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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)
)
Joint Petition of BellSouth, SBC, and Verizon)
for Elimination of Mandatory Unbundling of)
High-Capacity Loops and Dedicated Transport)
)

CC Docket No. 96-98

WORLDCOM REPLY COMMENTS

The Commission should dismiss the RBOCs' "high cap" petition immediately. As CLEC commenters show, consideration of the RBOC petition is barred by the UNE Remand Order's three-year review rule, which states in the clearest possible terms that the Commission will not entertain, much less grant, *ad hoc* petitions to revise the scope of the UNE Remand Order's unbundling rules.¹

Immediate dismissal of the RBOCs' petition would show that the Commission stands ready to enforce its rules, and would provide CLECs with the certainty and

¹Implementation 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, released November 5, 1999, at ¶¶ 150-151 (UNE Remand Order). See Allegiance/Focal Comments at 12; McLeod Comments at 1; Covad Comments at 2-5; Yipes Comments at 5-6.

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predictability that are essential to the development of local competition.² As long as the RBOC petition remains pending, and thus adds to the risks facing CLECs whose business plans rely on unbundled “high-cap” loops and transport, the RBOC petition will “threaten the certainty that . . . is necessary to bring competition to the greatest number of consumers.”³

If the Commission addresses the merits of the RBOC petition, which it should not, it must find that the UNE Remand Order’s impairment analysis for high-cap loops and transport remains valid. Not only has the USTA “Fact Report” been thoroughly discredited by commenters in this proceeding and in the “EELs” proceeding,⁴ but CLEC and state commission commenters provide sworn affidavits and comprehensive studies that confirm the UNE Remand Order’s findings that CLEC facilities extend to only a small percentage of buildings and serve only selected point-to-point transport routes.

For example, the New York Department of Public Service (New York DPS) reports that its recent study of special access competition in New York shows that “competitors do not have sufficient alternatives to Verizon’s high-capacity loops and transport.”⁵ The New York DPS found that Verizon’s network “dwarfs” CLECs’

²UNE Remand Order at ¶¶ 114-115; 150-152.

³UNE Remand Order at ¶ 150.

⁴WorldCom Comments, Attachment A; Allegiance/Focal Comments at 18-24; Sprint Comments 3-4; XO Comments at 12-23.

⁵New York DPS Comments at 1.

networks both in terms of route miles and buildings served.⁶ Even in New York City, perhaps the most competitive area of the nation, CLECs serve a maximum of 900 buildings – a tiny fraction of the 220,000 mixed use, commercial, and public buildings served by Verizon’s network.⁷ The New York DPS also found that Verizon’s “dominant” position is reflected in a pattern of substandard and discriminatory provisioning performance and in special access prices that are significantly in excess of TELRIC, “a result inconsistent with expectations for a competitive market.”⁸

The New York commission’s conclusions are echoed by CLEC commenters in this proceeding. Without exception, CLEC commenters report that they continue to rely on ILEC facilities to provision the vast majority of their high-capacity circuits, despite these CLECs’ best efforts to self-provision high-capacity circuits or obtain such circuits from other CLECs.⁹ And, consistent with the New York commission’s findings, CLEC commenters report that CLECs’ dependence on ILEC facilities exposes CLECs to

⁶Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc., Opinion and Order Modifying Special Services Guidelines for Verizon New York, Inc., Conforming Tariff, Requiring Additional Performance Reporting, New York Public Service Commission, Case No. 00-C-2051, issued June 15, 2001, at 7 (New York Special Services Order).

⁷Id. at 7-8.

⁸Id. at 8-9.

