

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: IMPLEMENTATION OF THE REQUIREMENTS OF
THE FEDERAL COMMUNICATIONS COMMISSION'S
TRIENNIAL REVIEW ORDER

DOCKET NO. 3550

COMMENTS OF MCI ON PROCEDURAL ISSUES

Pursuant to the Clerk's Memorandum of September 12, 2003, WorldCom, Inc. ("MCI") submits the following comments on the discovery process for this proceeding as well as other procedural issues.

MCI, through its operating subsidiaries, is authorized by the Commission to provide intrastate telecommunications services in Rhode Island, both as a toll and local service provider. MCI provides intrastate telecommunications services within Rhode Island pursuant to such authorization. MCI has a vital interest in the outcome of the Commission's inquiry because it relies upon access to unbundled network elements from Verizon-Rhode Island in order to provision local exchange services to residential and small business customers in Rhode Island. MCI has a direct and substantial interest in demonstrating to the Commission that MCI and other carriers will be impaired without access to unbundled switching for mass market customers, given the substantial economic and operational impediments facing competitors in offering local service through their own or non-Verizon switches.

MCI also has an interest in purchasing high capacity loops and dedicated transport from Verizon, and thus, has a direct and substantial interest in demonstrating to the Commission that MCI and other carriers will be impaired without access to these unbundled elements.

In these Comments, MCI has addressed several of the scoping and procedural issues that the Commission should consider in conducting its investigation of impairment¹ pursuant to the FCC's directives in its *Triennial Review Order* released on August 21, 2003.

1. Decisions on market definition and satisfaction of triggers should be made by the Commission after completion of the evidentiary record

The FCC's national finding "that competing carriers are impaired without access to unbundled local circuit switching for mass market customers" is based on "the combined effect of all aspects of the hot cut process on competitors' ability to serve mass market voice customers."² The FCC found that "the overall impact of the current hot cut process raises competitors' costs, lowers their quality of service, and delays the provisioning of service, thereby preventing them from serving the mass market in the large majority of locations."³ Therefore, one important aspect of the mass market switching impairment proceeding will be an examination of whether Verizon can overcome the finding that competitors are impaired based on its hot cut process. In addition, the mass market switching impairment proceeding will examine many other economic and operational issues "that may give rise to impairment."⁴ The FCC has identified several categories of barriers that could create impairments, including:

poor incumbent LEC performance in fulfilling unbundling, collocations, and other statutory obligations, difficulties in performing customer migrations between competitive LECs, difficulties in performing collocation cross-connects between competing carriers, and the significant cost disadvantages competitive carriers face in obtaining access to the loop

¹The FCC found "a requesting carrier to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic." *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking*, CC Docket No. 01-338, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, rel. Aug. 21, 2003 ("TRO"). at ¶84. *Id.* at ¶¶84-117.

²TRO at ¶473.

³*Id.*

⁴*Id.* at ¶476 (citation omitted).

and backhauling the circuit to their own switches.⁵

These barriers “can be sufficient to hinder or prevent entry even if impairment caused by hot cuts were fully resolved.”⁶ Therefore, a detailed and granular analysis of all economic and operational impairments will have to be applied “to each identifiable market” in the mass market switching impairment proceeding.⁷

The FCC has set forth certain parameters as to how the states must determine the proper market definition and has mandated that the states conduct a thorough factual examination before arriving at a definition. The FCC has directed that “[s]tate commissions have discretion to determine the contours of each market, but they may not define the market as encompassing the entire state. Rather, state commissions must define each market on a granular level, and in doing so they must take into consideration the locations of customers actually being served (if any) by competitors, the variation in factors affecting competitors’ ability to serve each group of customers, and competitors’ ability to target and serve specific markets economically and efficiently using currently available technologies.”⁸ Given the extensive factual record that the FCC has required the states to analyze before defining the market, the Commission’s determination as to the definition of a market can and should only be made after it has received and reviewed all evidence and argument in this proceeding. There are no other reasonable alternatives given the likely case schedule and given the totality of the information which the FCC has mandated that the Commission consider before making its determination as to the

⁵ *Id.* (citation omitted).

