

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Implementation of the Federal Communications)
Commission's Triennial Review Order with respect)
to Potential Non-Impairment Determinations) Docket No. 03-0595
Regarding Unbundled Local Switching for)
Mass Market Customers in Specific Markets)

**MCI'S OPPOSITION TO SBC ILLINOIS' MOTION
TO COMPEL PRODUCTION OF DOCUMENTS AND INFORMATION**

WorldCom, Inc., d/b/a MCI ("MCI"), by and through its attorneys, and pursuant to the November 19, 2003 Notice, respectfully submits its Opposition to the motion of Illinois Bell Telephone Company ("SBC") to compel the production of documents and information from MCI.

As SBC's motion acknowledges, this motion was filed before MCI responded to SBC's letter explaining the issues SBC had with MCI's responses to several of SBC's Data Requests ("DRs"). While MCI believes that SBC's DRs overreach in many respects, in order to avoid involving the Commission in discovery disputes, subsequent to the filing of this motion, MCI has provided SBC with a substantial amount of additional information, including extremely confidential and highly sensitive proprietary information regarding MCI's strategies and analyses. As a result, SBC has agreed that its concerns regarding eight of the ten DRs have been resolved. With respect to the two other DRs, however, the information sought by SBC is simply irrelevant, cumulative, and burdensome. SBC's request that MCI be compelled to produce information responsive to these two DRs is without merit and should be denied.

1. On October 14, 2003, SBC Illinois propounded its "First Set of Data Requests of SBC and Ameritech Illinois to MCI WorldCom Communications, Inc."

Although SBC Illinois' data requests were extremely broad and burdensome, and sought a substantial amount of information irrelevant to this proceeding, on October 28, 2003, MCI issued a timely response to SBC Illinois' data requests.

2. On November 5, 2003, SBC Illinois wrote MCI and requested "additional clarification and documentation" regarding MCI's responses to several of SBC Illinois' data requests. On November 18, 2003, after discussions between the parties' respective counsel, MCI responded to SBC Illinois' November 5 letter. A copy of MCI's November 18 letter, without enclosures, is attached hereto as Exhibit A. Id.

3. MCI maintained (and continues to maintain) that SBC's DRs are extremely overbroad and burdensome, and seek a substantial amount of irrelevant information. Nevertheless, in order to avoid a discovery fight, MCI provided SBC Illinois a substantial amount of additional documents and data, including highly confidential and extremely sensitive proprietary information regarding MCI's strategies and analyses. Id.

Issues Resolved By The Parties

4. As a result of MCI providing additional information, documents, and data, SBC has acknowledged that eight of the ten DRs that were the subject of its motion to compel have been resolved. Specifically, the parties have fully resolved their dispute as to DRs 3, 4, 5, 6 (subject to MCI providing additional information to SBC, which MCI provided to SBC's counsel, Mark Ortlieb, via electronic mail this afternoon -- November 21, 2003), 13, 14, 16, and 17.

Issues Remaining In Dispute

5. MCI and SBC Illinois have been unable to resolve their dispute as to DRs 12 and 18. As to DR 12, MCI has provided SBC with a substantial amount of highly confidential and sensitive proprietary information, but SBC is not yet satisfied, and asks MCI to produce additional information that is plainly irrelevant. SBC's DR 18 seeks information that is cumulative, irrelevant, and highly sensitive, and while MCI has gone to great lengths to try to resolve this dispute, it will not agree to produce information which SBC has absolutely no right or legitimate interest in obtaining. As set forth below, the Motion to Compel is without merit on these disputed issues and should be denied.

Data Request 12

6. In DR 12, SBC Illinois sought all documents, studies, or analyses relating to MCI's consideration of the geographic areas in Illinois in which MCI offers, plans to offer, or in planned to offer, local services to mass market or enterprise customers. (See Ex. B to SBC Motion at ¶ 9.) Notwithstanding its objection that DR 12 is irrelevant, vague, overly broad, and unduly burdensome, MCI recently produced a significant amount of additional, highly confidential and proprietary business information related to its planned use of non-SBC circuit switches in Illinois. (See Ex. A hereto at 3.)

7. Unsatisfied with the additional information MCI has provided, SBC inexplicably demands that MCI produce information regarding MCI's past marketing practices in Illinois with respect to mass market customers, which were based entirely on the availability of the Unbundled Network Element Platform ("UNE-P"), including unbundled local switching. (See SBC Illinois Motion at ¶ 9.) SBC claims that this information is relevant to the Commission's determination regarding the definition of the

relevant “market” for purposes of the mass markets switching inquiry under the Triennial Review Order. (Id.)

