Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

COMMENTS OF WORLDCOM, INC. ("MCI")

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I. Introduction and Summary

On August 21, 2003, the Federal Communications Commission ("FCC" or "Commission") issued a Further Notice of Proposed Rulemaking[1] ("NPRM" or "Notice") in the above-captioned proceeding seeking comment on whether the Commission should modify its interpretation of Section 252(i)[2] of the Communications Act, as amended ("Act"). In particular, the Commission proposes altering its "pick-and-choose" rule, which implements Section 252(i), to permit an incumbent local exchange carrier ("LEC")

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1 *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order On Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003) (FCC 03-36); Errata, 18 FCC Rcd 19020 (2003) (FCC 03-227). (Citations are to the NPRM as amended by the Errata.)

2 47 U.S.C. § 252(i).

with a state-approved Statement of Generally Available Terms ("SGAT") to require a competitive LEC seeking to opt into a third-party interconnection agreement to adopt that agreement in its entirety, or not at all.[3]

As discussed in greater detail below, the Commission does not have the authority to alter the pick-and-choose rule in the manner proposed in the Notice. Given the plain language of the statute, the Commission's existing pick-and-choose rule is not only the most reasonable interpretation of Section 252(i), it is most likely the only interpretation of Section 252(i). The Commission may not, as a matter of law, read that section to mean that requesting carriers are obligated to adopt all elements of an agreement.

In addition, as a matter of sound public policy, the Commission should retain the existing pick-and-choose rule. As discussed below, in addition to being useful in preventing unlawful discrimination, the rule plays a key role in enabling competitive carriers to enter local markets quickly and efficiently. Thus, even if the FCC were to conclude that it has the authority to reinterpret Section 252(i) (which it does not), in the absence of concrete evidence that the current rule inhibits negotiations, there is no valid policy basis for adopting an alternative rule.

In comparison to the current pick-and-choose rule, the FCC's proposed SGAT alternative raises a host of issues. As described in the attached declaration of Dayna D. Garvin ("Declaration") (appended as Attachment 1), the current status of SGATs varies substantially from state to state. Indeed, almost two-fifths of the states do not have an effective SGAT on file. Of those states with SGATs, a full one-third are outdated and

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[3] *See* NPRM ¶ 715; 47 U.S.C. § 252(i). If an incumbent LEC does not have a state-approved SGAT on file, the current pick-and-choose rule would continue to apply. NPRM ¶ 725.

would require significant revisions to conform with current federal and state legal requirements, including state arbitration rulings. Moreover, as a practical matter, most states do not have in place a procedure for ensuring that SGATs remain updated. Consequently, implementation of the FCC's proposed rule would likely require the outlay of substantial resources. Moreover, far from fostering negotiated agreements, it is likely that the SGAT proposal would result in several negative effects, including more arbitrations, and an increased risk of discrimination by incumbent LECs.

Finally, the FCC also sought comment on other alternatives to the current rule. To the extent that the FCC desires to improve the existing pick-and-choose process, it should implement national rules providing for expedited adoption procedures similar to those adopted in California. First, the FCC should clarify that the requirement by some state commissions that both parties to an interconnection agreement must petition the commission jointly for adoption of an existing contract is contrary to the Commission's rules and results in unreasonable delays in adoption of interconnection agreements. Instead, competitive carriers should be able to file for adoption unilaterally. Second, the FCC should establish expedited time frames in which the incumbent LEC must act on a request to pick and choose a term or adopt an entire contract. Finally, the Commission should clarify that incumbent LECs are not permitted to propose alterations to the terms of the underlying agreement being adopted. An FCC rule that establishes such procedures on a nationwide basis would streamline and expedite the Section 252(i) adoption process, assisting competitive carriers in entering local markets quickly and efficiently.

II. Discussion

A. As a Matter of Law, Section 252(i) Cannot be Read to Require Competitors to Adopt Agreements in Their Entirety

The Commission seeks comment in the NPRM on its authority to alter its current interpretation of Section 252(i).[4] In particular, the Commission seeks comment on its authority to interpret Section 252(i) to allow carriers to opt into entire agreements but not individual provisions.[5] As described below, the plain language of the Act, the Supreme Court's decision in *Iowa Utilities Board* and the FCC's own past statements confirm that the Commission does not have the authority to alter the pick-and-choose rule in the manner proposed in the Notice.

It is a cardinal principle of statutory construction that the Commission must look first to the plain language of Section 252(i). "If the intent of Congress is clear, that is the end of the matter; for the . . . agency[] must give effect to the unambiguously expressed intent of Congress."[6] Section 252(i) provides:

> A local exchange carrier shall make available *any* interconnection, service or network element provided under an agreement approved under [Section 252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.[7]

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4 *See* NPRM ¶¶ 721, 728 (quoting *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 396 (1999) ("*Iowa Utilities Board*")).

5 NPRM ¶ 727.

6 *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984); *see also Consumer Product Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980); *North Dakota v. United States*, 460 U.S. 300, 312 (1983); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) ("where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms'") (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

7 47 U.S.C. § 252(i) (emphasis added).

The text of Section 252(i) thus expressly distinguishes between "*any* interconnection, service, or network element provided under an agreement," which incumbents must make available on an individual basis, and the entire agreement. The legislative history confirms this distinction. In the words of Congress, Section 252(i) was intended to require incumbent LECs to "mak[e] available to other carriers the *individual elements of agreements* that have been previously negotiated."[8] Although the competitive LEC may decide *voluntarily* to opt into another interconnection agreement in its entirety, it cannot be forced to do so under Section 252(i). The FCC, therefore, correctly implemented the requirements of this provision by permitting a carrier to select individual elements of an agreement, rather than requiring it to adopt the agreement as a whole.[9]

As the Commission stated in the NPRM, the Supreme Court has held that the current pick-and-choose rule "tracks the pertinent [statutory] language almost exactly" and is the "most readily apparent" reading of Section 252(i).[10] Indeed, the FCC itself has repeatedly stated that the existing rule is the *only* reasonable interpretation of Section 252(i). In its opening brief before the Supreme Court in *Iowa Utilities Board*, the FCC stated that it had "interpreted Section 252(i) to mean exactly what it says: that a new entrant is entitled, on 'the same terms and conditions' as any other new entrant, to 'any interconnection, service, or network element provided under an [existing] agreement'

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8 *See* S. Rep. No. 104-23 at Title I, Sec. 101, discussion of "[n]ew section 251(g)" (1995) (emphasis added), *available at*: <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr023&dbname=cp104&>.

