

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Bell Atlantic-Delaware, Inc., <i>et al.</i> ,	)	
	)	
Complainants,	)	
	)	
v.	)	File No. E-98-49
	)	
MCI Telecommunications Corp.,	)	
	)	
Defendant.	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 1, 2002**

**Released: August 14, 2002**

By the Commission:

**I. INTRODUCTION**

1. In this Order, we grant a Joint Request<sup>1</sup> filed by the parties – Bell Atlantic-Delaware, Inc., *et al.* (“Verizon”)<sup>2</sup> and MCI Telecommunications Corporation (“WorldCom”)<sup>3</sup> –

<sup>1</sup> Joint Request, File No. E-98-49 (filed Jan. 7, 2002) (“Joint Request”).

<sup>2</sup> The original named complainants in this action were Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company. These companies now are doing business as Verizon Communications. *See Bell Atlantic-Delaware, Inc., et al. v. Frontier Communications Services*, Memorandum Opinion and Order, 16 FCC Rcd 8112, 8112 n.1 (2001) (“*Bell Atlantic Order*”). This order is binding on all named parties and their successors-in-interest.

<sup>3</sup> MCI now is doing business as WorldCom, Inc. (“WorldCom”). On July 25, 2002, WorldCom filed a Notice of Stay, alerting the Commission that WorldCom recently had filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code. Notice of Stay, File No. E-98-49 (filed July 25, 2002). Although WorldCom maintains that its bankruptcy filing stays this proceeding, we disagree. First, this Order cannot properly be considered a “continuation” of a proceeding. *See* 11 U.S.C. § 362(a)(1) (bankruptcy petition operates as a stay of the “commencement or continuation ... of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title”). Rather, it is tantamount to a clarification of a prior order (*i.e.*, the *Bell Atlantic Order*) that the Commission issued prior to WorldCom’s bankruptcy filing, and that established the duties and obligations of the respective parties prior to the bankruptcy filing. Second, even assuming the automatic stay provision were applicable, the regulatory exception to the stay provision applies, because, in clarifying the *Bell Atlantic Order*, the Commission is acting in a regulatory capacity (*i.e.*, it is interpreting the statutory duties and obligations of a regulated entity). *See* 11 U.S.C. § 362(b)(4) (bankruptcy petition does not operate as a stay of the “commencement or continuation of an action or proceeding by

(continued....)

to this formal complaint proceeding concerning application of Commission payphone per-call compensation rules that were in effect until November 23, 2001. The Commission recently revised the rules to require the first facilities-based interexchange carrier (“IXC”) to which a completed coinless access code or subscriber toll-free payphone call is delivered by a local exchange carrier (“LEC”) to compensate the payphone service provider (“PSP”) for the call.<sup>4</sup> Because the events at issue in this proceeding transpired when the Commission’s prior rules were in effect, however, we are constrained to apply the prior rules.

2. In the Joint Request, Verizon and WorldCom ask the Commission to resolve a dispute between them regarding the *Bell Atlantic Order*, which the Commission released in this proceeding on April 5, 2001. Specifically, the parties wish to know “when, under that Order, the first facilities-based carrier, in this case WorldCom, is responsible for paying per-call compensation and when the facilities-based resellers of that carrier’s services are responsible.”<sup>5</sup>

3. We hold – as we did in the *Bell Atlantic Order* – that WorldCom’s obligation to compensate Verizon for toll-free calls under the Commission rules in effect during the relevant period extended to calls that WorldCom handed off to LECs, but that WorldCom was not required to pay per-call compensation to Verizon for calls that WorldCom handed off to switch-based resellers. In the latter case, WorldCom’s obligation was limited during the period in question to identifying the reseller responsible for paying compensation to Verizon.

## II. BACKGROUND

4. Section 276 of the Communications Act of 1934, as amended (“Act”), requires the Commission to “establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone....”<sup>6</sup> In response, the Commission adopted rules governing payphone compensation.<sup>7</sup> As a result of these rules, when payphone users place toll-free calls that are

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a governmental unit ... to enforce such governmental unit’s ... regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit’s ... regulatory power”).

<sup>4</sup> See *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996: RBOC/GTE/SNET Payphone Coalition Petition for Clarification*, Second Order on Reconsideration, 16 FCC Rcd 8098 (2001), Third Order on Reconsideration and Order on Clarification, 16 FCC Rcd 20922 (2001).

<sup>5</sup> Joint Request at 1.