8. SBC’s position is untenable and cannot withstand scrutiny. The market definition inquiry the Commission is undertaking pursuant to the Triennial Review Order relates not to past marketing and deployment practices under a UNE-P regime, but rather to identifying the relevant market for purposes of determining whether and to what extent MCI will be impaired without access to SBC’s unbundled local switching for mass market customers at present and in the future. (See TRO at ¶¶ 419-428.) Out-of-date, obsolete marketing materials, prepared under a UNE-P regime and without consideration for the mass marketing switching trigger issues contemplated by the Triennial Review Order, have no relevance here, and MCI should not be required to produce the materials to SBC. SBC is not entitled to conduct a “fishing expedition . . . with the hope of finding something relevant.” Fabiano v. City of Palos Heights, 336 Ill. App. 3d 635, 658-59 (Ill. Ct. App. 2002).

9. In response to DR 12, MCI has produced a substantial amount of highly confidential and proprietary information regarding MCI’s consideration of its plans for use of non-SBC circuit switches. While MCI maintains that DR 12 is completely objectionable, if anything, the information MCI has produced is the only information that appropriately could be sought by SBC. SBC’s request that MCI be compelled to produce past marketing data seeks irrelevant information and should be denied.

Data Request 18

10. With respect to DR 18, SBC asks the Commission to compel MCI to produce a copy of all responses MCI provided to the Commission in response to the Competition Data Requests issued by the Commission in 2002 or 2003. See SBC Motion ¶ 14.) On this issue, SBC’s motion utterly lacks legal or factual basis, and should be denied for at least two separate reasons.

11. First, to the extent the information contained in MCI’s prior submissions to the Commission included data and other information potentially relevant to this proceeding, it is undeniable that SBC either has asked (or could have asked) MCI to produce that very information – in a more accurate and current form – in response to other DRs. Indeed, MCI has produced the most accurate and current information about switches and MCI’s customers in Illinois in response to other SBC discovery requests. Discovery that is duplicative, or the response to which was provided in response to other discovery requests, is improper under Illinois law. See e.g., Zack Co. v. Sims, 108 Ill. App. 3d 16, 38 (Ill. Ct. App. 1982) (affirming trial court’s refusal to order a party to answer discovery request where “plaintiffs requested the same information from defendants by means of deposition and by the production of documents,” and noting that “the duplication of discovery methods to obtain the same information should be avoided”); The Habitat Co. v. McClure, 301 Ill. App. 3d 425, 443-44 (Ill. Ct. App. 1998) (affirming denial of motion to compel where plaintiff had complied with defendant’s four previous discovery requests and holding that “[defendant] already had, therefore, ample opportunity to obtain comparative evidence in discovery”). Any relevant information

that MCI previously produced to the Commission has already been obtained by SBC via other requests in this proceeding.

12. To the extent information MCI previously produced to the Commission is not relevant to this proceeding, SBC's motion to compel also should be denied. It is black-letter Illinois law that discovery should be denied where the information requested is not relevant to the proceeding. Fabiano, 336 Ill. App. 3d at 658-59 (affirming denial of motion to compel); Roekby-Johnson v. Derek Bryant Ins. Brokers, Ltd., 230 Ill. App. 3d 308, 316-17 (Ill. Ct. App. 1992) (same). MCI's prior submissions to the Commission included significant amounts of confidential, highly proprietary company information, the great majority of which is completely irrelevant to the present proceeding, and which it should not be required to turn over to SBC.

13. At bottom, to the extent MCI's prior submissions to the Commission contain information relevant to this proceeding, SBC either has (or could have) obtained that information through other DRs. To the extent MCI's prior submission contain information irrelevant to this proceeding, SBC has no legitimate interest in obtaining that information here. SBC's motion to compel MCI to provide the reports MCI submitted to the Commission should be denied.

WHEREFORE, for the reasons set forth above, MCI respectfully requests that SBC Illinois' Motion to Compel be denied in its entirety.

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NOTICE OF FILING

Please take notice that on November 21, 2003, I caused to be filed via the Illinois Commerce Commission's e-docket system MCI's Opposition to SBC's Motion to Compel in the above-captioned matter, a copy of which is hereby served on you.

Darrell Townsley

CERTIFICATE OF SERVICE

I, Darrell Townsley, certify that I caused to be served a copy of MCI's Opposition to SBC's Motion to Compel in the above-captioned docket, together with a Notice of Filing, upon all parties on the attached service list on this 21st day of November 2003, by electronic mail.