9 47 C.F.R. § 51.809; *see also AT&T Communications of the Southern States, Inc. v. GTE Florida, Inc.*, 123 F. Supp. 2d 1318, 1327 (N.D. Fla. 2000) (pick-and-choose rule "squarely authorizes a competing carrier . . . to 'pick and choose' provisions of an agreement between other carriers").

10 NPRM ¶ 721; *Iowa Utilities Board*, 525 U.S. at 396.

without also having to accept all other terms of that agreement."[11] In its reply brief, the FCC stressed that a rule that prohibits competitors from adopting individual terms from an agreement would "read[] 'any * * * element' (of an agreement) to mean 'all elements.' That is not what Congress wrote or meant."[12]

In its briefs before the U.S. Court of Appeals for the Eighth Circuit, the FCC similarly explained that Congress, in enacting Section 252(i), required the Commission to adopt a rule that obligated incumbent LECs to permit requesting carriers to pick and choose from *agreements*. "Congress directed incumbents to make available to new entrants '*any* interconnection, service, or network element' that they have provided in other agreements. . . . The statutory language simply leaves no room for the incumbent LECs' suggested interpretation."[13] In other words, "[t]he language that Congress chose for section 252(i) *permits only one interpretation*, the interpretation that informs the FCC's nondiscrimination rule."[14]

The Commission now seeks comment as to whether the phrase "upon the same terms and conditions" in Section 252(i) is sufficiently ambiguous to permit adoption of a

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[11] Opening Brief for the Federal Petitioners (FCC and the United States), LEXIS, 1997 U.S. Briefs 831, *17 (Apr. 3, 1998) ("Supreme Court Brief").

[12] Reply Brief for the Federal Petitioners and Brief for the Federal Cross-Respondents (FCC and the United States), LEXIS, 1997 U.S. Briefs 826, *49 n.33 (June 17, 1998) ("Supreme Court Reply").

[13] Brief for Respondents FCC and United States, No. 96-3321, at 114 (8th Cir. Dec. 23, 1996) ("8th Circuit Brief"). Like the FCC's proposed rule, the incumbent LECs sought to require carriers to adopt interconnection agreements in their entirety.

[14] *Id.* at 116 (emphasis added); *see also id.* at 110 ("[I]t is clear that the FCC properly understood the plain language of section 252(i) to *require* a nondiscrimination rule that gives new entrants 'most favored nation' status.") (emphasis in original); *id.* at 114 ("[C]ompelling requesting carriers to elect entire agreements instead of particular services or network elements would drain the phrase 'any interconnection, service, or network element' of independent meaning.").

rule that requires a carrier to opt into an entire interconnection agreement, rather than the terms and conditions applicable to a specific service or network element.[15] In MCI's view, the answer to that question is clearly no. As discussed above, Section 252(i) specifically states that "any interconnection, service, or network element provided under an agreement" must be made available. The FCC, moreover, previously has rejected an argument that the phrase "upon the same terms and conditions" enables the Commission to adopt a rule that requires competitors to adopt agreements only in their entirety. In response to the *Local Competition* NPRM, GTE argued that "section 252(i)'s statement, that requesting carriers must receive individual elements 'upon the same terms and conditions' as those contained in the agreement, precludes unbundled availability of individual elements."[16] The FCC disagreed, finding that GTE's argument "fails to give meaning to Congress's distinction between agreements and elements."[17] Instead, the Commission concluded that Section 252(i)'s "same terms and conditions" requirement relates "solely to the individual interconnection, service, or element being requested under section 252(i)."[18] Accordingly, the FCC concluded that Section 252(i) does not permit an incumbent LEC to "require as a 'same' term or condition the new entrant's agreement to terms and conditions relating to *other* interconnection, services, or elements in the approved agreement."[19]

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15 *See* NPRM ¶ 728.

16 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶ 1315 (1996) ("*Local Competition Order*").

17 *Id.*

18 *Id.*

19 *Id.* (emphasis added). The NPRM also erroneously suggests that the Supreme Court acknowledged in *Iowa Utilities Board* "the ambiguous nature" of the phrase "upon

In sum, as the Commission has previously observed, the current pick-and-choose rule interprets Section 252(i) to mean exactly what it says. That section may not be read to mean that requesting carriers are obligated to adopt all elements of an agreement.

B. As a Matter of Sound Public Policy, the Current Pick-and-Choose Rule is Far Superior to the Proposed Alternative

Even if the FCC had the discretion to adopt a different rule under Section 252(i), there are sound policy reasons to retain the existing pick-and-choose rule. As discussed below, the rule plays a key role in enabling competitive carriers to enter local markets quickly and efficiently, and also discourages incumbent LECs from engaging in discrimination. In contrast, the proposed SGAT alternative raises a host of implementation and policy issues that counsel against its adoption.

1. The FCC Should Retain the Existing Pick-and-Choose Rule

The ability of competitive carriers to pick and choose terms from other agreements is critical to the negotiation of nondiscriminatory interconnection agreements under Section 252. During interconnection negotiations, the ability to pick and choose acts as an important counterweight to the overwhelming bargaining power enjoyed by incumbent LECs. Although carriers have made some competitive inroads into the market for local services since the Act was passed, incumbent LECs continue to control the vast majority of last-mile facilities. In addition, any remaining incentives for incumbents to negotiate with competitors created by the "carrot" of authority to offer in-region interLATA services pursuant to Section 271 are either already gone or will disappear by

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the same terms and conditions." NPRM ¶ 728. In fact, the Supreme Court never made a finding as to whether Section 252(i) contains any ambiguous language. *See Iowa Utilities Board* at 395-96.

year's end. Without the ability to pick and choose from other agreements, competitive carriers face the loss of the little bargaining power they currently enjoy.

