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Illinois Bell Telephone Company

Complainant

vs.

MCI WorldCom Communications, Inc.
MCImetro Access Transmission Services, LLC.
and MCI WorldCom Communications, Inc., f/k/a
MFS Intelenet

Respondents.

Docket No. 02-0443

SUPPLEMENT TO FEBRUARY 10, 2003, MOTION OF WORLDCOM

Pursuant to Sections 200.190 and 200.370 of the rules of the Illinois Commerce Commission ("Commission"), 83 Ill. Adm. Code Sections 200.190 and 200.370, MCI WorldCom Communications, Inc., and MCImetro Access Transmission Services, LLC, (collectively, "WorldCom"), hereby file this supplement to its February 10, 2003, motion to compel Illinois Bell Telephone Company ("SBC", "Ameritech Illinois" or "Ameritech") to properly respond to discovery ("February 10 Motion").

INTRODUCTION

Since the filing of the February 10 Motion, the parties have been engaged in further discovery and in efforts to resolve other discovery issues which were still open, but not made part of the February 10 Motion. This present supplement to the February 10 Motion addresses SBC's responses which it served on February 17 to WorldCom's Third Set of Data Requests, and

addresses discovery requests 6, 7, and 13 of WorldCom's Second Set of Data Requests. By agreement of the parties, SBC is to file its written response to this supplement and to the February 10 Motion on February 25, and hearing on these matters has been set for March 3 at 10:30am.

REQUEST 7 OF THE SECOND SET OF DATA REQUESTS

Despite efforts of the parties to resolve disputes regarding Request 7 of the Second Set of Data Requests, SBC has still not submitted a proper response. This request, and SBC's response, are as follows:

7. Provide copies of all documents sent to customers as part of SBC's Winback Program since July 21, 2002. If the documents sent to customers as part of SBC's Winback program since July 21, 2002 are different from those sent to customers in the three months prior to July 2002, identify and describe in detail the differences and produce the documents sent in the three months prior to July 2002.

Response:

SBC Illinois objects to this request on the grounds set forth in General Objections 1 and 2. Without waiving its objections, SBC Illinois states that it is producing the attached samples of the "two-day" letter sent as part of the Winback Program to customers that recently switched service to another provider. One version of the sample letter was in use prior to October 2002, one version was in use between October 2002 and January 2003, and the third version is currently in use.

SBC also had attached certain documents in this response, and these documents have already been tendered to the ALJ in conjunction with the February 10 Motion. By letter dated February 10, SBC supplemented this response by stating that: "The letter previously produced that bears the subscript 'IL2DAY 9/01' was in use between September 2001 and October 2002. The letter was sent to all Winback customers." A copy of this SBC February 10 letter, and the WorldCom responsive February 13, 2003, letter will also be tendered to the ALJ in conjunction with this supplemental filing.

For the winback letters which SBC produced in response to Request 7, these were just the "2 Day" letters sent on the second day or so after the customer had left SBC. SBC in discussions has stated that it has also sent other letters to the customers at issue here. It is SBC's contention that these other letters do not refer to slamming and therefore are not relevant to the issues in this proceeding. WorldCom is entitled to copies of notes (or a summary of each such note) of all communications between SBC and the customers at issue for the time period during which the customer either was a WorldCom customer (or allegedly first had communication with WorldCom which is the subject of the present proceeding) up through the time during which the customer was communicating with SBC about the complaints at issue in the present proceeding. SBC should be ordered to fully respond to Request 7 of the Second Set of Data Requests.

REQUESTS 13(a) AND 6 OF THE SECOND SET OF DATA REQUESTS

Despite efforts of the parties to resolve disputes regarding Request 13(a) of the Second Set of Data Requests, SBC has still not submitted a proper response. This request states as follows:

13. For each of the ANIs set forth in Attachment 1 to the Third Set of Data Requests by SBC, and for each of the affidavits set forth as Attachments A through L to the Verified Motion For Enforcement of Order Granting Emergency Relief:

a) Produce all documents and audio recordings that refer to or relate to communications between SBC and the customers;

SBC initially was only willing to produce such information for 70 customers. By letter dated February 14, SBC supplemented this information with information on about another 69 customers, and has indicated that it will provide the information for the remainder of the 240 or so total list of customers. A sample of the type of information being provided with respect to

each customer by SBC in this regard is attached to SBC's February 10, 2003 letter which is being supplied to the ALJ in conjunction with this supplemental filing.

