**BEFORE THE PUBLIC UTILITIES AND TRANSPORTATION COMMISSION**

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| In the Matter of the Implementation of Section 252(i) of the Telecommunications Act of 1996 | ) | DOCKET NO. UT-990355 |
| | ) | Supplemental Comments of MCI WorldCom, Inc. & Level 3 Communications, Inc. |
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**SUPPLEMENTAL COMMENTS OF MCI WORLDCOM, INC. AND LEVEL 3 COMMUNICATIONS, INC. ON THE INTERPRETATIVE AND POLICY STATEMENT REGARDING IMPLEMENTING THE PROVISIONS OF SECTION 252(i) OF THE TELECOMMUNICATIONS ACT**

MCI WorldCom Inc. ("MCI WorldCom") and Level 3 Communications, Inc. ("Level 3") hereby submits their comments on the Draft Interpretative and Policy Statement ("Policy Statement"), as requested by the October 15,1999, Washington Utilities and Transportation Commission ("Commission") Notice of Opportunity to File Supplemental Comments. MCI WorldCom and Level 3 generally supports the Policy Statement, which provides carriers with a process for adopting previously approved interconnection agreements, or portions of interconnection agreements pursuant to Section 252(i) of the Telecommunications Act of 1996 ("the Act"). However, MCI WorldCom and Level 3 are concerned that in several respects, the Policy Statement does not go far enough in providing carriers the expedited treatment to the full extent they are entitled pursuant to the Act and applicable Federal Communication Commission ("FCC") rulings. As such, these comments suggest several modifications to the proposed Policy Statement.

## I. Introduction and Background

Interconnection agreements entered into pursuant to Section 252 of the Act provide the means by which competitive local exchange Carriers ("CLECs") enter the market. The Act provides CLECs the option of obtaining such interconnection agreements through negotiation (including mediation), arbitration or adoption of an interconnection agreement pursuant to Section 252(i).

Section 252(i) of the Act requires a local exchange carrier to make available any interconnection, service, or network element provided under an agreement approved pursuant to Section 252 of the Act to any other requesting carrier upon the same terms and conditions as those provided in the agreement. In its corresponding rule, 47 C.F.R. §51.809, the FCC clarified that such interconnection, service or network elements are to be made available to a requesting carrier **without delay**. Furthermore, the FCC commented in its Local Competition Order that the "pro-competition purposes of Section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to section 251 before being able to utilize the terms of a previously approved agreement."[1] Based on the Act and related FCC findings, requesting carriers have an unfettered right to adopt on an expedited basis previously approved interconnection agreements.

While the Policy Statement makes great strides toward implementing 252(i) opt-in procedures pursuant to the aforementioned sections of the Act and applicable FCC rulings, MCI WorldCom and Level 3 believe the Policy Statement needs to be modified to give requesting

[1] In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, Adopted August 1, 1996, ¶ 1321 ("Local Competition Order").

carriers **all** the rights they are afforded pursuant to the governing laws, and FCC rules and decisions. Specifically, MCI WorldCom and Level 3 propose that the following changes be made to the Policy Statement:

1. The Policy Statement should be amended to provide that, if a CLEC opts into an entire agreement, the Commission should approve such agreement within a two to three week period.

2. Principle 8 of the Policy Statement should reflect that some agreements contain provisions extending such agreements beyond the date of termination noted in the agreement. CLECs opting into such agreements must have the option to exercise their rights under such provisions irrespective of whether the initial agreement is extended beyond the date of termination.

3. WAC 480-09-530 should be amended to provide that Section 252(i) disputes must be resolved within 45 days.[2]

4. ILEC objections to certain provisions of an agreement should not delay adoption and implementation of the remaining provisions of such agreement.