Nor is there any valid basis for overhauling the current pick-and-choose rule. Despite the claims of incumbent LECs, they have yet to provide credible evidence that the ability to pick and choose inhibits voluntarily negotiated agreements. In fact, the ability to pick and choose not only fosters interconnection negotiations, it is also helpful in furthering nondiscriminatory treatment among competitive carriers. Even if the pick-and-choose rule were not required by the plain language of Section 252(i) (which it is), sound public policy requires that the FCC retain the existing rule.

a) The Ability to Pick and Choose is Necessary to Interconnection Negotiations

In the *Local Competition Order*, the FCC concluded that a competitive LEC's ability to pick and choose individual elements from interconnection agreements under Section 252(i) would help offset the unequal bargaining power between incumbent LECs and new entrants.[20] Absent the ability to pick and choose, the FCC reasoned, incumbent LECs would have an incentive to "lard their agreements with 'onerous terms for a service or element that the original carrier does not need, in order to discourage subsequent carriers from making a request under that agreement.'"[21] Incumbent LECs would also have every incentive to slow-roll negotiations in an effort to delay competitive entry. After all, as the FCC explained to the Supreme Court, "[i]ncumbent monopolists benefit enormously from any delay in opening their markets to competition, and they will of course prefer 'the costs of prolonged negotiations' to the rapid erosion of their monopoly

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20 8th Circuit Brief at 114-115; *Local Competition Order* ¶ 1313.

21 8th Circuit Brief at 115 (citing *Local Competition Order* ¶ 1312).

market shares."[22] Thus, the FCC concluded, in addition to being mandated by the plain language of the Act, the pick-and-choose rule is also in the public interest.

The fundamental premise underlying the FCC's previous conclusion is that, given the market power enjoyed by incumbent LECs, the statutory scheme for negotiation of interconnection agreements established in Sections 251 and 252 can only function properly if competitive carriers have the ability to pick and choose. The incumbent LECs continue to exercise market power in the provision of local services. Incumbent LECs still control 87% of end-user switched access lines,[23] and even carriers with extensive networks continue to depend on incumbent LECs for last-mile facilities. Of the 13% of end-user lines served by competitors, over three-quarters rely on the incumbent LEC for local loop facilities.[24]

It is undisputed, moreover, that the BOCs' desire for authority to offer in-region, interLATA services pursuant to Section 271 has also played an important role in the 251/252 negotiation process because the BOCs needed to demonstrate compliance with

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22 Supreme Court Brief at *50. On appeal, the Eighth Circuit had concluded that "incumbent LECs have as much interest in avoiding the costs of prolonged negotiations or arbitrations as do the requesting carriers, which gives the incumbent LECs an incentive to negotiate initial agreements that would be acceptable to a wide range of later requesting carriers." *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 801 (8th Cir. 1997). The FCC vehemently disagreed with this reasoning, describing it as "invalid on its face." Supreme Court Brief at *50.

23 *Local Telephone Competition: Status as of December 31, 2002*, Table 1 (June 2003), *available at*: <http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0603.pdf>.

24 *Id.*, Table 1 & Table 3 (dividing 6,396,000 CLEC-owned, end-user switched access lines in Table 3 by 187,508,810 total end-user switched access lines reported in Table 1). Only 3.4% of all end-user lines are served using CLEC-owned last-mile facilities, and thus do not require access to incumbent LEC loops. *Id.*

Section 251 in order to obtain 271 relief.[25] The BOCs today, however, have obtained Section 271 authority in all but one state, and a decision on that state is due in December. In the absence of the incentives created by the need to obtain Section 271 authority, the ability to pick and choose is one of the few bargaining chips remaining to competitive carriers.

b) MCI Has Successfully Used the Current Pick-and-Choose Rule

The current pick-and-choose rule has a number of advantages. First, it allows carriers to craft customized agreements consistent with their business plans. It also avoids the re-litigation of previously decided issues – thus conserving scarce state commission (and carrier) resources. When used informally, as discussed below, it helps to solidify non-disputed terms so that parties are able to focus their efforts on other areas that require further resolution. In addition, by avoiding the delays of prolonged negotiations and resource-intensive arbitrations, the current rule also enables competitive LECs to enter local markets more quickly.[26]

MCI has exercised its ability to pick and choose terms from other agreements in a variety of ways. In some cases, MCI has used the pick-and-choose rule to adopt individual provisions from other interconnection agreements. For example, in both

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[25] *See, e.g.,* 47 U.S.C. § 271(c)(2)(B)(i)-(ii); *see also* 141 Cong. Rec. H. 8281, 8282 (Aug. 2, 1995) (statement of Rep. Bliley) ("Once the [BOCs] open the local exchange networks to competition, [they] are free to compete in the long distance and manufacturing markets."); *Application by SBC Communications, Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, ¶¶ 1, 437 (2000).

[26] Of course, some incumbent LECs have refused to adhere to the current rule by, for example, attempting to impose additional or unrelated terms on MCI when it seeks to exercise its right to pick and choose. In those instances, the advantages of using the pick-and-choose rule to enter a market quickly are often diminished.

California and Texas, MCImetro has adopted several sections of an existing agreement between another MCI affiliate and SBC.

In addition, MCI has been able to negotiate customized terms unique to its business plans under the current pick-and-choose rule. For example, in Qwest's region, MCI and Qwest used an existing SGAT term regarding the cost of interconnection facilities as a baseline for negotiating a term that would apportion costs based on each company's relative usage of such facilities.

The existence of the formal pick-and-choose request process has also enabled MCI to obtain desired provisions without necessarily exercising its formal rights. For example, without making a formal pick-and-choose request, MCI has been able during its interconnection negotiations to obtain provisions that were previously arbitrated and "won" by other CLECs. During negotiations in California, MCImetro proposed including the same limitation of liability and indemnity provisions that resulted from the Pacific Bell-AT&T arbitration before the California PUC. MCI's ability informally to opt into terms reflecting CLEC "wins" in California and elsewhere is due in significant part to the FCC's existing pick-and-choose rule, which allows MCI to obtain the same results through a formal request.

c) The Current Rule Reduces the Likelihood that Incumbent LECs will be Able to Discriminate

The ability to pick and choose also reduces the incumbent LECs' ability to evade the Act's nondiscrimination requirements. According to the legislative history, Section 252(i) is necessary to "prevent discrimination among carriers and to make interconnection more efficient by making available to other carriers the individual

elements of agreements that have been previously negotiated."[27] The FCC has similarly recognized that "[u]nbundled access to agreement provisions will enable smaller carriers [that] lack bargaining power to obtain favorable terms and conditions . . . negotiated by large [carriers], and speed the emergence of robust competition."[28]

The proposed rule, in comparison, would make it even easier for incumbent LECs to discriminate among companies. For example, an incumbent LEC could enter into an interconnection agreement with a carrier that has very limited business needs, such as access to directory assistance data. While the directory assistance data terms may be favorable, that same contract could include onerous provisions (so-called "poison pills") regarding interconnection or unbundled network elements ("UNEs"). Because the niche carrier would never use those terms, it would agree to them in return for more favorable directory assistance terms. The incumbent LEC, in turn, might be willing to concede those specialty terms to a niche competitor in order to bolster the incumbent LEC's claim that its local markets are vibrantly competitive.