SBC states that all of the telephone communication between it and the 240 or so customers at issue were from in-bound calls from the customers (as opposed to out-bound winback calls from SBC to the customer). Given that SBC has a large scale out-bound winback telemarketing campaign, this assertion that no complaints were identified in out-bound sales calls and that 100% of the complaints were identified through in-bound calls seems dubious. In reliance on this 100% in-bound call assertion, SBC did not provide any response or documents with respect to its out-bound sales calls operation which would have otherwise been responsive to discovery request 6 of the WorldCom Second Set of Data Requests.¹

In an effort to resolve this dubious SBC assertion and to attempt to resolve this discovery dispute, WorldCom's counsel asked SBC's counsel to produce some documentation for each of these customers showing that these in fact were in-bound calls. SBC's counsel stated that for some percentage of these customers there are customer notes showing that the customer had called in such as to complain about a feature not working or mentioning the "2 Day" letter. SBC

¹ This discovery request 6, and SBC's response, are as follows: "6. For the time period July 21, 2002 to the present, produce all documents that constitute, identify, refer to, or relate to documents provided to SBC customer service representatives pertaining to allegations of slamming, misrepresentations, misquoting of rates, or other improper conduct, involving customers of CLECs, including, but not limited to, scripting materials or talking points. If the documents responsive to this request are different from those documents in effect during the three months prior to July 2002, identify and describe in detail the differences. **Response:** SBC Illinois objects to this request in its entirety on the grounds set forth in General Objections 1 and 4. SBC Illinois also objects to the last sentence of this request on the ground set forth in General Objection No. 2. Without waiving its objection, SBC Illinois states that it is producing the attached materials and that it is producing additional materials in response to Data Request 13."

is unwilling to produce these notes even though these notes are part of the same conversation as reflected in that portion of the documentation being provided in response to Request 13(a) where the documentation shows the customer's complaint about WorldCom conduct.

WorldCom is entitled to all such SBC customer notes (or a summary of such notes) showing any communication pertaining to the time period from the time that the customer was an MCI customer (or from the time of the first alleged wrongful MCI conduct pertaining to this customer) up to and through the time that the customer was communicating with SBC about the allegedly wrongful WorldCom conduct which is the focus of the present proceeding. There are two primary reasons for this. First, MCI is entitled to know of all such documentation so that it can draw its own conclusions as to whether the communication is in any way problematic against SBC. Second, the documentation could well show that certain of these communications were in fact out-bound calls. In the event that any such calls were outbound calls, then WorldCom would also certainly be entitled to outbound scripting, talking points, and training materials which so far SBC has failed to produce in response to discovery request 6 of the Second Set of Data Requests.²

As for inbound calls, SBC would like to see the discovery limited to the sales training, scripts, etc. pertinent to addressing those situations which eventually result in customer service representatives recording a customer complaint as a slam or misrepresentation. For example, this would include documents addressing the situation where a customer might call in complaining

² With respect to question 6 of the WorldCom Second Set of Data Requests, SBC also stated that it would be sending to WorldCom a statement that the production is complete and that there are no other documents responsive to the request. WorldCom has not yet received this written statement.

that a feature does not work and SBC would discover that SBC no longer provides the local service, which could then result in a customer alleging that he/she had been slammed. For inbound calls, this limitation is acceptable to WorldCom, provided that the documents produced are fully responsive. But SBC needs to confirm in writing that it has produced all such documentation.

REQUEST 1 OF THE WORLDCOM THIRD SET OF DATA REQUESTS

Part of the problem with the SBC theory of liability (as set forth in their responses to request 1 of the Second Set of Discovery Requests, and as set forth in par. 1, page 2 of its Amended Motion) is that the theory is not logical. Under the SBC theory, WorldCom has “blatantly” violated the Emergency Order because SBC in the two months prior to the Emergency Order received 111 and 110 consumer complaints about WorldCom in May and June 2002 respectively, and that in the two months after the Emergency Order it received 123 and 115 complaints in August and September 2002 respectively. One of the problems with the SBC theory is that it does not look at when the underlying conduct took place which gave rise to the complaints which it received in August and September. For example, many of the complaints which SBC received in August and September pertain to pre-petition conduct.