<sup>6</sup> 47 U.S.C. § 276(b)(1)(A). Section 276 exempts emergency calls and telecommunications relay service calls for hearing disabled individuals from the per-call compensation requirement. *Id.*

<sup>7</sup> See 47 C.F.R. §§ 64.1300-64.1340. See generally *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541 (1996) (“*First Payphone Order*”), on reconsideration, 11 FCC Rcd 21233 (1996) (“*Order on Reconsideration*”), review granted in part and denied in part *Illinois Public Telecommunications Ass’n v. FCC*, 117 F.3d 555 (D.C. Cir.), clarified on reh’g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied, 523 U.S. 1046 (1998); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Second Report and Order, 13 FCC Rcd 1778 (1997), review granted in part and denied in part *MCI Telecommunications Corp. v. FCC*, 143 F.3d 606 (D.C. Cir. 1998); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545 (1999), review denied *American Public Communications Council, Inc. v. FCC*, 215 F.3d 51 (D.C. Cir. 2000).

routed to IXCs, the IXCs must compensate the PSPs for completed calls.<sup>8</sup>

5. This compensation system becomes more complicated, however, when IXCs sell space on their networks to other IXCs, known as “resellers.”<sup>9</sup> Resellers can be divided into two categories – “switchless” and “switch-based.” Switchless resellers simply rename the underlying IXC service.<sup>10</sup> Switch-based resellers (“SBRs”), on the other hand, install their own switch to handle traffic.<sup>11</sup>

6. The Common Carrier Bureau ruled in the liability phase of this proceeding that Verizon properly had certified its eligibility to receive per-call compensation, and, upon review, we upheld this determination.<sup>12</sup> Thereafter, Verizon and WorldCom settled all but one issue between them – *i.e.*, which entity is responsible for paying per-call compensation for payphone calls that an IXC hands off to a SBR.<sup>13</sup> In the damages phase, we resolved WorldCom’s obligation to pay per-call compensation to Verizon for such calls, as well as WorldCom’s duty to provide tracking information to Verizon regarding the calls.<sup>14</sup> As part of the order resolving the damages phase (*i.e.*, the *Bell Atlantic Order*), we directed the parties to attempt to resolve through negotiations the precise amount of damages owed.<sup>15</sup> They were unable to do so.

7. On January 7, 2002, Verizon and WorldCom filed the Joint Request, which proposed that the parties submit additional briefs on the appropriate construction of the *Bell Atlantic Order*.<sup>16</sup> As a result, we directed the parties to submit briefs regarding the respective obligations (under the Commission’s prior rules) of first facilities-based carriers and facilities-

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<sup>8</sup> See 47 C.F.R. § 64.1300(a) (“[E]very carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call...”) (amended Apr. 27, 2001).

<sup>9</sup> A reseller, in turn, may resell service to another reseller, and an IXC and several resellers may carry a single payphone call before the call is transferred to a LEC for completion. See *Bell Atlantic Order*, 16 FCC Rcd at 8113, ¶ 3.

<sup>10</sup> Because switchless resellers lack their own facilities and therefore do not have the ability to track calls, the Commission has held that facilities-based carriers should pay compensation to the PSP “in lieu of a non-facilities based carrier that resells service,” and that, if they so choose, the facilities-based carriers may “impose the payphone compensation amounts on [reseller] customers.” *First Payphone Order*, 11 FCC Rcd at 20586, ¶¶ 86-87.

<sup>11</sup> Switch-based resellers also are known as “facilities-based” resellers.

<sup>12</sup> See *Bell Atlantic-Delaware, et al. v. Frontier Communications Services, Inc., et al.*, Memorandum Opinion and Order, 14 FCC Rcd 16050 (Com. Car. Bur. 1999), and *Ameritech Illinois, U S West Communications, Inc., et al. v. MCI Telecommunications Corporation*, Memorandum Opinion and Order, 14 FCC Rcd 18643 (Com. Car. Bur. 1999), *aff’d Bell Atlantic-Delaware, et al. v. Frontier Communications Services, Inc., et al.*, Order on Review, 15 FCC Rcd 7475 (2000), *review denied Global Crossing Telecommunications, Inc. v. FCC*, 259 F.3d 790 (D.C. Cir. 2001). See also *Bell Atlantic Order*, 16 FCC Rcd at 8115-17, ¶¶ 6-9.

<sup>13</sup> Complainants’ Initial Brief on the Reseller Issue, File No. 98-49 (filed July 10, 2000) at 1.