Under the FCC's proposed rule, however, the incumbent LEC would be able to prevent other competitive LECs from obtaining the directory assistance terms because the competitive LECs would have to swallow the "poison pills" in order to obtain the favorable terms.[29] Unless they file for arbitration, these larger competitive LECs would be powerless to obtain the language extended to smaller niche players, and either would be forced to forgo competing for the specialty service, or to adopt the niche agreement in its entirety, thus impeding their ability to compete for other local services. Under this

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27 Supreme Court Brief at *49 n.16 (citing S. Rep. No. 104-23 (1995)).

28 *Local Competition Order* ¶ 1313.

29 *See* NPRM ¶¶ 718, 723-724.

scenario, the incumbent LECs could then focus arbitration resources on the few competitors that offer the broadest and most meaningful competition across a range of geographic regions.

Finally, the FCC's proposed rule would make it more difficult for a third party to meet its burden of proof in demonstrating that an agreement is discriminatory under Section 252(e)(2). Specifically, under the proposal described in the NPRM, it appears that a state commission could not find that a customized interconnection agreement is discriminatory based solely on the fact that it treats competitors disparately.[30] Instead, competitors would have to prove that the parties to the agreement *intended* to discriminate against other carriers.[31] Proving intent would be particularly difficult for a competitor, because the best source of evidence regarding intent would be the parties themselves. Moreover, under the FCC's proposed rule, the mere fact that a competitor would be unable to opt into the agreement, for example, because the agreement contained "poison pills" or required the carrier to have a certain network architecture, would not constitute unreasonable discrimination.[32] Given the difficulty of meeting such a high burden of proof, the incumbent LEC would have much greater freedom to discriminate among carriers without fear of penalty.

d) There Is No Evidence that the Current Pick-and-Choose Rule Inhibits Voluntary "Give and Take" Negotiations

As noted above, there is ample evidence of meaningful negotiations under the FCC's current pick-and-choose rule. Other than speculative concerns – which the FCC

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30 *Id.* ¶ 727 n.2148.

31 *Id.*

32 *Id.*

has previously refused to credit – the record thus far provides no concrete evidence to the contrary.[33]

Experience to date does not suggest that the current regime impedes carriers from freely negotiating contracts that benefit both the incumbent and competitive carrier. Both the Act and the FCC's current rules already permit incumbent and competitive LECs to negotiate voluntary interconnection agreements under Section 252(a)(1) without regard to the interconnection and unbundling requirements of Section 251(b) and (c).[34] The pick-and-choose rule also allows an incumbent LEC to require a competitor to accept all other contract provisions that it can prove are "legitimately related" to the desired term.[35] In addition, the rule exempts incumbent LECs from making a provision available to a requesting party if the LEC can prove that doing so would be more costly or technically infeasible.[36] As the Supreme Court recognized, these additional limitations on the ability of competitive carriers to pick and choose are "more generous to incumbent LECs than Section 252(i) itself."[37]

Despite these protections, incumbent LECs continue to claim (without support) that they seldom make significant concessions in return for a trade-off for fear that other

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[33] The NPRM relies in part on a petition for declaratory ruling filed by Mpower Communications for the proposition that the current rule "inhibit[s] innovative deal-making." *See* NPRM ¶ 717. That petition subsequently has been withdrawn. *See* Letter from Douglas G. Bonner, Counsel for Mpower Communications, to Marlene H. Dortch, FCC, CC Docket Nos. 01-338, 96-98, & 98-147 (Oct. 14, 2003).

[34] *See* 47 U.SC. § 252(a)(1).

[35] *See Local Competition Order* ¶ 1315. Some incumbent LECs have abused this limitation by attempting to require the adoption of unrelated terms.

[36] *See* 47 C.F.R. § 51.809(b).

[37] *Iowa Utilities Board*, 525 U.S. at 859.

carriers will obtain the benefits of the trade-off without the cost.[38] The fact that incumbent LECs seldom make significant concessions is not surprising given the lopsided bargaining power between incumbent and competitive LECs. Rather, any lack of significant concessions is far more likely due to the unilateral refusal of certain incumbent LECs to negotiate anything more than what is required unequivocally by law.[39] Moreover, the FCC itself has previously dismissed similar objections as implausible: "Incumbents complain that, with the FCC's rule in place, they 'cannot afford to make tradeoffs' in bargaining with new entrants and will be less likely to reach negotiated agreements. However, Congress adopted section 252(i) precisely because the incumbents can afford so much."[40] The incumbent LECs have not explained why such a drastic departure from one of the Act's principal safeguards against anticompetitive behavior – especially in light of the FCC's earlier conclusions – would be warranted. In the absence of credible evidence that the existing rule inhibits voluntary negotiations, there is no valid policy basis for changing the pick-and-choose rule.[41]

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38 *See, e.g.*, BellSouth Comments on Mpower Petition at 2-3, CC Docket No. 01-117 (July 3, 2001); Verizon Comments on Mpower Petition at 2, CC Docket No. 01-117 (July 3, 2001); Qwest Comments on Mpower Petition at 1-2, CC Docket No. 01-117 (July 3, 2001).

39 Indeed, to the extent that MCI has been able to negotiate business-specific terms that go beyond the Act's minimum requirements, those negotiations have generally occurred prior to the incumbent LEC receiving region-wide Section 271 authorization.

40 8th Circuit Brief at 115 (citation omitted).

41 *See* Supreme Court Brief at *49 (arguing that the Eighth Circuit had presented "no valid basis for supplanting the will of Congress" based on the same speculative arguments presented in the NPRM).

