DA 95-375

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Pacific Bell Petition for Waiver of	)	
800 Data Base Access Time Requirements	)	CC Docket No. 86-10
	)	
BellSouth Petition for Waiver of	)	
800 Data Base Access Time Requirements	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 28, 1995 Released: February 28, 1995

By the Chief, Common Carrier Bureau:

I. Introduction

1. The Commission's Memorandum Opinion and Order in Docket 86-10, Provision of Access for 800 Services (released September 4, 1991) (Reconsideration Order)[1] mandated that the Bell Operating Companies (BOCs) and GTE meet certain maximum data base access time requirements for 800 traffic by March 1, 1995. On December 21, 1994, Pacific Bell (Pacific) filed a petition for waiver (Pacific Petition) of the requirement that none of its 800 traffic experience an access time of greater than five seconds.[2] On January 20, 1995, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for waiver of the same requirement (BellSouth Petition).[3] We now grant both waiver requests.

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[1] Provision of Access for 800 Service, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5421 (1991) (Reconsideration Order).

[2] Petition for Waiver of Pacific Bell, CC Docket No. 86-10 (Dec. 21, 1994) (Pacific Petition). "Access time" is the time that begins when the caller completes dialing an 800 call and ends when the call is delivered by the originating local exchange carrier to an interexchange carrier. Reconsideration Order at 5422 n.4.

[3] Petition for Waiver of BellSouth Telecommunications, Inc., CC Docket No. 86-10 (Jan. 20, 1995) (BellSouth Petition).

II. Background

2. In a series of orders, the Commission has overseen the establishment by local exchange carriers (LECs) of a data base system for 800 access.[4] The data base system facilitates 800 number portability, thus allowing greater competition in the provision of 800 services.[5] LECs that implemented the data base system were permitted to cease offering the NXX method previously used to screen 800 calls.[6] The Commission required the BOCs and GTE to meet minimum standards for data base access time as a condition for withdrawing NXX access.[7] By March 1, 1995, each LEC is required to meet the following standards: (1) none of its data base traffic may have an access time of greater than five seconds; and (2) the mean access time for all of its 800 data base traffic must be 2.5 seconds or less.[8] In an earlier waiver order issued in 1992, the Common Carrier Bureau granted Pacific a waiver of certain March 1, 1993 access time requirements, denied without prejudice as premature Pacific's request for a waiver of the March 1, 1995 five-second requirement, and required Pacific to achieve a mean access time of less than one second by March, 1995.[9]

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[4] See Provision of Access for 800 Service, Report and Order, 4 FCC Rcd 2824 (1989) (800 Order), recon., 6 FCC Rcd 5421 (1991) (Reconsideration Order), further recon., 8 FCC Rcd 1038 (1993); Second Report and Order, 8 FCC Rcd 907 (1993); Order, 7 FCC Rcd 8616 (1993) (extending the number portability implementation date).

[5] "Number portability" here refers to the ability of a customer to change 800 service providers without being forced to change phone numbers. Under the data base system, all 800 numbers are stored in a computer data base that includes for each number a field identifying the carrier selected by the customer. LECs generally use their common channel Signalling System 7 (SS7) networks to query this data base and determine the proper routing for all 800 calls.

[6] Under the NXX routing system, each carrier offering 800 service was assigned specific three-digit prefixes, or "NXX codes," which were used by LEC switches to identify the proper routing of 800 calls. Under this system, customers who wished to change 800 carriers were required to change phone numbers to reflect the new company's NXX codes.

[7] Reconsideration Order, 6 FCC Rcd at 5425, para. 19.

[8] Id. The Commission also required that, by March 1, 1993, no more than three percent of each LEC's 800 traffic experience an access time of greater than five seconds. Id.

[9] Provision of Access for 800 Service, Order, 7 FCC Rcd 5042, 5043-45, paras. 12-19 (Com. Car. Bur. 1992).

III. Pleadings

A. Pacific

3. Pacific seeks a waiver until March 1, 1996 of the requirement that none of its 800 data base traffic have an access time of greater than five seconds. According to Pacific, two of its customers have new product offerings that require routing over Switched 56 trunk groups for calls placed to 800 numbers.[10] Pacific states that, until it deploys a 64 Clear Channel Capability (64 CCC) transport network, the access time for such calls will be approximately 7-10 seconds.[11] Pacific argues that only a small percentage of 800 calls will be subject to this delay, and states that it expects to complete deployment of 64 CCC by December 31, 1995.[12] Pacific requests a waiver until March 1, 1996, by which time it claims that it will be able to deploy and provision 64 CCC so as to meet the five-second requirement for all 800 traffic.

