rules, Verizon's waiver request should be denied.

Dated: October 23, 2000

Respectfully submitted,

WorldCom, Inc.



Richard S. Whitt

Cristin L. Flynn

Its Attorneys

1801 Pennsylvania Ave., NW

Washington D.C., 20006

(202)887-3234

Of Counsel:

Mark D. Schneider

Jenner & Bloch

601 13th St., NW

12th Floor

Washington D.C., 20005

(202)639-6005

ATTACHMENT A

October 13, 2000

Mr. John A. Trofimuk
Regional Executive, Central Region
MCI WorldCom
205 North Michigan Avenue, Suite 3700
Chicago, IL 60601

Re: FOR DISCUSSION PURPOSES on matters relating to Oregon and Washington Collocation Applications

Dear Mr. Trofimuk:

This information is being provided to you as promised during our telephone conversation on October 10, 2000. As I understand the situation to which you have raised concern, MCI WorldCom submitted applications to Verizon quite some time ago and those applications have not been worked, either in whole or in part, for various reasons. My efforts today is to provide you with information regarding these applications that will assist in identifying the open issues and provide the path for further discussions as may be warranted.

Below are the dates for WorldCom's (former MFS) OR and WA collocations applications:

Beaverton OR

* 3/24/00 - Lynne Dawson submitted application and engineering fees for a new cage (MFS). Requirements included a 100 sq. ft. cage, 160 amps of DC power, diverse conduit space for 48 fibers, 96 DS3s, 24 Collocator to Collocator Interconnect DS3s to be run between MCI Metro's existing cage and MFS's new cage, with Verizon providing all cabling.

* 4/27/00 - Received 50% NRC from Worldcom to start the project

* 8/31/00 Bob Thompson submitted a revised application to add 24 Collocator to Collocator Interconnect fibers to be run between existing (MCI Metro) and new cage (MFS) with Worldcom providing the fibers and Verizon providing cabling.

* Status as of 10/13/00 - Project in jeopardy. Cage is built but DS3 will not be available until 2/28/01 and DC power will not be available until 1Q01. Currently, no additional space is available in the office for a new DSX bay to terminate the DS3's.

1. Worldcom's collocation is provided in accordance with terms and conditions and rates in Verizon's federal collocation tariff. The federal tariff is subject to FCC requirements under Section 201, as opposed to Section 251. Should Worldcom desire collocation pursuant to Section 251, it has the obligation to negotiate terms and conditions of an agreement under Section 251. Worldcom does not currently have such an agreement with Verizon for the state of Oregon.
2. Based on the D.C. Circuit's vacatur of the ASO's requirements that ILECs permit collocating competitors to interconnect their equipment, Verizon has no obligation to permit the type of cross-connection that is being requested. Until such time as the FCC completes its proceeding on remand from the D.C. Circuit's decision in GTE Service Corp. v. FCC, No. 99-1176 (March 17, 2000), Verizon filed a letter with the FCC stating that it will continue to process collocation requests made prior to the courts ruling in accordance with past practices.
3. Worldcom's request for collocator to collocator interconnect DS3s is therefore offered in accordance with the Verizon federal tariff. This arrangement will require the termination of DS3s from each cage to the Verizon DSX panel. As identified above, the DSX bay will not be available until 2/28/01.

Kirkland and Redmond WA

* 7/27/00 - Bob Thompson submitted initial augment applications (into Collo Central) to add 24 DS3s at each site
* 8/9/00 - Received augment fees from Worldcom
* 8/31/00 - Bob Thompson submitted revised augment applications to add 24 optical cross connects at each site
* 9/11/00 - Received 50% NRCs from Worldcom to start the projects
* 9/18/00 - Bob Thompson revised augment requirements to add 96 DSLs to each site. Worldcom has been informed that these 96 DSLs can be implemented in the same timeframe as the DS3s.

1. Worldcom's collocation is provided in accordance with terms and conditions and rates in Verizon's federal collocation tariff. This tariff does not offer optical cross connects. Discussions between the Parties have been ongoing since approximately mid-August in an effort to determine WorldCom's use of the cross connects in order to determine if another option is available that can accommodate Worldcom's request (e.g., SONET tariff, Section 251 agreement).
2. Verizon requests input from Worldcom as to the use of the 96 DSLs to each site, which would be subject to the contractual limitations discussed in item 3 below.
3. Verizon and Worldcom currently interconnect with each other's network for the transmission and routing of local exchange traffic and exchange access traffic in accordance with the Interim Interconnection Agreement dated July 15, 1996. This Interim Agreement does not provide for terms and conditions under Section 251 of the TA96 (e.g., UNEs, Collocation).

After you have the opportunity to review this information, I am available for a conference call if necessary to discuss the letter in more detail or to answer any questions. Please contact me at 972-718-1333 or in the alternative, Laurel Parr at 972-718-4177 to establish the call.

Sincerely,

Steven J. Pitterle
Director-Negotiations
Verizon Network Services

Cc: Laurel Parr
Dean Goff
Kathy Jespersen

CERTIFICATE OF SERVICE

I, Denise E. Akoto, hereby certify that I have this 23rd day of October, 2000, sent a copy of the foregoing " Comments of WorldCom, Inc. " by hand delivery, to the following:

Magalie Roman Salas (one original and four copies)
Office of the Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

The Honorable William E. Kennard
Chairman
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Susan P. Ness
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Harold W. Furchtgott-Roth
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Michael K. Powell
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Gloria Tristani
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Lawrence Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Michelle Carey
Chief, Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Katherine Farroba
Deputy Chief, Policy Division
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Staci Pies
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Rodney McDonald
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-A266
Washington, D.C. 20554

Jane Jackson
Chief, Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-A225
Washington, D.C. 20554

Tamara Preiss
Deputy Chief, Competitive Pricing
Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-A232
Washington, D.C. 20554

Yog Varma
Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-C352
Washington, D.C. 20554

Deena Shetler
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Room 5-C410
Washington, D.C. 20554

William Bailey III
Counsel , Common Carrier Bureau
Federal
Communications Commission
The Portals
445 12th Street, S.W., Room 5-C434
Washington, D.C. 20554

Donald Stockdale
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., Room 5-C354
Washington, D.C. 20554

Thomas Nevin
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554

International Transcription Service, Inc.
CY-B40000
445 12th Street, S.W.
Washington, D.C. 20554

Anthony J. DeLaurentis
Competitive Pricing Division
Common Carrier Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W., 5th Floor
Washington, D.C. 20554


Denise E. Akoto