Darrell Townsley

Darrell Townsley
205 North Michigan Avenue, Suite 1100
Chicago, Illinois 60601
Tel: (312) 260-3533
Fax: (312) 470-5771
E-mail: darrell.townsley@mci.com

November 21, 2003

VIA FEDERAL EXPRESS

Elizabeth A. Rolando
Chief Clerk
ILLINOIS COMMERCE COMMISSION
527 E. Capitol Avenue
Springfield, IL 62701

Re: Illinois Commerce Commission Docket No. 03-0595

Dear Ms. Rolando:

I am electronically filing with the Commission via E-Docket MCI's Opposition to SBC's Motion to Compel in the above-captioned docket in Docket 03-0593.

Very truly yours,

Darrell Townsley

Enclosures
cc: Judge Wallace
Service List

Karl B Anderson
Illinois Bell Telephone Company
225 West Randolph, Floor 25D
Chicago IL 60606

Jeffrey Binder
Allegiance Telecom of Illinois, Inc.
1919 M St., NW, Ste. 420
Washington DC 20036

Russell M Blau
Atty. for RCN Telecom Services of Illinois, LLC
Swidler Berlin Shereff Friedman, LLP
3000 K St., NW, Ste. 300
Washington DC 20007

Sean R Brady
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago IL 60601-3104

Randolph R Clarke
Assistant Attorney General
Attorney General's Office
100 W. Randolph, 11th Fl.
Chicago IL 60601

William J Cobb III
Covad Communications Company
100 Congress Ave., Ste. 2000
Austin TX 78701

J. Tyson Covey
Atty. for Illinois Bell Telephone Company
Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle St.
Chicago IL 60603

Matt C Deering
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign IL 61826-6750

Joseph E Donovan
Atty. for Intervenors
Kelley Drye & Warren LLP
333 W. Wacker Dr., Ste. 2600
Chicago IL 60606

Patrick J Donovan
Atty. for Intervenors
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K St., NW., Ste. 300
Washington DC 20007

Douglas A Dougherty
Illinois Telecommunications Association, Inc.
300 E. Monroe St., Ste. 306
PO Box 730
Springfield IL 62705

Jonathan Feipel
Case Manager
Illinois Commerce Commission
527 East Capitol Ave.
Springfield IL 62701

Carmen Fosco
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago IL 60601-3104

Dennis G Friedman
Atty. for Illinois Bell Telephone Company
Mayer Brown Rowe & Maw LLP
190 S. LaSalle St.
Chicago IL 60603-3441

Harry Gildea
Atty. for DoD/FEA
Snavelly King, Majoros, O'Connor & Lee, Inc.
1220 L St., NW, Ste. 410
Washington DC 20005

Steve Goldman
Bullseye Telecom, Inc.
25900 Greenfield Rd., Ste. 330
Oak Park MI 48237

John Gomoll
Vice President
AT&T Communications of Illinois, Inc.
222 W. Adams, Ste. 1500
Chicago IL 60606

Michael Guerra
Atty. for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago IL 60606

William A Haas
McLeodUSA Telecommunications Services, Inc.
6400 C St., S.W.
Cedar Rapids IA 52404

Cheryl Hamill
Atty.
AT&T Communications of Illinois, Inc.
222 W. Adams St., Ste. 1500
Chicago IL 60606

James R Hargrave
Assistant Vice President
Verizon North/South Inc.
1312 E. Empire St.
PO Box 2955
Bloomington IL 61702-2955

Michael B Hazzard
Atty. for Intervenors
Kelley Drye & Warren, LLP
1200 19th St., NW, Ste. 1500
Washington DC 20036

Rhonda J Johnson
Vice President
Illinois Bell Telephone Company
555 Cook St., Fl. 1E
Springfield IL 62721

Trey Judy
Director, Regulatory Affairs
Gallatin River Communications L.L.C.
103 S. Fifth St.
PO Box 430
Mebane NC 27302

Henry T Kelly
Atty. for Intervenors
Kelley Drye & Warren LLP
333 W. Wacker Dr., Ste. 2600
Chicago IL 60606

Thomas Koutsky
Vice President
Z-Tel Communications, Inc.
1200 19th St., N.W., Ste. 500
Washington DC 20036

Michael J Lannon
Illinois Commerce Commission
160 N. LaSalle, Suite C-800
Chicago IL 60601

Brett D Leopold
Sprint Communications Company L.P.
MS: KSOPHN0212-2A461
6450 Sprint Pkwy.
Overland Park KS 66251