## II. Paragraph #13 - Principle 1

MCI WorldCom and Level 3 disagree with the statement that, if an incumbent local exchange carrier ("ILEC") makes an entire agreement available to a requesting carrier this would constitute a negotiated agreement. If nothing has changed in the interconnection, other than the named parties, nothing was negotiated by the parties; in that instance, a CLEC simply exercises

[2]As noted above in the first proposed revision, entire agreements should be approved within a two to three week period.

its statutory rights under Section 252(i) and nothing is negotiated between the parties.

Section 252(i) and the FCC's rule §51.809(a) affords requesting parties an immediate right to adopt state approved interconnection agreements. As the Supreme Court recognized, §51.809(a) provides only two exceptions to requesting carriers' unfettered right to adopt agreements pursuant to Section 252(i).[3] These two exceptions are:

(1) The costs of providing a particular interconnection, service, or element to the requesting carrier is greater than the costs of providing it to the carrier that originally negotiated the agreement, and

(2) The provision of a particular interconnection, service or element to the requesting carrier is not technically feasible.

In addition, where a requesting carrier seeks to adopt certain provisions of an agreement, an ILEC must prove to the Commission that certain terms and conditions as legitimately related to those provisions. Any other claim raised by an ILEC is simply an attempt to justify its refusal to honor a request for adoption and should not be entertained by the Commission.[4]

Absent an ILEC objection to cost, technical feasibility, and legitimately related terms, there is no negotiation between a requesting CLEC and the affected ILEC. As such, when a CLEC adopts an entire interconnection agreement, the Commission's Policy Statement should provide that these agreements will be approved within a two to three week time frame. There is simply no reason for further delay.

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[3] AT&T Corp. v. Iowa Util. Bd., 119 S. Ct. 721, 738 (1999).

[4] For example, ILEC claims that certain agreements are not available for adoption, that reciprocal compensation provisions cannot be adopted, or that new agreements must be executed before an adopted agreement can be deemed effective must fail as they are not legitimate claims for consideration by the Commission.

## II. Paragraph 20 - Principle 8

MCI WorldCom and Level 3 request that the Commission amend Principle 8 of the Policy Statement to reflect that some agreements contain provisions allowing parties to extend such agreements beyond the date of termination. The Policy Statement should reflect that a CLEC opting into such agreement must have the option to exercise its rights under those provisions even though the initial agreement may have terminated on the date of termination noted in the agreement. Such agreement should remain active beyond the date of termination if the adopting CLEC exercise's its rights under the agreement to extend the agreement beyond the date of termination. For example, the MFS/GTE Washington provides:

> MFS and GTE agree to interconnect with each other pursuant to the terms defined in this Agreement until it is superseded by an interconnection agreement negotiated between the Parties pursuant to Section 251 of the Telecommunications Act of 1996. Notwithstanding the foregoing, this Agreement shall, if not superseded by an interconnection agreement, expire two years after the effective date of the Agreement. In the event that the Agreement expires after two years, the interconnection arrangements in this Agreement shall remain in place until the Parties are able to negotiate and implement a new interconnection agreement. Negotiations on such a new agreement shall commence no later than 45 days prior to the expiration of this Agreement.

Article VIII. The AT&T/GTE agreement provides:

> This Agreement shall become effective in accordance with Section 23.8 (the "Effective Date"), and shall remain effective for a period of three (3) years. This Agreement shall continue in effect for consecutive one (1) year terms thereafter unless either Party gives the other Party at least ninety (90) calendar days written notice of termination, which termination shall be effective at the end of the initial term.

General Terms and Conditions, Section 2. Clearly, it is the intend of the parties to the above noted agreements that such agreements may be extended beyond the date of termination if certain conditions are met. A CLEC opting into an agreement that contains similar provisions should be

able to exercise its rights under those provisions irrespective of whether the initial party exercised its right to extend the agreement.

