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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

AUG 24 2001

In the Matter of)
)
Implementation of the Local)
Competition Provisions of the)
Telecommunications Act of 1996)
)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-98 /

WORLDCOM COMMENTS

Pursuant to the Common Carrier Bureau's July 11, 2001 Public Notice, DA 01-1648, WorldCom, Inc. (WorldCom) hereby submits its comments to refresh the record regarding petitions for reconsideration of the Local Competition First Report and Order in CC Docket No. 96-98.¹ These comments discuss the petitions for reconsideration filed by WorldCom, Inc. (WorldCom), MFS Communications Company, Inc. (MFS), and MCI Telecommunications Corporation (MCI) on September 30, 1996.

While many of the issues raised by WorldCom, MFS, and MCI in their petitions for reconsideration have been addressed in subsequent Commission orders or are no longer relevant, there remain several issues that should be addressed by the Commission or should be deferred because the underlying issues are the subject of pending litigation.

¹Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) (Local Competition First Report and Order).

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I. Issues that Should be Addressed

Five years after the adoption of the Local Competition First Report and Order, little of the promise of that order has been fulfilled. Whereas the Local Competition First Report and Order envisioned broad-based competition facilitated by three paths of local market entry,² CLECs have in general been able to compete only for the limited number of customers that they can viably serve using their own facilities. CLECs' use of the key market-opening provisions of the Act – the resale provisions and the unbundled network element provisions – has been sharply curtailed.

No CLEC has been able to compete successfully by relying on the resale provisions of the Act, and examples of successful UNE-based entry are few and far between. The “data CLECs,” which sought to deliver advanced services to residential and business customers using unbundled loops, have largely collapsed. CLECs' ability to bring local competition to residential customers using the UNE “platform” has been sharply constrained by inflated UNE prices, OSS deficiencies, and other issues. CLECs that sought to use circuits comprised of unbundled loop and transport to deliver services to their customers have been forced to rely instead on high-priced ILEC special access circuits – an inferior market entry path that was not contemplated by the 1996 Act or the Local Competition First Report and Order.

The failure of the unbundled element provisions of the 1996 Act to deliver the broad-based competition envisioned by the Local Competition First Report and Order reflects a variety of factors. In large part, however, the current situation reflects ILEC intransigence and the incomplete implementation of three key provisions of the Local Competition First Report and

²Local Competition First Report and Order at ¶ 12.

Order: the requirement that ILECs provide combinations of elements; the order's TELRIC pricing standard; and the requirement that ILECs provide nondiscriminatory access to operations support systems (OSS).

Combinations

As the Commission discusses in the Public Notice, some aspects of the "combinations" rules adopted in the Local Competition First Report and Order remain the subject of pending litigation. But the Commission could significantly advance the development of competition by acting now in areas where its authority has been conclusively established by the Supreme Court. In particular, the Commission should act immediately to eliminate the "interim" use restrictions on loop-transport combinations adopted in the Supplemental Order³ and Supplemental Order Clarification.⁴ Those use restrictions are contrary to the Local Competition First Report and Order's finding that 251(c)(3) of the Act empowers CLECs to use UNEs to provide any and all telecommunications services.⁵

TELRIC Standard

In the Local Competition First Report and Order, the Commission concluded that prices for unbundled elements should be based on TELRIC.⁶ The Commission also announced that it would further examine the Hatfield Model, BCM, and other cost models by the first quarter of

³Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order, CC Docket No. 96-98, released November 24, 1999.

⁴Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Supplemental Order Clarification, CC Docket No. 96-98, released June 2, 2000.

⁵Local Competition First Report and Order at ¶ 356.

⁶Local Competition First Report and Order at ¶ 672.

