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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 20554

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 PETITIONS FOR CONDITIONAL WAIVERS OF QWEST AND SBC

Qwest Corporation ("Qwest") and SBC Communications, Inc. ("SBC") seek, *inter alia*, a waiver of the 90-day provisioning rule set forth in the Commission's Order on Reconsideration[1]. Qwest seeks to prevent the 90-day provisioning rule from taking effect in those states where Qwest has filed an SGAT, and the collocation intervals suggested in the SGAT are passively acknowledged by the state, pursuant to § 252(f)(3)(B) of the 1996 Act.[2] SBC's conditional waiver seeks to create a staggered processing approach for instances where more than five collocation requests are received from a single competitive local exchange carrier in a five day period.[3] SBC also seeks a waiver on the same SGAT amendment compliance problems as alleged by Qwest, and further seeks relief from

[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] Qwest Petition for a Conditional Waiver, at 2.

[3] SBC Petition for a Conditional Waiver, CC Docket No. 98-147, dated October 11, 2000, at 1-2 (SBC Waiver).

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the obligation to offer the new 90-day provisioning requirement "in the negotiation of new agreements and in the amendment of existing agreements."[4] WorldCom requests that the Commission deny the waivers sought by Qwest and SBC, and affirms the 90-day provisioning requirements set forth in the Order on Reconsideration.

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

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 the waiver petitions and recent ex parte filings[5], WorldCom emphasizes its support for the Commission's conclusion that national provisioning guidelines are appropriate, and opposes any effort by the ILECs to further delay collocation as a valid means of entry for CLECs seeking to provide facilities-based service.

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[4] SBC Waiver at 3.

[5] 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).

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.[6] 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, requiring ILECs to provide just and reasonable collocation as a matter of law.[7]

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."[8] Present-day collocation is yet another example of ILEC intransigence. 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."[9]

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

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[6] Collocation Order at ¶ 17.

[7] 47 U.S.C. § 251(c)(6).

[8] 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).

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

provisioning standards in the absence of state action or contractual agreement by parties.[10] As the Commission notes, ILECs "can take advantage of collocation provisioning delays to lock-up customers in advance of competitive entry."[11]

The Commission provisioning schedule for ILECs requires a response to a CLEC application for collocation space within ten days of such an application.[12] 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."[13] 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.[14]

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[10] Collocation Order at ¶ 21.

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

[12] Collocation Order at ¶ 24.

[13] Id. at ¶ 24.

[14] Id. at ¶ 27.

In absence of a showing to a state commission, the provisioning period should not take any longer than 90 days, in any instance.[15]

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 help ensure timely deployment of advanced services and other telecommunications."[16] 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,[17] 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.

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[15] Collocation Order at ¶ 31.

[16] Id. at ¶ 27.

[17] Id. at ¶ 31.

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

As was the case with Verizon, Qwest and SBC have failed similarly to present sufficient justification for the claim that it would be unduly burdensome for them to comply with the state tariff and SGAT amendment filing requirements of ¶ 36 of the Collocation Order.

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.[18] Neither of these concerns are addressed by the waiver petitions. The fact that the ILECs must now file amendments to tariffs or SGATs alone does not constitute sufficient "good cause" that evidences "special circumstances" that merit a waiver of the FCC's rule.

1. Qwest's Petition Does Not Satisfy The "Good Cause" Standard

In its Waiver Petition, Qwest requests relief from the Order on Reconsideration's requirement that it must file amendments to its statement of generally available terms ("SGATs"). Qwest claims, as does BellSouth and SBC, that the Collocation Order creates an inconsistency when interpreted against the amendment requirements of paragraph 36, the result of which is to create sufficient grounds for a waiver on the ILECs' behalf. In order to review Qwest's claim, setting aside its failure to make a sufficient "good cause" showing, Qwest argues that the inconsistency allows for ILECs to exempt themselves from the SGAT amendment requirements of paragraph 36, if a state authority

[18] 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 . . .").

has "permitted the intervals. . . to take effect."[19]

Qwest attempts to purvey the passive acquiescence of a state regulator on a one-sided SGAT application to a statewide collocation standard that supercedes federal regulation.[20] Even if they are right that a state commission's passive acceptance of an SGAT interval is sufficient to indicate state assent to a longer interval they have made no showing that they are entitled to a waiver of the rule that requires them seek state approval in light of the new federal rule. The national collocation provisioning standards set forth by the Commission clearly state that the standards are in lieu of state action, and cites specifically, "by statute, through an existing or future rulemaking order, by enforcing a state tariff, or by applying the precedent of a state arbitration decision."[21] Thus, so long as the action by the state falls into one of the specific state exemptions carved out by the Commission, then an ILEC is not required to file an amendment. Qwest's bald assertion, that "SGATs which a state regulator has permitted to take effect" are sufficient to justify a waiver of the paragraph 36 requirements, is unsupported and without merit.