⁹See, e.g., Allegiance/Focal Comments at 8, 10-11; McLeod Comments at 2-3; Covad Comments, Shipley/Chang Declaration at 8; Nextel Comments at Attachment A.

substandard ILEC provisioning performance and, in most instances, forces CLECs to use ILEC special access services that are priced well in excess of TELRIC.¹⁰

CLEC commenters also confirm the UNE Remand Order's finding that the construction of high-capacity loop and transport facilities is "prohibitively" expensive and time-consuming.¹¹ CLEC commenters show, for example, that the RBOC claim that outside plant can be constructed at a cost of \$5.25 per foot is "laughable;"¹² the actual cost of outside plant construction is at least \$30 per foot and often considerably more.¹³ While CLECs have, in certain instances, been able to self-provide loops and transport to the largest office buildings and central offices, self-provisioning of high-cap facilities to more typical central offices and "high-cap" customer locations is not viable as a general matter.¹⁴

Rather than waste resources on the frivolous RBOC petition, the Commission should focus on ensuring that the unbundling provisions of the Act are fully implemented. As the Commission explained in the UNE Remand Order, it was Congress's expectation that competitors would use unbundled elements from the incumbent LEC until it was practical and economically feasible for CLECs to build their

¹⁰See, e.g., Covad Comments, Shipley/Chang Affidavit at 9.

¹¹UNE Remand Order at ¶¶ 183, 355.

¹²XO Comments, Burns Declaration at 2-3.

¹³Id., See also Yipes Comments at 13-14.

¹⁴TDS Metrocom Comments at 5-6; Focal Comments at 6-7.

own networks.¹⁵ That expectation has, however, been frustrated by ILEC intransigence and by the unlawful “temporary” use restriction adopted in the Supplemental Order Clarification.¹⁶ Although no elements are less susceptible to self-provisioning as a “practical and economical matter” than loops and transport,¹⁷ CLECs have been able to obtain and use these elements only in the narrowest of circumstances. Almost without exception, CLECs have been forced to use high-priced ILEC special access services to reach their customers.¹⁸ This state of affairs is completely inconsistent with Section 251(c)(3) of the Act, which gives any CLEC the right to “fill out” its network with unbundled loops and transport (or combinations thereof) obtained at rates, terms, and conditions consistent with the requirements of section 251 and 252, including the Section 252(d)(1)(A)(i) pricing standard.

The Commission should ensure that, consistent with the design of the 1996 Act, CLECs are able to use unbundled loops and transport (and enhanced extended links) to fill out their networks, regardless of the service that they seek to offer. If a CLEC has

¹⁵UNE Remand Order at ¶ 6.

¹⁶Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, CC Docket No. 96-98, released June 2, 2000 (*Supplemental Order Clarification*).

¹⁷UNE Remand Order at ¶¶ 182-187, 355-364.

¹⁸See, e.g., CompTel Comments, CC Docket No. 96-98, April 5, 2001, at 15 (“The EEL restrictions force an entrant to choose between investing in unnecessary facilities in order to obtain a cost benefit compared to supra-competitive special access rates, or simply paying excessive special access rates to the ILECs and investing fewer resources in other aspects of its business model.”)

been forced to use an ILEC special access circuit to serve a customer, the CLEC should be permitted to convert that circuit to whatever element – a loop or enhanced extended link (EEL) – is required to reach that customer’s location. Similarly, if a CLEC wins a new customer, it should be permitted to obtain the unbundled loop or EEL that is required to reach that customer’s location, regardless of the service that the CLEC seeks to offer.

For the reasons stated herein and in WorldCom’s initial comments, the Commission should dismiss the RBOCs’ petition.

Respectfully submitted,
WORLD.COM, INC.

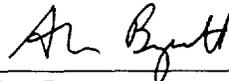


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June 25, 2001

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on June 25, 2001.



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Certificate of Service

I, Barbara Nowlin, do hereby certify that copies of the foregoing Reply Comments of WorldCom, Inc. in the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 were sent via first class mail, postage paid, to the following on this 25th day of June 2001.

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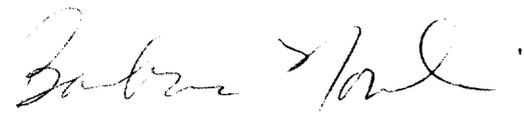
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