2. The FCC's Proposed SGAT Alternative Is Problematic and Will Require a Significant Expenditure of Resources

a) SGATs Are Inadequate to Perform the Role the FCC Envisions

As an initial matter, the FCC's proposal fails to take into account the current state of SGATs across the country. As discussed in the attached Declaration, many SGATs on file today are completely inadequate to perform the role that the proposed rule envisions. Indeed, almost two-fifths of the states do not have an effective SGAT on file.[42] Some SGATs were originally rejected and never refiled, or were filed but then subsequently withdrawn.[43] Other states have concluded that there is no need for an approved SGAT once a BOC has received a request for interconnection.[44]

Of those states with an effective SGAT on file, a full one-third are outdated and would require significant revisions to conform with current federal and state legal requirements, including state arbitration rulings.[45] Still others were uncontested when originally adopted and thus contain terms unilaterally imposed by the incumbent.[46] Moreover, as a practical matter, most states do not have in place a procedure for ensuring that SGATs remain updated.[47] Accordingly, adoption of such procedures would be a necessary prerequisite to implementing the FCC's proposed SGAT rule.[48]

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42 *See* Declaration ¶ 12.

43 *See id.* ¶¶ 13-14.

44 *See id.* ¶ 15.

45 *See id.* ¶ 7.

46 *See id.* ¶¶ 6-7, 10.

47 *See id.* ¶¶ 6, 16.

48 In addition, as the FCC has recognized, independent incumbent LECs are not required by law to file SGATs. *See id.* ¶ 18. To the extent that these carriers sought to

Given these considerations, developing and maintaining comprehensive, up-to-date SGATs for those states without an updated SGAT would likely require the outlay of significant resources at a time when carriers and state commissions have substantial other demands on their resources.

b) Arbitrations, Arbitrations, and More Arbitrations

The FCC's proposed rule will likely result in more, not fewer, arbitrated agreements. Because SGATs today contain only the most general interconnection terms, if a carrier desires to obtain a term that is not in the SGAT, it will have to negotiate – and potentially arbitrate – to obtain that term. In addition, as the FCC recognized in the *Local Competition Order*, adoption of an entire agreement may be infeasible due to a carrier's network architecture or its company-specific business plans.[49] To the extent that is the case, rather than fostering market-based negotiated agreements, the new rule may actually result in more arbitrated agreements.

As noted, SGATs contain only the most general terms and conditions for interconnection, UNEs and resale. Thus, to the extent a carrier desires to obtain a term from another agreement that is not available from the SGAT, that carrier is faced with a choice of: (1) forgoing access to the term (in which case the FCC's proposed rule acts as a barrier to entry); (2) adopting the other agreement in its entirety (regardless of whether that agreement contains (or lacks) other terms necessary to the carrier's business plan); or

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take advantage of the FCC's proposed rule, state commissions would have to approve, update, and maintain not just one, but multiple, SGATs.

[49] *See Local Competition Order* ¶ 1312 ("Since few new entrants would be willing to elect an entire agreement that would not reflect their costs and the specific technical characteristics of their networks or would not be consistent with their business plans, requiring requesting carriers to elect an entire agreement would appear to eviscerate the obligation Congress imposed in section 252(i).").

(3) initiating negotiations in the hope of obtaining the term. If the incumbent LEC refuses to agree to the term during negotiations, then the carrier must file for arbitration. As a result, the proposed rule will likely deter competition either by acting as an entry barrier, or by resulting in more arbitrations, thus eliminating many of the efficiencies of the current system.[50]

The proposed rule would seem to have particularly harsh consequences for a company seeking to negotiate a second or third generation contract. Often, only specific provisions of those contracts need to be enhanced or updated with new terms. Under the current rule, such agreements can be quickly and efficiently updated via the exercise of the pick-and-choose rule. However, it is not clear that the FCC's proposal would allow carriers to update such contracts on a piecemeal basis. Instead, it is likely that incumbent

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[50] Arbitrations often require extraordinary resources by both the parties and the decision-maker. As the Commission stated in the *Virginia Arbitration Order*, "[m]any of the issues that the parties ha[d] presented raise significant questions of communications policy that are also currently pending before the Commission in other proceedings." *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commision Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration*, Memorandum Opinion and Order, 17 FCC Rcd 27039, ¶ 3 (2002). The time and effort that went into the case was significant. After filing petitions for arbitration with the FCC on April 23, 2001, the parties (MCI, AT&T and Cox) participated in pre-filing conferences, supervised settlement negotiations, and discovery for several months. *Id.* ¶¶ 8-14. They also filed written pre-filed testimony – a labor-intensive task – and participated in a two-week hearing, which involved submitting documentary evidence and examining witnesses. *Id.* ¶¶ 12-14. Understandably, at three points in the proceeding the parties were instructed to submit to staff a "Joint Decision Point List" (JDPL) which was a "list and summary of disputed issues, positions and relevant contract language, intended as a tool to assist Bureau staff in navigating the considerable record." *Id.* ¶ 15. At the conclusion of the arbitration, the parties submitted post-hearing briefs and reply briefs in November and December 2001 covering the numerous issues raised in the case. *Id.* ¶ 16. The staff then released its decision on July 17, 2002. Additionally, because the non-pricing issues in the case were considered first, the FCC considered the pricing-related issues on a separate track. The FCC released its order on the pricing issues on August 29, 2003.

LECs would insist that the FCC's proposed rule contemplates only two avenues: (1) adoption of a provision from the SGAT; or (2) adoption of another agreement in its entirety. Thus, a carrier either would have to forgo new terms not available in the SGAT, or potentially would be compelled to renegotiate an agreement from scratch – with the possibility of arbitration as the end result.

C. The FCC Should Clarify The Implementation of and Procedures Under the Current Rule for Pick-and-Choose

In the Notice, the FCC invited the parties to comment in this proceeding with their own proposals regarding the pick-and-choose rule.[51] To the extent that it desires to improve the current process, the FCC should adopt national procedural rules, similar to those adopted by the California PUC, that streamline existing pick-and-choose procedures. First, the FCC should clarify that the requirement by some state commissions that both parties to an interconnection agreement must petition the commission jointly for adoption of an existing contract is contrary to the Commission's rules and creates unreasonable delays in the pick-and-choose process. Instead, competitive carriers should be able to file for adoption unilaterally. Second, the FCC should establish expedited time frames in which the incumbent LEC must act on a request to pick and choose a term or adopt an entire contract. Finally, the Commission should clarify that incumbent LECs are not permitted to propose alterations to the terms of the underlying agreement being adopted.[52]

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[51] NPRM ¶ 729.

[52] Although contrary to the rule, when a competitive LEC attempts to opt into existing agreement, incumbent LECs continue to attempt to alter the terms of or propose additional terms to said agreement.