Theodore A Livingston
Atty. for Illinois Bell Telephone Company
Mayer, Brown, Rowe & Maw LLP
190 S. LaSalle St.
Chicago IL 60603

Owen E MacBride
Atty. for Intervenors
Schiff Hardin & Waite
6600 Sears Tower
Chicago IL 60606

Philip J Macres
Atty. for Intervenors
Swidler Berlin Shereff Friedman, LLP
The Washington Harbour
3000 K St., NW, Ste. 300
Washington DC 20007

Robert W McCausland
Sage Telecom, Inc.
805 Central Expy. South, Ste. 100
Allen TX 75013

Francie McComb
Talk America Inc./Sage Telecom, Inc.
6805 Route 202
New Hope PA 18938

Stephen J Moore
Atty. for Intervenors
Rowland & Moore
77 W. Wacker Dr., Ste. 4600
Chicago IL 60601

Dennis K Muncy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign IL 61826-6750

Joseph D Murphy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St., PO Box 6750
Champaign IL 61826-6750

Julie Musselman
Telecommunications Policy Analyst
Kelley Drye & Warren LLP
333 W. Wacker Dr.
Chicago IL 60606

Brad E Mutschelknaus
Atty. for Intervenors
Kelley Drye & Warren, LLP
1200 19th St., NW, Ste. 1500
Washington DC 20036

Nora A Naughton
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago IL 60601

Samantha C Norris
Atty. for Intervenors
Schiff Hardin & Waite
6600 Sears Tower
Chicago IL 60606

Peter Q Nyce Jr.
General Attorney
Department of the Army
JALS-RL
901 N. Stuart St., Ste. 713
Arlington VA 22203-1837

Mark Ortlieb
Illinois Bell Telephone Company
25D
225 W. Randolph
Chicago IL 60606

Jack A Pace
Assistant Corporation Counsel
City of Chicago
30 N. LaSalle St., Suite 900
Chicago IL 60602-2580

Edward Pence
Director
Illinois Consolidated Telephone Company
121 S. 17th St.
Mattoon IL 61938

Document Processor
Citizens Telecommunications Company of Illinois
C T Corporation System
208 S. LaSalle St.
Chicago IL 60604

Conrad Reddick
Special Deputy Corporation Counsel
City of Chicago
30 N. LaSalle St., Ste. 900
Chicago IL 60602

Kevin D Rhoda
Atty. for Intervenors
Rowland & Moore
77 W. Wacker, Ste. 4600
Chicago IL 60601

John E Rooney
Atty. for Verizon North/South Inc.
Sonnenschein Nath & Rosenthal LLP
8000 Sears Tower
Chicago IL 60606

Thomas Rowland
Atty. for Intervenors
Rowland & Moore
77 W. Wacker, Ste. 4600
Chicago IL 60601

David O Rudd
Director, State Government Relations
Gallatin River Communications L.L.C.
625 S. Second St., Ste. 103-D
Springfield IL 62704

Susan L Satter
Illinois Attorney General's Office
11th Floor
100 W. Randolph
Chicago IL 60601

Kevin Saville
Citizens Telecommunications Company of Illinois
d/b/a Frontier Citizens Communications of Illinois
2378 Wilshire Blvd.
Mound MN 55364

Kristen M Smoot
Director Regulatory Affairs
RCN Telecom Services of Illinois, LLC
350 N. Orleans St., Ste. 600
Chicago IL 60654

Louise A Sunderland
Illinois Bell Telephone Company
Floor 25D
225 W. Randolph Street
Chicago IL 60601

Sharon Thomas
Director of Regulatory Affairs
Talk America Inc.
12001 Science Dr., Ste. 130
Orlando FL 32826

Stephanie Timko
Sage Telecom, Inc.
805 Central Expy. South, Ste. 100
Allen TX 75013

Darrell Townsley
Midwest Region Public Policy
MCI WorldCom Communications, Inc.
205 N. Michigan Ave., 11th Fl.
Chicago IL 60601

A. Randall Vogelzang
Verizon Services Group
600 Hidden Ridge
Irving TX 75038

Ron Walters
Regional Vice President
Z-Tel Communications, Inc.
601 S. Harbour Island Blvd., Ste. 220
Tampa FL 33602

Michael W Ward
Atty. for Intervenors
Michael W. Ward, P.C.
1608 Barclay Blvd.
Buffalo Grove IL 60089

Nancy Wells
AT&T Communications of Illinois, Inc.
620 S. 5th St.
Springfield IL 62703

Rosalind Williams
Talk America Inc.
12001 Science Dr., Ste. 130
Orlando FL 32826

James Zolnierek
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield IL 62701

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