December 3, 1999

VIA ELECTRONIC MAIL &
ORIGINAL VIA FEDERAL EXPRESS

Carole Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 South Evergreen Park Drive, S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Rules Relating To Pick and Choose Provisions of the Telecom Act
Docket No. UT-990391

Dear Ms. Washburn:

Enclosed for filing is an original and ten (10) copies of ***Comments of Connect Communications Corporation***, in the above-referenced proceeding. Please date-stamp the extra copy of the comments and return it in the enclosed self-addressed stamped envelope.

Should you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,

Larry A. Blosser
Counsel for Connect Communications Corporation

Enclosures
LAB:rc

Before the
Washington Utilities and Transportation Commission

In the Matter of	)	
	)	
Rules Relating to	)	Docket No. UT-990391
	)	
Pick and Choose Provisions	)	
of the Telecom Act	)	

COMMENTS OF CONNECT COMMUNICATIONS CORPORATION

Connect Communications Corporation ("Connect!"), by its attorneys, hereby submits these Comments in response to the Washington Utilities and Transportation Commission's ("Commission's") Notice of Opportunity to Comment and Notice of Workshop, dated October 29, 1999 ("Notice") in the above-referenced proceeding.

Connect! and its affiliates are currently authorized to provide local exchange and interexchange telecommunications services in 24 states,[1] and have applications pending in 24 additional states and the District of Columbia.[2] Connect! has two subsidiaries currently authorized to provide telecommunications services within the State of Washington – Connect!LD, Inc, and CCCWA, Inc., d/b/a Connect!. As a new entrant in the

---

[1] States where Connect! is authorized are: Alabama, Arkansas, California, Colorado, Florida, Idaho, Kansas, Louisiana, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Washington and Wisconsin.

[2] States where applications are pending include Arizona, Connecticut, District of Columbia, Delaware, Georgia, Indiana, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Tennessee, Vermont, Virginia, West Virginia and Wyoming.

telecommunications marketplace that is rapidly expanding its operations, Connect! has a strong interest in taking advantage of its rights under Section 252(i) of the federal Telecommunications Act of 1996 (the "Act"). Section 252(i) affords carriers an opportunity, to opt into an entire previously approved interconnection agreement or to selectively opt into interconnection, service and network elements made available under previously approved agreements. The availability of "pick and choose" gives newer and rapidly expanding companies such as Connect! an opportunity to move more rapidly into additional geographic markets and to expand the range of services offered to businesses and consumers.

Introduction

Since the first interconnection agreements were approved under the Act, incumbent local exchange carriers ("LECs") have taken every opportunity to hinder, delay, or even deny competitive local exchange carriers ("CLECs") the ability to obtain the rates, terms and conditions contained in previously approved interconnection agreements, to which CLECs are statutorily entitled under Section 252(i). Incumbents have delayed some CLECs by as much as nine months in their attempts to opt-in to previously approved agreements, which is equal to the time limit for state commission consideration of a fully negotiated and arbitrated agreement. In enacting Section 252(i), Congress intended to "make interconnection more efficient by making available to other carriers the individual elements of agreements that have been previously negotiated."[3] The Federal Communications Commission ("FCC") envisioned that Section 252(i)

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, ¶618 (1996) ("*Local Competition Order*"), *rev'd in part and aff'd in part sub nom. Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1996), *rev'd in part, aff'd in part, and remanded sub nom., AT&T Corp. v. Iowa Utilities Board*, 19 S. Ct. 721 (1999).

would serve to enable CLECs to obtain agreements on "an expedited basis," thereby furthering "Congress's stated goals of opening local markets to competition and permitting interconnection on just, reasonable, and nondiscriminatory terms . . . as quickly and efficiently as possible." *Local Competition Order* at ¶ 1321.