Similar rules were implemented by the California PUC in 2000.[53] Under the California rules, a party may file, unilaterally, an Advice Letter or Letter of Intent to adopt all or a portion of an existing interconnection agreement. The incumbent LEC is not permitted to propose alterations to the terms of the underlying agreement, and it has 15 days either to approve the request for adoption or to file for arbitration and demonstrate why the request does not meet the requirements of the FCC's pick-and-choose rule. If the incumbent fails to respond, the contract is automatically deemed effective on the 16th day after the Advice Letter or Letter of Intent is received.[54] If the incumbent LEC files for arbitration, it must specify the terms to which it objects. Any provisions within the adopted agreement that are not subject to the incumbent's objection and request for arbitration are deemed effective on the date that the incumbent files for arbitration.

MCI has used this approach successfully a number of times, most recently to adopt Verizon's contract with ICG. Although Verizon sought to alter the terms of the underlying agreement, California's rules prohibit such proposed alterations. As a result, MCI's adoption became effective on March 16, 2003, sixteen days after filing. The California rules thus not only permitted MCI to adopt the agreement without objectionable changes, they also allowed MCI to do so expeditiously.

MCI's attempts to adopt the same Verizon-ICG agreement (as allowed by the Bell Atlantic/GTE Merger Conditions) in Ohio and North Carolina stand in stark contrast to

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53 *See* Resolution 181, *California Public Utilities Commission Revised Rules Governing Filings Made Pursuant to the Telecommunications Act of 1996*, Rule 7, "Process for Adopting a Previously Approved Agreement (or Portions of an Agreement) Pursuant to 252(i)," 2000 Cal. PUC LEXIS 864 (2000).

54 *Id.*, Rule 7.2.

its California experience. MCI sought to adopt that agreement in both states in June 2003, and Verizon similarly responded by attempting to alter the terms of the underlying agreement. However, because the Ohio and North Carolina Commissions do not have expedited adoption procedures in place, MCI, to date, has not been able to obtain the ICG agreement in those two states.

Accordingly, to the extent that it desires to improve the current rule, the FCC should adopt a national rule providing for a streamlined procedure under Section 252(i), similar to the rules adopted by the California PUC.

III. CONCLUSION

MCI urges the Commission to retain its existing pick-and-choose rule. To the extent that the FCC desires to facilitate market-based negotiations, it should adopt procedural rules similar to those adopted in California, to provide for the expedited, unilateral adoption of interconnection agreements, or portions of agreements.

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October 16, 2003

Attachment 1

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

DECLARATION OF DAYNA D. GARVIN ON BEHALF OF MCI

Based on my personal knowledge and on information learned in the course of my business duties, I, Dayna D. Garvin, declare as follows:

1. My name is Dayna D. Garvin. I am employed by WorldCom, Inc. ("MCI") in the position of Senior Manager Carrier Agreements, West Telco Line Cost Management. My business address is 2678 Bishop Drive Suite 200, San Ramon, CA 94596.
2. In 1996, I joined Metropolitan Fiber Systems, which was subsequently acquired by MCI, and have been with MCI since then. I first worked for MCI in Chicago as an independent consultant working on local collocation issues. In 1997, I became Director, Local Services Delivery in San Francisco, and was responsible for negotiating rights of way for MCI local network expansion, and implementing the MCI local interconnection agreements with Pacific Bell. While employed by

MCI, I have had responsibility for local contract or interconnection agreement negotiations for the Western Region with Southwestern Bell Telephone Company ("SWBT"), Pacific Bell, Southern New England Telephone Company ("SNET") (collectively, now SBC) and U S West (now Qwest). I currently have primary responsibility for interconnection agreement negotiations, amendments and issue resolution for Verizon (including legacy Bell Atlantic and GTE states) and Qwest nationwide, as well as various independent incumbent local exchange carriers ("ILECs"), including Century Tel and Valor. In addition, as Senior Manager for Carrier Agreements, I have knowledge regarding the status of interconnection negotiations, Statements of Generally Available Terms ("SGATs" or "Statements"), and arbitrations nationwide.

3. Prior to working at MCI, I spent 11 years with Pacific Bell in San Francisco, CA in both the Sales and Marketing departments. My last job at Pacific Bell was Director of Access Product Marketing, Industry Markets, responsible for planning Access Restructure for Pacific Bell.

4. My understanding is that the FCC has issued a Notice of Proposed Rulemaking ("NPRM") that includes a proposal to eliminate the current pick-and-choose rule and instead adopt a rule that permits an ILEC with a state-approved SGAT to require competitors to opt into third-party interconnection agreements only in their entirety. An SGAT is a statement of the terms and conditions that a Bell Operating Company ("BOC") generally offers within a state to comply with the requirements of Sections 251-252 and the FCC's implementing regulations. Such Statements are filed with the relevant state commission for approval. In light of

the FCC's proposal, I have therefore been asked to describe the current status of SGATs in various states.

Current Status of SGATs

5. Although not exhaustive, my survey of existing SGATs reveals that they vary substantially from state to state. As an initial matter, not all states have SGATs. Some SGATs were originally rejected and never refiled, or were filed but then subsequently withdrawn. Other states have concluded that there is no need for an approved SGAT once a BOC has received a request for interconnection. Moreover, although a number of states have effective SGATs on file,[1] many have not been regularly updated and are outdated. Still other SGATs were approved without input from competitive carriers. As a result, implementation of the FCC's proposed rule would likely require the outlay of substantial resources to adopt new SGATs and update existing ones to conform to current state and federal requirements. Even then, there are a number of outstanding issues that would need to be resolved before the FCC's SGAT proposal could be adopted, including, but not limited to, whether a competitive local exchange carrier ("CLEC") could pick and choose from the SGAT and whether the SGATs have to include arbitrated provisions.

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[1] Roughly three-fifths of the states have effective SGATs, including Arizona, Arkansas, Colorado, Connecticut, Georgia, Idaho, Iowa, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Washington, and Wyoming. SWBT also filed an SGAT in Oklahoma, although it is not clear that the Statement remains in effect.