⁶ *Id.*

⁷ *Id.* at ¶495. The Commission’s proceedings will also need to address how to identify an enterprise market customer and a mass market customer, in addition to its consideration of geographic markets, in light of the TRO.

⁸ *Id.*

definition of the relevant market.

Finally, because the only logical way to address the issue of market definition is to decide the issue after development of a complete evidentiary record and briefing on all impairment issues, the Commission must likewise defer decision making on satisfaction of the triggers⁹ until the end of the case. With respect to mass market switching, the TRO requires that the Commission “find ‘no impairment’ in a particular market when either trigger is satisfied...”¹⁰ (emphasis supplied). Accordingly, the Commission should structure the proceeding on the premise that all issues relating to the existence of impairment will be decided at the end of the proceeding after discovery, hearings and briefing of the issues.

2. Implementation of a cost-effective batch cut process is necessary, at a minimum, for carriers to compete effectively in the mass market

The FCC has found in its analysis of mass market local switching that “a seamless, low-cost batch cut process for switching mass market customers from one carrier to another is necessary, at a minimum, for carriers to compete effectively in the mass market.” TRO at ¶487. Thus, the Commission’s adoption of a cost-effective, efficient batch cut process is an integral part of its impairment findings and rulings as to local switching. Once Verizon-RI submits its response to a request for information as to when it can file cost support for a proposed batch cut process, the Commission should include this subject in its next scheduled procedural conference call. It is possible that the Commission will be able to build upon an ongoing investigation of

⁹ The FCC has set forth federal “triggers” for findings of non-impairment that require detailed fact-finding by State Commissions. For example, in its discussion of the location-specific review to be conducted by State Commissions with regard to high-capacity loops, the FCC identified a “self-provisioning trigger” and a “competitive wholesale facilities trigger” and also explained the need to examine evidence as to specific customer locations to determine whether impairment exists even if a trigger has been satisfied. TRO at ¶¶328-340. See also, TRO at ¶¶394-418 (triggers discussed regarding dedicated transport); ¶¶498-510 (triggers discussed regarding local switching). 47 C.F.R. §51.319.

¹⁰ *Id.* at ¶498.

batch cut issues in New York. The FCC has directed that the Commission address the implementation and costs associated with a batch cut process within the same nine month window in which it will conduct its impairment investigations. TRO at ¶¶486-492. 47 C.F.R. §51.319(d)(2)(ii).¹¹

3. The Commission should allow for full discovery rights

MCI respectfully submits that all parties should be allowed to fully exercise their rights under the Commission's rules to conduct discovery from other parties. A complete evidentiary record will be necessary to allow the parties to present their factual and legal arguments on how the Commission should make its determinations under the TRO.

Some of the responses elicited during the discovery process will undoubtedly contain competitively-sensitive, proprietary information. This information should be available to all parties pursuant to an appropriate protective order adopted by the Commission and signed by all parties.

MCI would not oppose a reasonable shortening of the deadlines for filing discovery responses in order to accommodate the tight frames imposed upon the Commission.

Finally, in order to facilitate timely discovery, the Commission should designate one of its Staff as an arbitrator for the purpose of quickly resolving objections to discovery. All discovery objection hearings should be done by teleconference and open to all parties.

4. Verizon should have the burden of going forward and the burden of persuasion on the impairment issues where it proposes non-impairment findings

The FCC has found that competitors are impaired without access to unbundled mass

¹¹ A "batch cut process is defined as a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to

market local switching and high-capacity loops and transport and left it to the state commissions to determine on a more granular basis if there are situations in which competitors are *not* impaired. The FCC accordingly required the states to make findings of non-impairment where appropriate and under certain circumstances. Given the FCC's guidelines, it should be Verizon – as the proponent of a finding of non-impairment – who should have the burden of going forward, and as the party with the ultimate burden of proof of overcoming the national findings of impairment on these issues.

MCI appreciates the Commission's affording the parties an opportunity to file comments regarding the conduct of this proceeding and again underscores the critical importance of the Commission's fact-finding to the development of a more competitive intrastate telecommunications environment in Rhode Island that maximizes consumer choice and promotes the provision of reliable telecommunications services at a reasonable cost.

Respectfully submitted,

WORLDCOM, INC.

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operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line-by-line basis."