4. Two parties filed comments on Pacific's Petition. Southwestern Bell expresses support for Pacific's position, and argues that Pacific has "clearly demonstrated the 'good cause' necessary for the granting of the requested waiver."[13] Southwestern Bell notes that it appears from the Pacific Petition that only customers seeking certain new services will be subject to the additional access times, and that if such customers have no objections to such a delay, the public interest will not be harmed by our granting the requested waiver.[14]

5. MCI opposes the Pacific Petition. According to MCI, Pacific has failed

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[10] Pacific Petition at 2. Switched 56 Service allows digital data transmission over the public switched network at a rate of 56 kilobits per second. This service primarily benefits customers that require high-speed digital transmission, but that do not need full-time availability of the high-speed lines.

[11] 64 CCC allows customers to use the full 64 kilobit per second bandwidth of a digital trunk. Pacific states that 64 CCC will permit it to use SS7 signalling for 800 data base access. Pacific claims that its Switched 56 network is limited to Multi-Frequency (MF) signalling, which results in significantly slower data base access times. Pacific Reply at 1-2.

[12] Pacific indicates that its current schedule calls for deployment of 64 CCC for LATAs 1 and 5 by July 1, 1995, and full statewide deployment by December 31, 1995. Pacific provides an affidavit of Pat Peterson-Butler, Pacific Bell Product Manager for Switched Access Feature Group D, describing the steps necessary for implementation of 64 CCC, stating that statewide deployment of 64 CCC has been funded, and confirming the timetable set forth in the Pacific Petition. See Pacific Petition at Attachment.

[13] Southwestern Bell Comments at 2.

[14] Id.

to show any special circumstances that would justify a waiver, and has not explained why other LECs supporting similar new customer products have not felt compelled to request waivers from the Commission.[15] MCI emphasizes that the Commission has held parties seeking waivers to a high standard.[16] MCI further argues that the Pacific Petition is "vague and contradictory" as to the date Pacific will complete deployment of the 64 CCC network.[17] Finally, MCI claims that the relief requested in the Pacific Petition is overbroad, and that any waiver should be limited to certain types of calls and subject to monthly reporting by Pacific Bell of its 800 access time performance.[18]

6. In its reply, Pacific emphasizes that only 800 data traffic originating on ISDN or Switched 56 facilities is subject to its waiver request, not 800 voice traffic.[19] Pacific states that it "cannot vouch for other companies' networks," but that it "can prove" that its Switched 56 network does not allow SS7 signalling and therefore cannot meet the Commission's access time requirements.[20] Pacific also rejects MCI's argument that Pacific should be subject to monthly reporting requirements as unnecessary, based on the fact that Pacific has already specified the duration of the requested waiver, the services to be included in the waiver, and the schedule for 64 CCC deployment.[21]

B. BellSouth

7. BellSouth seeks a waiver of the Reconsideration Order with respect to 800 service traffic originating from its central offices (COs) in Bridgeport, Alabama, and Stevenson, Alabama. BellSouth states that it has attempted to install new fiber optic and electrical multiplexing equipment within the Bridgeport CO, and to place new fiber optic cable through the city limits of Bridgeport that would link the COs in Stevenson and Chattanooga, Tennessee. BellSouth states, however, that Bridgeport officials have refused to authorize equipment installation within the CO or buried or aerial placement of the outside plant fiber optic facility.

8. BellSouth argues that the proposed improvements are essential to

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[15] MCI Opposition at 7-8.

[16] MCI Reply at 2.

[17] MCI Opposition at 9; MCI Reply at 2.

[18] Id. at 10.

[19] Pacific Reply at 1.

[20] Id. at 2. Pacific argues that it "cannot base its waiver on the configuration of another's network." Id.

[21] Id. at 2, Attachment.

implementing Signalling System 7 (SS7) technology for service to Bridgeport and Stevenson. Without SS7, BellSouth will be unable to meet the prescribed access time standard for 800 service traffic originating from the Bridgeport and Stevenson COs. BellSouth states that it considered the use of microwave technology as an alternative, but concluded that such an option was not technically feasible. BellSouth states that it has initiated legal action against the City of Bridgeport to allow BellSouth to undertake these improvements, and that it expects to prevail in this lawsuit.[22] BellSouth therefore seeks a waiver for the Bridgeport and Stevenson COs until it is able to complete necessary network upgrades to offer SS7 in these areas. No parties filed comments in response to the BellSouth Petition.

IV. Discussion

9. The Commission may waive any provision of its rules or orders on petition if a petitioner demonstrates special circumstances that warrant deviation from the rule and shows how such deviation would serve the public interest.[23] We believe both petitioners have met this burden.

