

OCT 30 2000

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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Capability)

**OPPOSITION OF AT&T CORP.
TO SBC AND QWEST PETITIONS FOR CONDITIONAL WAIVER**

Pursuant to the Commission's Public Notice, dated October 19, 2000, AT&T Corp. ("AT&T") submits this opposition to the Petitions for Conditional Waiver filed by SBC Communications Inc. ("SBC Pet.") and Qwest Corporation ("Qwest Pet.") on October 17 and 18, 2000, respectively, in the above-captioned proceeding, and the Motion to Supplement SBC's Petition for Conditional Waiver, filed October 27, 2000 ("SBC Supp. Mot").

In its recent *Collocation Order*, the Commission adopted a national default rule that incumbent LECs must provide collocation within 90 calendar days of receiving an acceptable collocation application, except where a state commission establishes different intervals. *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration, ¶ 27 (rel. Aug. 10, 2000) ("*Collocation Order*"). The *Collocation Order* also provides that, if an incumbent LEC has already established provisioning intervals in a state tariff or Statement of Generally Available Terms and Conditions ("SGAT"), "within 30 days after the effective date of this *Order*, the incumbent LEC must file with the state commission any amendments necessary to bring a tariff or SGAT into compliance with the national standards." *Id.* ¶ 36. The Commission stated that "[a]t the time [an incumbent LEC] files these amendments, it also must file its request, if any, that the state set intervals longer than the national standards as well as all supporting information." *Id.* Thus, incumbent

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LECs must immediately bring their tariffs and SGATs into compliance with the national default rule, but they may simultaneously request longer intervals which, if ultimately adopted by the state commission, would displace the national standards.

SBC, like Verizon before it,¹ seeks a “conditional waiver” of the requirement that it immediately file tariffs implementing the national default rule of 90-calendar-day provisioning intervals. In its original petition, it asked the Commission to permit it to implement immediately throughout its region the longer intervals that it has proposed in its Petition for Reconsideration of the *Collocation Order*. See SBC Pet. at 1-2 (90 days for “standard” collocations, 180 days for “non-standard” collocations, and no set intervals for adjacent structure construction). On October 27, 2000, in the guise of a motion to “supplement” its petition, SBC asked that the Commission instead impose the even less rigorous intervals adopted by the New York Public Service Commission. SBC Supp. Mot. at 1-2.² Like Verizon, SBC contends that it will seek to persuade the states in its region to adopt its proposed standards, but that a “waiver” is necessary because in the meantime SBC cannot consistently meet the national default standard of 90 days. SBC Pet. at 2-4.

SBC’s petition and supplemental motion should be denied. Like Verizon, SBC has not remotely satisfied the Commission’s stringent standards for a waiver. The applicant has

¹ See Verizon Petition for Conditional Waiver, filed October 11, 2000; see also Opposition of AT&T Corp. to Verizon Petition for Conditional Waiver, filed October 23, 2000.

² In its original waiver petition and petition for reconsideration, SBC does not challenge the FCC’s 90-day interval as it applies to “standard” collocations – *i.e.*, those that do not involve unconditioned space or special construction. SBC does not make clear in its supplemental motion whether it is seeking to implement the New York intervals only as they apply to “non-standard” collocations, or as they apply to all collocations; in this opposition, AT&T assumes the former.

the burden of showing “good cause” for a waiver (47 C.F.R. § 1.3) and “faces a high hurdle even at the starting gate.”³ Good cause is demonstrated only where “special circumstances” warrant a deviation from the general rule, such deviation serves the public interest, and a waiver would be consistent with the principles underlying the rule.⁴

SBC has not even attempted the necessary showings. In particular, SBC has made no attempt to demonstrate that there are any “special circumstances” in its region that would warrant a deviation from the general rule. In the petition for reconsideration that SBC has attached to its waiver request, SBC merely alludes to the processes that all incumbent LECs generally follow in provisioning collocation requests. *See* SBC Petition for Reconsideration at 3-7. The Commission has already found, on a full record, that incumbent LECs generally can complete those processes within 90 days. *Collocation Order* ¶¶ 27-28. For that reason alone, SBC’s petition should be denied.

In all events, SBC’s claim that the FCC’s 90-day interval is unreasonable as it relates to “non-standard” collocations (*i.e.*, those involving unconditioned space or special construction) is incorrect. In AT&T’s experience, very few of its collocation requests involve unconditioned space or new construction. Even so, SBC’s claims are overblown. Indeed, the Commission has already considered and rejected a longer provisioning interval for unconditioned space, and expressly concluded that longer intervals “would not generally result in

³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁴ *See FPC v. Texaco Inc.*, 377 U.S. 33, 39 (1964) (an agency must adhere strictly to its rules unless an applicant demonstrates “reasons why in the public interest the rule should be waived”); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[t]he agency must explain why deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation”); *WAIT Radio*, 418 F.2d 1153; *Thomas Radio v. FCC*, 716 F.2d 921 (D.C. Cir. 1983).

competitive LECs' receiving access to space within incumbent LEC premises within reasonable time frames." *Collocation Order* ¶ 29. The Commission also specifically concluded that, "based on the record, . . . intervals significantly longer than 90 days generally will impede competitive LECs' ability to compete effectively." *Id.*

Moreover, the Commission has already anticipated that "in specific circumstances a significantly longer provisioning interval may be warranted," and incumbent LECs may justify such longer intervals by presenting "detailed information" to a state commission. *Id.*; *see also id.* ¶ 22. Given the relative rarity of unconditioned space and special construction, Verizon and SBC have not shown that the FCC should modify the generally applicable national default rule.

Finally, there is no reason to grant Qwest's petition for waiver. Qwest's petition for reconsideration is limited to the narrow question whether the *Collocation Order* is intended to preclude an SGAT from taking effect 60 days after it is filed where a state has not affirmatively ruled on it. *See* Qwest Pet. at 1-2 (seeking clarification of *Collocation Order* ¶ 36). Qwest is correct that, under the plain terms of Section 252(f)(3), the state commission "shall" either "complete the review of [an SGAT]" or "permit such statement to take effect" within 60 days, unless the submitting carrier agrees to an extension of the period for such review. 47 U.S.C. § 252(f)(3); *see also* 47 U.S.C. § 252(f)(4) (state commission may continue to review SGAT that has been permitted to take effect after 60 days). Therefore, the plain language of Section 252(f)(3) would preclude any Commission rule providing that an SGAT could take effect only when the state commission has issued an affirmative ruling approving or modifying the SGAT. Because the plain terms of Section 252(f)(3) dictate this result, and the Commission's rules could not lawfully override that plain statutory language, there is no need for

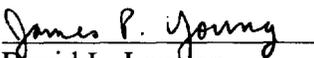
a waiver of the FCC's default rules to permit such SGATs to become effective during the pendency of Qwest's petition for clarification.

CONCLUSION

For the foregoing reasons, the Petitions for Conditional Waiver and SBC's Motion to Supplement should be denied.

Respectfully submitted,

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October 30, 2000

CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of October, 2000 a true and correct copy of the foregoing Opposition of AT&T Corp. to SBC and Qwest Petitions for Conditional Waiver was mailed first class, postage pre-paid to the following:

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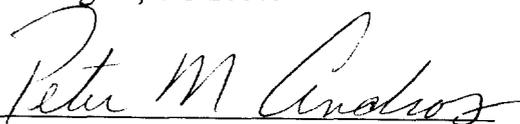
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