The Commission must also specifically reject Qwest's argument that it will be in compliance with the requirements of the Order on Reconsideration if Qwest agrees to be bound by the collocation intervals that will be proposed in SGAT filings over the next few months, that may or

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[19] Qwest Waiver at 2.

[20] If the Commission were to waive this requirement that BOCs refile SGATs to come into compliance with federal law, then states will not have an opportunity to consider this question, and parties who would benefit from operation of the FCC's 90-day interval will have no opportunity to argue that application of that interval is appropriate under the circumstances present in that state. Such a waiver would not be in the public interest.

[21] Collocation Order at ¶ 22.

may not be accepted by a state regulator.[22] This is far too conditional to provide any degree of certainty to CLECs, and can be used to delay CLECs seeking to provide facilities-based service to a customer in an area controlled by an ILEC SGAT.

Seeking to capitalize from the alleged inconsistencies, Qwest also requests the Commission adopt the collocation intervals set forth in its draft collocation interval schedule annexed to its Waiver Petition. Qwest has failed to provide a "good cause" justification for such a clear deviation from the intent and purpose of the FCC's rules, and has failed to show how its self-created deadlines (which have not been subject to state or federal review), would serve the public interest. The underlying principle of the Order on Reconsideration is to eliminate the four years of delay in implementing the collocation requirements of the 1996 Act, delays that have been caused by ILECs' unwillingness to cooperate with CLECs or facilitate CLEC collocation.

2. SBC's Petition Does Not Satisfy The "Good Cause" Standard

SBC asserts that it is entitled to a waiver of the FCC's proposed collocation intervals, and proposes longer time periods than the Commission's 90-day time period. SBC argues that intervals should be created by negotiation between parties, and set a 180-day time limit, although it carved out an exception for adjacent collocation.[23] SBC also proposes, without support, a staggered time frame that grants it an additional 5 days to process CLEC applications, when more than 5 are received in a five day period. The fact that these intervals are "comparable to" those recently enacted in New York is of no moment. What is relevant is the fact that this is yet another thinly-veiled attempt by the ILECs to further delay their compliance with the 1996 Act's collocation requirements.

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[22] Qwest Waiver at 3.

[23] SBC Waiver at 2.

These arguments cannot surmount the requirement that SBC must put forth good cause as to why it is in the public interest to grant such a waiver, and why the waiver will forward the aims of the rule. SBC does neither here. Without any support for its claim, SBC argues that it is in the public interest to increase collocation intervals because the 90-day FCC requirement creates "inherent uncertainty."[24] SBC claims that because the 90-day interval may not be achieved in all instances, that the entire interval should be eliminated.[25] This circular logic highlights the need for the FCC's timeline: the ILECs will seek to delay in every instance possible, as they have since the creation of the 1996 Act, to impede CLECs from providing competitive services to consumers.

SBC similarly requests a waiver from the paragraph 36 requirements of amending tariffs and SGATs in order to comply with the terms of the Order on Reconsideration. SBC offers no arguments in support of this request. Even more egregious, SBC seeks to suspend the applicable portions of paragraphs 33 and 34 that require ILECs to offer the 90-day interval when negotiating new agreements or amending existing agreements.[26] This is, in large part, the very reason why the 90-day requirement is necessary. Without an obligation to make such a provision available to contracting parties, ILECs can and will delay deployment of facilities-based services for consumers.

Thus, in no instance should the Commission grant SBC's waiver requests. SBC has failed to provide "good cause" for a waiver of any of the rules at issue here, and the ILECs must be forced to comply with the collocation requirements they have artfully dodged since 1996.

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[24] SBC Waiver at 4.

[25] Id.

[26] Id. at 3.

II. CONCLUSION

Both Qwest and SBC have failed to set forth sufficient "good cause" to support their requests for a waiver of the collocation provisioning rules set by the Commission. Given the lack of sufficient support for these petitions, and the lack of public interest in modifying the Commission's rules, SBC's and Qwest's waiver requests should be denied.

Dated: October 30, 2000

Respectfully submitted,

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I, Denise E. Akoto, hereby certify that I have this 30th day of October, 2000, sent a copy of the foregoing " Comments of WorldCom, Inc. " by hand delivery, to the following:

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