## IV. Use of WAC 480-09-530

Because §51.809(a) limits an ILEC's objections to three narrowly focused factors: cost, technical feasibility, and legitimately related terms and conditions, MCI WorldCom and Level 3 believe that the Commission must resolve objections as soon as possible. The agreement or provisions that a requesting CLEC seeks to adopt have already been reviewed and approved by the Commission. To satisfy the statutory mandate as well as the FCC's rules, any process established by the Commission to review objections raised by an ILEC to a proposed adoption must still afford a CLEC the ability to exercise its rights under Section 252(i) in an expeditious fashion.

There are also practical reasons for expediting the Commission's review of ILEC objections to adoptions. First, it will provide certainty for requesting CLECs as they undergo strategic business planning. By choosing to adopt an agreement a requesting CLEC may believe that the more favorable terms will allow it to build out facilities or provide services to a greater number of customers. Second, an ILEC that dislikes the terms of an agreement will have the incentive to oppose its adoption by raising frivolous claims.

In lieu of using the current process found in WAC 480-09-530, and which could take in excess of 90 days[5], MCI WorldCom and Level 3 recommend that the Commission amend WAC 480-09-530 to provide that Section 252(i) disputes must be resolved within 45 days. As already

[5]WAC 480-09-530(5)(a) provides that the presiding officer has the discretion to convert a proceeding into a complaint proceeding under RCW 80.04.1101.

noted, legitimate disputes will be limited to three areas and, as such, extremely focused. Given that a CLEC will be attempting to elect an agreement that has previously been approved by the Commission, claims that some provisions are technically infeasible should already have been negotiated by the parties or arbitrated by the Commission. The near completion of final prices for unbundled network elements in the generic costing/pricing proceeding should make disputes as to cost differences rare and focused.[6] Moreover, in the Eighteenth Supplemental Order the Commission found that "[t]he current interim prices for UNEs will remain in effect until the Commission has completed the Phase III process of deaveraging the prices determined in Phase II."[7] Thus, costing issues should be very limited. Finally, issues regarding incorporation of related terms will only arise when a CLEC attempts to opt into only part of, not all of, an agreement and should be fairly easy to resolve without any, much less extended or complex, hearings.

## IV. ILEC Claims with Respect to Rule 51.809(b)(2)

The Commission's Policy Statement should also be amended to provide that ILEC objections as to technical feasibility should not delay adoption of the remaining provisions of an agreement. If, for example, a CLEC seeks to adopt an entire agreement and the ILEC challenges the technical feasibility of a particular unbundled element, the remaining terms and conditions of the agreement must be honored by the ILEC.

Because §51.809(b) only enunciates exceptions to the absolute right of adoption under

[6]In the Matter of the Pricing Proceeding for Interconnection, Unbundled Elements, Transport and Termination, and Resale, Docket Nos. UT-960369, UT-960370, & UT-960371.

[7]Id., Eighteen Supplemental Order on Requests for Clarification, page 5.

Section 252(i), ILECs must not be able to delay the effectiveness of an entire adopted agreement by raising the specter of §51.809(b)(2) objections to certain provisions. This would essentially eviscerate a requesting CLEC's adoption rights before the ILEC meets the requisite burden of proving its claims.

If an ILEC is able to delay adoption of the remaining portions of an agreement by raising §51.809(b)(2) objections or arguing that certain terms are legitimately related to those the requesting CLEC seeks to adopt, the requesting CLEC will be delayed in its quest to enter the market and provide services.

To the extent an ILEC objects to the adoption of an agreement, or provisions therein, solely based on cost arguments pursuant to §51.809(b)(1), such provisions should be deemed effective on the adoption date of the agreement and subject to true-up based on the Commission's ultimate resolution of the ILEC's costing claims. Such treatment will serve the interests of both parties. In the case of the requesting CLEC, should the ILEC's claims be proven to be frivolous, its market entry or access to more favorable terms and conditions will not be unnecessarily delayed. In the case of the ILEC, the Commission could order retroactive true-ups should it find that the costs for serving the requesting CLEC are higher.

## VI. Conclusion

For the reasons stated, MCI WorldCom and Level 3 respectfully request the Commission to amend its proposed Policy Statement.

Respectfully submitted

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