10. The Pacific Petition indicates that certain of Pacific's customers require routing over Switched 56 trunks for certain of their services, and that Pacific does not expect to complete deployment of 64 CCC until December 31, 1995. We conclude that Pacific has made a sufficient showing that special circumstances would prevent it from supporting certain new services absent a waiver. Contrary to MCI's assertions, we believe that Pacific has demonstrated that particular limitations caused by the architecture of Pacific's network and the products offered by certain of Pacific's customers would prevent Pacific from meeting the five-second requirement for certain calls. Regardless of whether other LEC networks may be capable of meeting the five-second requirement, Pacific has shown that its Switched 56 network does not allow SS7 signalling, and is therefore incapable of supporting 800 data base access times of five seconds or less for certain calls. MCI provides no evidence that Pacific can in fact meet the five-second requirement, or that Pacific has delayed unreasonably the deployment of 64 CCC. Pacific has committed that it will complete 64 CCC deployment by December 31, 1995, and that a waiver until March 1, 1996 would allow it sufficient time to provision the service to customers. As Pacific and Southwestern Bell argue, the requested waiver will allow Pacific's customers that require routing over the Switched 56 network to offer new services to consumers that Pacific Bell might otherwise be unable to support.

11. We do, however, limit the waiver to those calls that pass over the Switched

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[22] BellSouth Petition at 2.

[23] See 47 C.F.R. § 1.3; Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

56 network.[24] We see no need to allow Pacific to exceed the five-second threshold for traffic that does not pass over the Switched 56 network, given that Pacific has not asserted any reasons why it cannot meet the access time requirements for other types of 800 calls. Therefore, we permit Pacific to exceed the five-second access time limit for digital data calls routed over Switched 56 trunks to 800 numbers until March 1, 1996. Pacific is still subject to the requirement in the Reconsideration Order that after March 1, 1993, no more than three percent of its total 800 traffic experience a delay of more than five seconds,[25] and to the requirement in the earlier waiver order that the mean access time for all its 800 traffic be less than one second by March, 1995.[26] Given the limited number of calls affected by the waiver, the limited duration of the waiver, and Pacific's commitment to 64 CCC deployment by the end of 1995, we see no need to impose the additional monitoring requirements on Pacific suggested by MCI.

12. We also conclude that BellSouth has made a sufficient showing that special circumstances preclude it from complying with the March 1, 1995 access time requirements of the Reconsideration Order for the Bridgeport and Stevenson COs. BellSouth has demonstrated that circumstances beyond its control have prevented it from undertaking necessary network upgrades, and it has taken reasonable steps to overcome this problem. Moreover, no party opposed BellSouth's waiver request.[27] We do not believe, however, that a waiver of uncertain duration as BellSouth requests would serve the public interest. Although we recognize that BellSouth cannot predict at this time when it will resolve its dispute with the City of Bridgeport, we do not wish to allow unnecessary delays in implementation of the Reconsideration Order. We therefore grant BellSouth a waiver of the five-second requirement for the Bridgeport and Stevenson COs until March 1, 1996. In the event that BellSouth is unable to meet the five-second requirement at that time, BellSouth may petition for an extension of this waiver.

V. Conclusion

13. Both parties have demonstrated that special circumstances exist, and that a waiver would serve the public interest and cause minimal harm. The waivers requested by Pacific and BellSouth are limited in scope and will not undermine the overall effectiveness of the 800 data base system. We conclude that Pacific has made a sufficient showing to justify a

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[24] The Pacific Petition does not clearly indicate whether Pacific is requesting a waiver of the five-second requirement only for the type of calls it describes. In its reply comments, however, Pacific clarifies that its waiver is limited to data calls originated on ISDN or Switched 56 facilities. Pacific Reply at 1.

[25] Reconsideration Order, 6 FCC Rcd at 5425, para. 19.

[26] 7 FCC Rcd at 5044, para. 18.

[27] See Public Notice, Pleading cycle established for comments on BellSouth's petition for waiver of the Commission's access time standards for 800 database service, CC Docket No. 86-10, DA 95-112 (released Jan. 26, 1995).

waiver until March 1, 1996 of the five-second access time requirement for the services described in the Pacific Petition. We also conclude that BellSouth has made a sufficient showing to justify a waiver of the five-second access time requirement for the Bridgeport and Stevenson COs until March 1, 1996.

VI. Ordering Clauses

14. Accordingly, it is ORDERED, pursuant to authority contained in Sections 1, 4, and 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, and 201-205, and Sections 0.91, 0.201-0.204, and 0.291 of the Commission's Rules, 47 C.F.R. §§ 0.91, 0.201-0.204, and 0.291, that the Petitions for Waiver of Pacific Bell and BellSouth ARE GRANTED to the extent described herein;

15. IT IS FURTHER ORDERED that this order IS EFFECTIVE immediately.[28]

FEDERAL COMMUNICATIONS COMMISSION

Kathleen M.H. Wallman
Chief, Common Carrier Bureau

[28] We conclude that good cause exists for the effective date of this order to be less than 30 days from publication in the Federal Register. See Section 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. § 553(d)(3). If the waivers do not become effective before March 1, 1995, Pacific and BellSouth will be out of compliance with the requirements of the Reconsideration Order. Given the conclusions of this order, and the absence of any identifiable harm resulting from an earlier effective date, we believe that it would not serve the public interest to have the waivers become effective after the March 1, 1995 date on which the waived requirements go into effect.