<sup>14</sup> *Bell Atlantic Order*, 16 FCC Rcd 8113, ¶ 1.

<sup>15</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8121, ¶ 19. See 47 C.F.R. § 1.722(i)(4) (following a Commission determination regarding a damages computation method or formula, the Commission may order the parties to submit, within thirty days of the release date of the damages order (1) a statement detailing the parties’ agreement as to the amount of damages; (2) a statement that the parties are continuing to negotiate in good faith and a request that the parties be given an extension of time to continue negotiations; and (3) a statement detailing the bases for the continuing dispute and the reasons why no agreement can be reached).

<sup>16</sup> Joint Request at 2.

based resellers to pay per-call compensation.<sup>17</sup>

### III. ANALYSIS

8. The parties disagree about WorldCom's obligation to pay per-call compensation in the event that WorldCom transfers a call to a SBR. Verizon argues that the Commission's rules clearly require WorldCom to compensate Verizon for such a call, and that WorldCom can avoid its payment obligation "if, and only if, another carrier 'identifies itself as being responsible for paying per-call compensation.'"<sup>18</sup> As support for this proposition, Verizon cites the following sentence from the *Bell Atlantic Order*: "The logical construction of the language from the *Coding Digit Waiver Order* requires a first facilities-based carrier to pay unless the reseller has identified itself to the first facilities-based carrier as being responsible for compensation."<sup>19</sup> WorldCom, on the other hand, maintains that, until very recently, the Commission squarely placed responsibility for paying per-call compensation on a reseller, rather than an IXC, if the reseller maintained its own switching capability.<sup>20</sup> According to WorldCom, the passage from the *Bell Atlantic Order* on which Verizon relies is dictum about a different aspect of the *Coding Digit Waiver Order* (i.e., the obligation to disclose information regarding the identity of switched-based resellers).<sup>21</sup>

9. We disagree with Verizon's interpretation of the *Bell Atlantic Order*. Paragraph 14 of the *Bell Atlantic Order* addressed Verizon's characterization of a sentence in the *Coding Digit Waiver Order*. In particular, Verizon argued that, in order for a first facilities-based carrier to be relieved of its obligation to pay per-call compensation for a call handed off to a reseller, the reseller must have identified itself to the PSP, rather than to the first facilities-based carrier.<sup>22</sup> The *Bell Atlantic Order* rejected this characterization, finding that the *Coding Digit Waiver Order* contained no such limitation, and that such a limitation would not make sense: "The logical construction of the language from the *Coding Digit Waiver Order* requires a first facilities-based carrier to pay unless the reseller has identified itself to the first facilities-based carrier as being responsible for paying compensation."<sup>23</sup> Thus, a first-facilities based carrier does not have to pay per-call compensation if a reseller is responsible for payment. Nothing

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<sup>17</sup> Letter from David A. Strickland, Attorney Advisor, Market Disputes Resolution Division, Enforcement Bureau, to Gilbert E. Geldon, Verizon counsel, and Lisa R. Youngers and Lisa B. Smith, WorldCom counsel, File No. E-98-49 (dated Jan. 18, 2002) at 1.

<sup>18</sup> Complainants' Memorandum on the Reseller Issue, File No. E-98-49 (filed Jan. 25, 2002) ("Verizon Brief") at 8. See Complainants' Reply Memorandum on the Reseller Issue, File No. E-98-49 (filed Feb. 20, 2002) ("Verizon Reply Brief") at 1-4.

<sup>19</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8119, ¶ 14. The *Coding Digit Waiver Order* refers to the Common Carrier Bureau's decision in *Implementation of the Pay Telephone Reclassification and Compensation Provisions in the Telecommunications Act of 1996: AT&T Request for a Limited Waiver of the Per-Call Compensation Obligation*, Memorandum Opinion and Order, 13 FCC Rcd 10893 (Com. Car. Bur. 1998), *Petition for Reconsideration and Application for Review pending on other grounds* ("Coding Digit Waiver Order").

<sup>20</sup> Defendant's Memorandum on the Reseller Issue, File No. E-98-49 (filed Feb. 6, 2002) ("WorldCom Brief") at 3-4.

<sup>21</sup> WorldCom Brief at 4-5.

<sup>22</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8119, ¶ 14.