If the focus of SBC is to compare a trend line of the number of complaints it receives in a given month as being indicative of the conduct of a company, then WorldCom is entitled to obtain pertinent information which would show the total number of complaints generated by conduct in a month (regardless of when the complaint is actually received) and which shows the volume of installation orders generated in that month so as to place the complaint volumes in context to the applicable order volumes over time. This is the focus of the request 1 of the Third Set of WorldCom Data Requests to SBC. (SBC’s responses to the WorldCom Third Set of Data

Requests is set forth as Attachment "A"). Instead, SBC has only submitted information on when the customer submitted its complaint to SBC and when SBC installed the service. Also, in order to place the WorldCom conduct in context, WorldCom needs such similar information for the other CLECs in Illinois, including the volumes of orders on a month by month comparison.

SBC's objections to producing this information are without merit. It has re-asserted its general objections 1, 2, and 3, to which WorldCom has previously responded in the February 10 Motion. SBC's further objection that this discovery concerns pre-petition matters and therefore is not discoverable is certainly ironic. If SBC's position is that no pre-petition matters can be addressed, then it must strike the first paragraph of its Amended Motion, and doing so would take away its only theory as to why WorldCom has violated the Emergency Order. SBC can not assert that the level of alleged complaints has increased post-petition compared to pre-petition and then not allow discovery on its theory of liability.

In discussions with counsel, it appears that SBC is now willing to produce the May and June 2002 complaints for both MCI and for other CLECs. For the other CLECs, however, SBC is not willing to provide information showing when SBC installed service for each of the complaints at issue due to the level of work this would require to produce the information. (WorldCom indicated that if SBC were to produce the applicable screen prints for each of these customers that WorldCom would do this work itself, but SBC refused this offer also). The SBC indication is also insufficient as it does not fully comply with the time frame requested in the discovery. Accordingly, the limited number of months for which SBC is willing to produce the pertinent information is too limited, and SBC refuses to produce a sufficient level of detail for these allegations. Accordingly, SBC should be ordered to fully respond to this discovery request.

REQUEST 2 OF THE WORLDCOM THIRD SET OF DATA REQUESTS

It is important to know whether the manner in which SBC solicits and collects customer complaints against CLECs in Illinois is any different than how it behaves in the rest of its states. Given that the Illinois complaints are processed through SBC's Port Huron, Michigan, center, it would appear that at least for the SBC-Midwest states (Ohio, Indiana, Michigan, and Wisconsin) that the processes would be identical. Yet, SBC offers general objections which have already been addressed. These objections include an assertion that the discovery is unduly burdensome. It is difficult to understand how a simple yes or no response would be unduly burdensome, and it is similarly difficult to understand how a simple explanation of any such differences could be unduly burdensome. SBC's objections in this regard should be overruled.

Furthermore, a strong example of SBC misbehaving in the manner in which it solicits slamming complaints is set forth in the attached letter (Attachment "B") from Senator David Goodman, an Ohio State Senator who sponsored that state's anti-slamming law. The letter recounts his recent personal experience of SBC inappropriately asserting to Senator Goodman that he had been slammed by MCI WorldCom.

CERTAIN OTHER DISCOVERY ISSUES

With respect to questions 22, 27, and 29 of the WorldCom Second Set of Data Requests, and with respect to questions 1(I) and 3 of the WorldCom Third Set of Data Requests, an issue has arisen over the potential confidential information of AT&T and other CLECs which potentially could be identified in any such response. Counsel for AT&T has informed WorldCom that they would be fine with an "attorneys eyes" only type of disclosure of such information, and

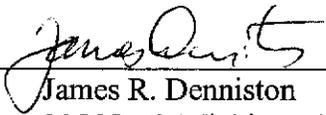
if at a later point in the case a different type of treatment would be warranted that we could then re-address the issue.³ However, SBC has not yet produced any of the requested information. SBC should be ordered to produce the requested information.

CONCLUSION

For all of the foregoing reasons, an order should be entered requiring SBC to promptly and fully respond to WorldCom's discovery as set forth above and in the February 10 Motion.

Respectfully submitted,

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et al

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³ With respect to question 27, in discussions among counsel, WorldCom clarified that the term "new" there simply meant what to the CLEC would be a new customer, which would be a migration of a customer from another carrier.

Illinois Commerce Commission
Docket No: 02-0443
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