Incumbent LECs have made the Section 252(i) opt-in process anything but the streamlined market entry strategy envisioned by Congress and the FCC. Rather, incumbent LECs have used the opt-in process as an opportunity to impose onerous terms and conditions on CLECs. Incumbent LECs have insisted that CLECs sign letter agreements waiving many of the terms and conditions contained in underlying agreements before permitting CLECs to opt-in to those agreements. CLECs have been forced either to capitulate to incumbent LEC demands, or to engage in lengthy complaint proceedings that severely delay their market entry. Connect! applauds the Commission for proposing rules designed to streamline the Section 252(i) opt-in process, thereby instituting it the efficient method of obtaining interconnection envisioned by Congress.

Summary

Connect! supports the adoption of rules to implement section 252(i) of the Act and Section 51.809 of the FCC's rules. The ten principles set forth in the Commission's Draft Interpretive and Policy Statement in Docket No. UT-990355 ("Draft Statement") provide an appropriate starting point for such rules. However, certain modifications to those principles, similar to those suggested in the supplemental comments filed by several parties in Docket No. UT-990355, are appropriate. Most importantly, the Commission should adopt rules which ensure that CLECs and other parties seeking relief under Section 51.809 obtain that relief on an

expedited basis. This will, of necessity, require amendment of WAC 480-09-530. The Draft Statement allows for a period of eighty days (or longer, if converted to a complaint proceeding) for Commission action on petitions for enforcement of interconnection agreements. Connect! believes that an accelerated timetable for the resolution of Section 252(i) disputes, along the lines of the 45 day period suggested by MCI WorldCom and Level 3 in their joint supplemental comments, is appropriate. Incumbent LECs are well aware that delay is a new entrant's greatest enemy. Thus they often impose needless obstacles to prevent CLECs from quickly opting-in to interconnection agreements, betting that CLECs will be unwilling to invest the time and resources necessary to combat these tactics. Only a rapid dispute resolution process will ensure that CLECs are able to obtain the interconnection agreements to which they are statutorily entitled.

Discussion

Based on its review of the record in Docket No. UT-990355, Connect! offers the following specific comments and recommendations:

Adoption of entire agreement: Consistent with Section 252(i) of the Act and Section 51.809(a) of the FCC's rules, adoption of an entire previously approved agreement should be achievable on a highly expedited basis. The required state commission approval could, in such cases, be accomplished within the two to three week period suggested by MCI WorldCom and Level 3 in their joint supplemental comments.

Definition of "reasonable period of time": Principle 7 of the Draft Statement appropriately distinguishes between carriers who have already entered into interconnection agreements with a particular ILEC and requesting carriers, including new entrants, who do not

have interconnection agreements in effect. Whatever deadline the Commission establishes for carriers with existing interconnection agreements to "opt into" a more favorable arrangement in a subsequently negotiated agreement should not affect the right of a carrier without any preexisting agreement with that particular ILEC; carriers without existing agreements should be able to opt into either an entire agreement or any portion thereof for as long as the agreement is in effect.

Effect of ILEC objections: Principle 9 of the Draft Statement appropriately places the burden of proof on the ILEC if it objects to making any individual interconnection, service or network element arrangement available to a requesting carrier on the basis of cost or technical feasibility. However, as noted by MCI WorldCom and Level 3, the Draft Statement does not expressly address the issue of whether the effectiveness of the remainder of the agreement is stayed pending resolution of the cost or technical feasibility dispute. Connect! recommends that the Commission adopt an approach that permits the remainder of the agreement – those provisions that are not in dispute – to become effective pending resolution of any cost or technical feasibility issues related to individual interconnection, service or network element arrangements. In cases where the only issue in dispute is one of cost, the entire agreement should be allowed to take effect, subject to true-up based on the Commission's ultimate resolution of the cost issues.

Conclusion

Wherefore, Connect! respectfully requests that the Commission take the views expressed herein into account in the above-captioned rulemaking.

Respectfully submitted,

_____

Larry A. Blosser, Esq.
Kemal Hawa, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500 (Telephone)
(202) 424-7645 (Fax)

Counsel for Connect Communications Corporation

Dated: December 3, 1999.