Outdated or Deficient SGATs

6. Many SGATs were originally filed by the BOCs in anticipation of obtaining Section 271 relief. An SGAT is most critical to a Section 271 application in the absence of a request for local access. Consequently, once CLECs began to request access and interconnection, many carriers, including MCI, began to focus their efforts on interconnection negotiations and arbitrations. Accordingly, competitive carriers generally did not expend their limited resources on contesting SGATs when they were initially filed.[2] Many of these SGATs, moreover, have been updated only sporadically since they were approved. Although some SGATs have been modified to include state-mandated generic orders, such as orders establishing pricing requirements or performance measurements, most SGATs do not reflect the gains obtained by carriers during arbitrations. This deficiency can often be traced to the lack of established rules governing the incorporation of arbitration rulings into the SGAT. Absent such a process, the BOC has the ability, in practice, to determine which modifications it will make to the SGAT, and when those revisions will be made.

7. Of those states with SGATs, a full one-third have been updated only occasionally and likely would require significant revisions to conform with current federal and state legal requirements. This problem arises in almost all the BellSouth states.[3] For example, in Kentucky, the Public Service Commission ("PSC") originally rejected BellSouth's proposed SGAT in August 1998, finding it deficient.

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[2] As discussed below, the most notable exception to this general trend occurs in the Qwest region.

[3] With the exception of Florida, BellSouth has filed SGATs throughout its territory.

BellSouth did not refile its SGAT until February 2002 – over three and one-half years later. Despite the passage of time, the Kentucky PSC approved BellSouth's revised SGAT, concluding that, with certain minor exceptions, BellSouth had incorporated the changes required by the August 1998 order. Noting that the SGAT was not relevant to BellSouth's request for Section 271 approval and observing that the submission of the SGAT was uncontested, the Kentucky PSC approved the revised SGAT in March 2002. In so doing, the Kentucky PSC did not mention or discuss other changes that might have become necessary during the intervening years, and the SGAT has not been modified since March 2002. *See Investigation Regarding Compliance of the SGAT of BellSouth Telecommunications, Inc. of Section 251 and 252(d) of the Telecommunications Act of 1996*, Case No. 1998-00348, Order (Ky. PSC Mar. 15, 2002), attached as Exhibit 1.

8. Similarly, the Georgia SGAT has been revised only twice since BellSouth received Section 271 authorization, once to incorporate an updated price list and master collocation agreement, as required by the state commission in Docket No. 14361-U, and once to reflect the Supreme Court's decision regarding combinations in *Verizon Communications, Inc. v. FCC*, 535 U.S. 467 (2002). *See* Letter from Bennett L. Ross, BellSouth to Reece McAlister, Georgia PSC (July 24, 2003), *available at:* <ftp://www.psc.state.ga.us/7253/65517.PDF>; Letter from Bennett L. Ross, BellSouth to Reece McAlister, Georgia PSC (June 21, 2001), *available at:* <ftp://www.psc.state.ga.us/7253/56251.doc>.

9. This problem has occurred in other states as well. For example, Verizon's SGAT in Connecticut, which it filed in conjunction with its Section 271 application, has

been revised only occasionally, with the last substantive revision being submitted in 2001. *See Application of New York Telephone Company Pursuant to Section 271 of the Telecommunications Reform Act of 1996*, Docket No. 97-01-23, Letter from Joseph A. Post, Verizon, to Louise A. Rickard, Connecticut Department of Public Utility Control (CDPUC June 29, 2001), *available at* <http://www.dpuc.state.ct.us/dockcurr.nsf/22af672892a9d75b85256afe0059fc24/4610cd26a2bb45ce85256a94006879d7/$FILE/SGAT_Amendment.doc>. Significantly, Verizon's SGAT applies only to its territory in Connecticut – roughly 30,000 customers. (SBC-SNET, which is the ILEC in nearly the entire state, never filed an SGAT.) Similarly, the SGATs for Arkansas and Oklahoma, to MCI's knowledge, have *never* been modified to conform to changes in the law.

10. Moreover, far from taking steps to ensure that their SGATs remain current, some states have in place procedures or practices that actively discourage or deter updates to the SGAT. For example, in Louisiana, amendments or modifications to the BellSouth SGAT generally are not noticed for opposition. Not surprisingly, there has not been a contested docket regarding BellSouth's Louisiana SGAT since the state 271 proceeding. As a result, the SGAT in Louisiana likely is significantly outdated, and, even in those instances where it has been updated, the process has generally lacked input from competitive carriers.

11. At least one state has terminated its SGAT proceeding, effectively ensuring that the Statement will be outdated. Earlier this year, the Tennessee Regulatory Authority ("TRA") officially terminated its SGAT docket, finding that the docket had met its purpose of establishing generally available terms and conditions. *See*

Generic Docket To Establish Generally Available Terms and Conditions for Interconnection, Docket No. 01-00526, Order Closing Docket at 3-4 (TRA Apr. 29, 2003), *available at*: <http://www.state.tn.us/tra/orders/2001/010052621.pdf>. One of the TRA's directors, however, dissented from that decision, noting that the SGAT did not incorporate certain state-mandated terms, and that, consequently, its usefulness for streamlining interconnection negotiations was limited. *See id.*, Dissent of Director Ron Jones to *Order Closing Docket* at 2 (TRA May 8, 2003), *available at*: <http://www.state.tn.us/tra/orders/2001/010052622.pdf>. Accordingly, BellSouth's Tennessee SGAT has not been significantly revised since August 2002 and, given the TRA's termination of the SGAT docket, it is unclear when – or whether – it will be updated in the future.

States Without Effective SGATs

12. Roughly two-fifths of the states, including California, Delaware, Florida, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, Missouri, Nevada, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Texas, Virginia, West Virginia, Wisconsin, and the District of Columbia, do not have an effective SGAT on file.

13. Although some states, including Pennsylvania, West Virginia, and the District of Columbia, had SGATs on file that were originally approved in 1997, those Statements expired at the end of 1999 and have not been renewed. *See, e.g.*, *Application by Verizon Maryland Inc., Verizon Washington, D.C. Inc., and Verizon West Virginia Inc., et al. for Authorization to Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia*, 18 FCC

Rcd 5212, ¶¶ 51 n.207, 56 (2003). In addition, the Delaware SGAT was rejected initially by the Delaware Commission, *see Application Of Bell Atlantic-Delaware, Inc. For Approval Of Its Statement Of Terms And Conditions Under Section 252(f) Of The Telecommunications Act Of 1996*, PSC Docket No. 96-324, Findings, Opinion and Order No. 4542, 1997 Del. PSC LEXIS 260, ¶ 17 (Delaware PSC July 8, 1997), and Verizon never refiled an SGAT.