<sup>23</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8119, ¶ 14.

about this statement from the *Bell Atlantic Order* is inconsistent with that order's general holding, which is articulated in paragraph 13: A first facilities-based carrier must compensate PSPs for calls that the facilities-based carrier transfers directly to a terminating LEC or must identify the reseller responsible for paying per-call compensation if it transfers calls to a switch-based reseller.<sup>24</sup> Consequently, like the *Coding Digit Waiver Order*, the *Bell Atlantic Order* held that a first facilities-based carrier that transfers calls to a switch-based reseller does not have to pay per-call compensation. Such carriers, however, do have to provide tracking information.<sup>25</sup>

10. This interpretation of WorldCom's obligations is consistent with other portions of the *Bell Atlantic Order*.<sup>26</sup> In the first paragraph of the *Bell Atlantic Order*, which enunciated the order's holding, the Commission wrote:

We hold that under the rules and orders that are applicable to this case, the Defendants' obligation to compensate Verizon for toll-free calls extends to calls that the Defendants hand off to local exchange carriers..., but that the Defendants are not required to pay per-call compensation to Verizon for traffic that they hand off to switch-based resellers. However, in the latter situation, and upon Verizon's written request, the Defendants must provide information to Verizon that enables it to identify any resellers responsible for compensation.<sup>27</sup>

Similarly, in Paragraph 20 of the *Bell Atlantic Order*, the Commission summarized its holding:

[W]e hold that the Commission's rules require the Defendants to compensate Verizon for toll-free calls transferred to terminating LECs, but do not require the Defendants to compensate Verizon for traffic transferred to switch-based resellers. Rather, with respect to the latter traffic, the Defendants must provide Verizon information that enables it to identify resellers responsible for compensation.<sup>28</sup>

Thus, the *Bell Atlantic Order* makes clear that, with respect to calls that WorldCom handed off to SBRs, WorldCom needed to do nothing more than provide tracking information to enable Verizon to identify the SBRs and attempt to collect payment. The *Bell Atlantic Order* does not, as Verizon argues, require WorldCom to act as a guarantor for compensation in the event a PSP

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<sup>24</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8118, ¶ 13 (“[T]he *Coding Digit Waiver Order* makes clear that a first facilities-based carrier need only identify the switch-based reseller responsible for paying compensation.”).

<sup>25</sup> *Bell Atlantic Order*, 16 FCC Rcd at 8119, ¶ 15 (“[O]nce a PSP issues a written request for payment, the facilities-based IXC must provide tracking information.”).

<sup>26</sup> Moreover, it is consistent with earlier Commission orders holding that carriers with switching capability must pay per-call compensation. See note 11, *supra*.

<sup>27</sup> *Bell Atlantic Order*, 14 FCC Rcd at 8113, ¶ 1.

<sup>28</sup> *Bell Atlantic Order*, 14 FCC Rcd at 8121, ¶ 20.

is unable to collect from an SBR.<sup>29</sup>

11. We therefore reiterate that, under the rules and orders applicable to this case, WorldCom's obligation with respect to calls it handed off to SBRs was limited to providing tracking information to Verizon. Specifically, for each call, WorldCom must provide the name of a contact person at the SBR, a telephone number for that person, and the SBR's last known address.<sup>30</sup>

#### IV. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 208, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, and sections 0.111, 0.311, 64.1300, and 64.1310 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, 64.1300, and 64.1310, that the Joint Request filed on January 7, 2002 is granted, consistent with this Order.

13. IT IS FURTHER ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>29</sup> See Verizon Brief at 7-9. In addition, we reject WorldCom's assertion that paragraph 14 of the *Bell Atlantic Order* is "merely dicta." WorldCom Brief at 6. As noted in paragraph 9 of this Order, we find that the proper interpretation of paragraph 14 is consistent with the rest of the *Bell Atlantic Order*, and therefore constitutes part of the holding of that Order. Similarly, we reject Verizon's argument that the Commission's orders subsequent to the *Bell Atlantic Order* contradict our holding in this case. See Verizon Brief at 3, 7-8; Verizon Reply Brief at 1-2.

<sup>30</sup> WorldCom also must indicate whether it and the SBR to which it is handing off calls have entered into a contract requiring the SBR to compensate Verizon. To the extent WorldCom and an SBR have formed such a contract, Verizon could attempt to enforce the contract (under a third-party beneficiary theory) if the SBR fails to fulfill its payment obligation. Verizon could not assert such a claim in this proceeding, however, because it would be beyond the scope of the damages complaint. Alternatively, WorldCom could have agreed contractually with an SBR that WorldCom will pay per-call compensation on behalf of the SBR. Again, however, any claim by Verizon against WorldCom seeking to enforce such a contract would transcend the allegations of the damages complaint.