1997 to determine whether one of these models could be used to replace the default proxies adopted in the Local Competition First Report and Order.⁷

In its petition for reconsideration, MCI supported the Commission's selection of TELRIC but asked the Commission to expressly endorse the Hatfield Model as a suitable model for estimating TELRIC for unbundled network elements. MCI suggested, in particular, that endorsement of the Hatfield model by the Commission would "allow the Order to be implemented more quickly" by "enabling individual states to move from proxy rates to actual cost-based rates in the near term."⁸ MCI noted that the Hatfield model was the only model that fully complied with the definition of TELRIC adopted in the Local Competition First Report and Order.⁹

The Commission should defer consideration of MCI's request while the TELRIC standard remains the subject of pending litigation. Although MCI's request that the Commission accelerate the transition from proxy rates by immediately endorsing the Hatfield model is no longer relevant, the Commission may in the future find it necessary to conduct a further examination of UNE cost models or otherwise provide additional guidance to the states concerning the implementation of the Commission's TELRIC standard. Such guidance may be needed to address significant state-to-state differences in the implementation of TELRIC. Not only is there no consistency in the methodologies or models used by state commissions to set UNE prices, but there are significant state-to-state differences in model inputs. As a result,

⁷Id. at ¶ 835.

⁸MCI Petition at 6.

⁹Id. at 3.

there is considerable state-to-state variation in the prices of unbundled network elements – even for those elements, such as switching, for which there should be little variation among states, particularly when the states in question are served by the same ILEC holding company. The degree of state-to-state variation in costing methodology calls into question whether current UNE pricing complies fully with the definition of TELRIC adopted in the Local Competition First Report and Order.

OSS Issues

In the Local Competition First Report and Order, the Commission concluded that Section 251(c)(3) of the Act required incumbent LECs to provide, upon request, nondiscriminatory access to operations support systems (OSS) functions. In its September 30, 1996 petition for clarification, WorldCom asked the Commission establish performance measurements to gauge the ILECs' performance on the delivery of wholesale services to competitors.¹⁰

Although most of the ILECs have developed performance metrics, and the Commission highlighted the need for federal benchmarks in its Performance Metrics NPRM,¹¹ the Commission has not established a set of measurements and standards by which all the ILECs are to report their monthly wholesale performance to the FCC and CLECs. In 1997, the Commission considered developing model measures and standards, but concluded that it was

¹⁰WorldCom Petition at 9-10.

¹¹Performance Measures NPRM, 1997 (finding that the Commission should “adopt model performance measures and reporting requirements”) at ¶¶ 50, 57.

premature to develop standards because it had not developed a sufficient record.¹² Since 1997, there have been at least five section 271 filings where the BOC's wholesale performance was the focus of the application. In fact, a large part of the Commission's review of a BOC's 271 application centers on the BOC's wholesale performance. It is time for the Commission to act on this issue and establish a set of measurements and standards by which all the ILECs will report their wholesale performance. WorldCom is available to assist the Commission in its efforts to develop meaningful metrics and standards.

Last year, ALTS filed a petition requesting that the Commission establish a national loop provisioning interval and require reporting on special access provisioning.¹³ WorldCom filed comments in support of the ALTS petition¹⁴ and encourages the Commission to act on that matter as well.

Other Issues

In its petition for clarification of the Local Competition First Report and Order, MFS sought clarification of the Commission's rules governing the ILECs' imposition of loop conditioning charges.¹⁵ The Commission has not acted on the MFS petition, but has sought

¹² Id. at ¶ 125.

¹³ Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-891, dated May 17, 2000.

¹⁴ Comments of WorldCom, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-891, dated June 23, 2000.

¹⁵ MFS Petition at 5-8.

comment on a related petition filed by Mpower Communications in March, 2001.¹⁶ In its petition, Mpower asked the Commission to apply its long-standing pricing guidelines to loop conditioning. WorldCom supports Mpower's petition and requests that the Commission address the loop conditioning issues raised by the MFS petition for clarification in the context of the Mpower proceeding.

The Commission should also act on MCI's request, in its petition for reconsideration of the Local Competition First Report and Order, that the Commission clarify or delete Section 51.301(c)(8)(ii) of the Commission's rules. Section 51.301(c)(8)(ii) states that refusal by a requesting carrier to furnish cost data that would be relevant to setting prices if the parties were in arbitration violates the duty to negotiate in good faith. As MCI pointed out in its petition for reconsideration, however, the reference in Section 51.301(c)(8)(ii) to "requesting carrier" appears to be a typographical error. The text of the Local Competition First Report and Order makes clear that it is the ILEC's duty to provide such cost data.¹⁷ Indeed, the Local Competition First Report and Order states that the refusal of a new entrant to provide data about its own costs would not be unreasonable.¹⁸

II. Issues that Need Not be Addressed

The remaining issues raised by WorldCom, MFS, and MCI in their petitions for reconsideration need not be addressed by the Commission at this time. In some cases, issues

¹⁶ See Petition for Expedited Declaratory Ruling, CCB/CPD File No. 01-06 (March 16, 2001).