14. In some states, including Illinois, Indiana, Maine, New York, and Virginia, SGATs were filed initially but then subsequently withdrawn without taking effect. In other states, such as Wisconsin, SGAT dockets have remained pending, but inactive, for several years without an SGAT ever being approved.

15. Finally, as noted, the role of an SGAT is tied to Section 271 authorization. As a result of that relationship, at least one state commission has refused to approve an SGAT. Specifically, the Michigan PSC found that, when the incumbent LEC has received a timely request for interconnection pursuant to Section 252, it may not seek approval of an SGAT pursuant to Section 252(f). *See On the Commission's Own Motion, to Consider Ameritech Michigan's Compliance with the Competitive Checklist in Section 271 of the Telecommunications Act of 1996*, Case No. U-11104, 1997 Mich. PSC LEXIS 168 (1997).

Updated SGATs

16. At the same time, several state commissions have made a concerted effort to ensure that their SGATs reflect current legal requirements. For example, Qwest revised its SGATs for Arizona and Oregon in August 2003, and its SGATs for Colorado and Minnesota earlier this year (March 2003). In the past, however,

Qwest's updates to its SGATs have occurred within the context of the Section 271 process. Because Qwest has Section 271 approval for all but one state, and because these states lack a mechanism to ensure ongoing SGAT updates, it is not clear that Qwest's SGATs will remain updated in the future.

17. In addition, at least one Verizon state has taken steps to ensure that its SGAT remains current. Specifically, the Vermont Board has required Verizon from time to time to update its SGAT. For the latest version of the Vermont SGAT, see <http://www.state.vt.us/psb/sgat/sgat.htm> (last updated April 2003).[4]

Independent ILECs

18. In addition to its existing contracts with the BOCs, MCI also has in place interconnection agreements with a number of independent ILECs such as Valor, Century Tel, and Cincinnati Bell. As the FCC's NPRM notes, these independent, incumbent LECs are not required by law to file SGATs. Thus, in addition to the resources needed to approve, update and maintain the BOC SGATs, the proposed rule would also require incumbent LECs, competitive carriers, and state commissions to expend time and resources that otherwise would not be required to prepare and maintain SGATs for independent ILECs.

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[4] Although Verizon's SGAT in Vermont has an expiration date of December 31, 2001, it is currently in effect pursuant to an automatic one-year renewal provision.

Declaration

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 15, 2003.

Dayna D. Garvin

Exhibit 1

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION REGARDING COMPLIANCE OF THE STATEMENT OF GENERALLY AVAILABLE TERMS OF BELLSOUTH TELECOMMUNICATIONS, INC. OF SECTION 251 AND 252(D) OF THE TELECOMMUNICATIONS ACT OF 1996	)))))	CASE NO. 1998-00348

O R D E R

On February 5, 2002, BellSouth Telecommunications, Inc. ("BellSouth") filed a revised Statement of Generally Available Terms and Conditions ("SGAT") and requested formal approval of this document. Though BellSouth filed this document in Case No. 2001-00105,[1] BellSouth does not dispute its lack of relevance to the provisions of 47 U.S.C. § 271(c)(1)(A) pursuant to which it is seeking in-region interLATA authority.[2] Thus, the Commission addresses this motion for the approval of the revised SGAT in Case No. 1998-00348.

BellSouth asserts that it has modified its SGAT in accordance with the Commission's dictates in the August 21, 1998 Order in this proceeding. In that Order,

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[1] Case No. 2001-00105, Investigation Concerning the Propriety of InterLATA Services for BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996.

[2] In its motion, BellSouth does not dispute the Commission's determination made in Case No. 1996-00608 (Investigation Concerning the Propriety of Provisions of IntraLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996) that the SGAT is not relevant to BellSouth's request for entry into the long-distance market. Since BellSouth has entered into interconnection agreements, those agreements and BellSouth's actual relationship with its competitive carriers are to be investigated in its request for this Commission's Advisory Opinion regarding in-region, interLATA entry.

the Commission mandated that "absent the amendments described herein, the SGAT shall not be approved. However, if BellSouth submits a revised SGAT, which is in accordance with this Order, it shall be approved." [3] BellSouth contends that it has now made each of the seven modifications the Commission required. No party has responded to BellSouth's motion for approval of its revised SGAT.

We turn to the seven modifications addressed by BellSouth. The Commission required that BellSouth include a sunset provision for joint marketing. As the sunset date has passed, this section of the SGAT has appropriately been removed.

BellSouth was ordered to take no responsibility in determining whether one of its customers has actually elected another local exchange carrier ("LEC"). BellSouth's proposed modification indicates that "BellSouth will not require end-user confirmation prior to transferring an end-user's service." Though the Commission understands that BellSouth does not require any proof of authorization before a customer migrates, the Commission herein requires BellSouth to modify this language to state "BellSouth will not require end-user confirmation for transferring an end-user's service." This will clarify that BellSouth will not confirm before or after migration occurs.

BellSouth has removed the $19.41 unauthorized change charge and indicates that it no longer resolves slamming complaints. The responsible agency will determine whether and to what extent an unauthorized charge will be applied.

Next, BellSouth was ordered to revise its SGAT to include a provision for customers to migrate their directory listings "as is." BellSouth indicates that when a

[3] August 21, 1998 Order.

competitive LEC ("CLEC") migrates service "as is," the migrated service includes the end-user's directory listing service.

The Commission notes that the revised SGAT allows resale of Lifeline. The Commission approves this provision; in addition, by separate Order in Administrative Case No. 360[4] the Commission will require other incumbent LECs also to resell Lifeline service.

BellSouth has modified its revised SGAT to comply with the Commission's requirements regarding terminating access charges. Such charges are to be at the CLEC's tariffed rate, rather than BellSouth's rate, if termination is to a CLEC customer.

The revised SGAT now includes a provision for reciprocal audits as required by the Commission.

BellSouth's revised SGAT provides unbundled network element combinations in compliance with the Commission's directives.

The Commission, having considered BellSouth's revisions to its SGAT, and having determined that these revisions comply with the August 21, 1998 Order, HEREBY ORDERS that:

1. BellSouth's revised SGAT is approved with the one modification noted herein.

2. Within 20 days of the date of this Order, BellSouth shall file its revised SGAT, with the one modification ordered herein, as a separate section of its tariff.

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[4] Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues.

Done at Frankfort, Kentucky, this 15th day of March, 2002.

By the Commission

ATTEST:

Executive Director