¹⁷First Report and Order at ¶ 155

¹⁸Id.

that were raised by WorldCom, MFS, and MCI need not be addressed because the issues are no longer relevant:

- The Commission need not address MCI's request that the Commission reconsider its decision to base the proxy ceilings for collocation and transport on interstate access rates. MCI Petition at 35-37. Similarly, the Commission need not address MCI's request that the Commission adjust the default resale discount. MCI Petition at 12-15.
- The Commission need not address at this time the specific concerns raised by MCI and MFS concerning resale issues. MCI Petition at 7-11; MFS Petition at 22-25. Because the resale discount is not sufficient to allow CLECs to enter the local market using a resale strategy, the specific concerns raised by MCI and MFS are no longer relevant.¹⁹
- Because few, if any, CLECs rely on virtual collocation arrangements, the Commission need not address at this time MCI and MFS's request that the Commission require the ILECs to offer virtual collocation with a "\$1 leaseback" option. MCI Petition at 37-39; MFS Petition at 14-16. The Commission should, however, reaffirm that it reserves the right to revisit the \$1 leaseback issue in the future.²⁰

¹⁹As a result of the D.C. Circuit's decision in Ascent v. FCC, there are open issues related to the ILECs' obligation to resell advanced services. Association of Communications Enterprises v. FCC, 235 F.3d 662 (D.C. Cir. 2001). The Commission should address those issues in a separate proceeding.

²⁰ Local Competition First Report and Order at ¶ 607.

- The Commission need not address at this time WorldCom's request that the Commission require ILECs to offer, as an unbundled element, a usage option for tandem switched transport between the serving wire center and the end office. WorldCom Petition at 1-7.
- Finally, several requests for clarification need not be addressed by the Commission at this time. These include (1) MFS's request that the Commission clarify that a CLEC switch need not perform tandem-like switching functions in order to qualify for symmetric compensation (MFS Petition at 25-28); (2) MFS's request that the Commission clarify the UNE geographic deaveraging rules (MFS Petition at 20-21); and (3) MFS's request that the Commission clarify that certain procedural requirements for state commission review of TELRIC studies (MFS Petition at 18-20).

Other issues raised in the MFS, MCI, and WorldCom petitions for reconsideration have already been addressed by the Commission in other proceedings.

- In the UNE Remand Order, the Commission addressed (1) subloop unbundling (MFS Petition at 9-11; MCI Petition at 16-20); (2) unbundling of dark fiber (MCI Petition at 20-23); (3) unbundling of databases and AIN functions (MCI Petition at 24-28); (4) whether the NID is an independent element or an integral component of the loop element (MFS Petition at 4-5); and (5) whether cross-connects are network elements (MFS Petition at 8-9).

- In the Collocation Remand Order²¹ and earlier orders in CC Docket No. 98-147, the Commission addressed (1) the types of equipment that may be collocated (MFS Petition at 11-14); and (2) CLEC-to-CLEC cross-connects (MFS Petition at 18).
- On several occasions, most recently in the Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68,²² the Commission has addressed whether reciprocal compensation is due on all local traffic, including traffic destined to an information service provider (MFS Petition at 28).

III. Conclusion

For the reasons stated herein, the Commission should address or defer action on a limited number of issues raised in the MCI, MFS, and WorldCom petitions for reconsideration of the Local Competition First Report and Order.

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²¹Deployment of Wireline Services Offering Advanced Telecommunications Capability, Fourth Report and Order, CC Docket No. 98-147, released August 8, 2001 (Collocation Remand Order).

²²Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic, CC Docket Nos. 96-98 and 99-68, Order on Remand and Report and Order, released April 27, 2001.

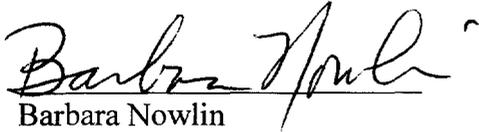
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I, Barbara Nowlin, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 24th Day of August, 2001.

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