

DT 02-049

WorldCom, Inc.

Petition For A Waiver Of Puc Rule 1308.04

Order On Quality Of Service Reports

O R D E R N O. 23,997

June 21, 2002

APPEARANCES: Cynthia Carney Johnson, Esquire, for WorldCom, Inc.; Stacy L. Parker, Esquire, for AT&T Broadband; F. Anne Ross, Esquire, of the Office of Consumer Advocate, for residential ratepayers of New Hampshire; and Lynmarie C. Cusack, Esquire, for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On March 27, 2002, WorldCom, Inc. (WorldCom) filed with the New Hampshire Public Utilities Commission (Commission) a petition for waiver of the public disclosure requirements set forth in New Hampshire Administrative Rules Puc 1308.04. The rule requires competitive local exchange carriers (CLECs) and independent local exchange carriers (ILECs) to file reports on quality of service ~~for public availability~~ on an annual basis. WorldCom requests that it be permitted to file its quality of service report as a proprietary attachment to its annual report.

The filing indicates that WorldCom believes such public disclosure will unfairly impede its ability to compete with Verizon-New Hampshire (Verizon), that it negatively impacts competitive market entry generally, and that such requirement is

contrary to the public interest. The filing also contends that service quality reports do not recognize that CLECs, such as WorldCom, rely to varying degrees on network services and facilities provided by the incumbent, Verizon. Accordingly, WorldCom claims, if the incumbent fails to meet its commitment to provide facilities to the CLEC or changes internal processes without notifying the CLEC, then the CLEC's service quality may be affected.

On April 22, 2002, the Commission issued an Order of Notice setting for hearing the issue of whether the quality of service information should be kept confidential and inviting any interested party to file a memorandum on the issue. Briefs on the issue of disclosure of quality service reports were subsequently filed by Staff and the OCA on May 17, 2002.

On April 30, 2002, the Office of Consumer Advocate (OCA) filed with the Commission its notification that the OCA will be participating in this docket on behalf of the residential ratepayers of the State of New Hampshire. On May 24, 2002, AT&T Broadband filed with the Commission a motion to intervene in this docket. No other interventions were requested or granted.

The hearing for the matter was held on May 29, 2002. Prior to the hearing, the Staff and Parties reached a suggested

resolution to the docket. The solution was proposed by Staff and is discussed in detail below.

Also at the hearing, Staff recommended that a filing by BayRing Communications requesting confidential treatment of portions of its annual report be handled in a separate action. This matter will be dealt with by Secretarial Letter.

II. POSITIONS OF THE PARTIES AND STAFF

A. WorldCom, Inc.

WorldCom contends that information currently provided in accordance with Puc 1308.04 by telephone utilities is not provided in a manner that is helpful to the general public. The information, according to WorldCom, cannot be synthesized by the public in a way that is meaningful given the reliance by some telephone companies on incumbent service providers. Thus, WorldCom asserts that public disclosure does not serve the purpose of helping consumers choose a local carrier.

WorldCom believes the public is unaware of the dependency of WorldCom on Verizon's services and provision of facilities and is unlikely to appreciate the fact that a poor service report may result wholly from Verizon's failure to provide WorldCom with optimal wholesale services. Providing the public with data on WorldCom's performance that includes quality of service over which WorldCom has little or no control may

provide consumers with misinformation that unfairly attributes underlying ILEC service quality problems to WorldCom.

WorldCom also raises the issue that publication of its quality of service reports provides Verizon with a potentially significant competitive advantage. WorldCom claims Verizon would be able to use the report to tarnish WorldCom's reputation in the marketplace and to use the information to tailor its own business plans to target those areas where WorldCom was experiencing problems. WorldCom also claims the incumbent would have additional incentive to deliver poor service quality to the CLEC in order to win back the customer. WorldCom believes that providing the 1308.04 information publicly provides information to Verizon that could be used adversely to WorldCom's interests. It suggests that CLECs are dependent on the ILEC's services and facilities, and this would create an unfair advantage to Verizon.

B. AT&T Broadband

AT&T Broadband substantively supports the position of WorldCom. In addition, AT&T Broadband believes that if a waiver is granted to WorldCom, the Commission should extend the same treatment to all CLECs operating within the State of New Hampshire. AT&T claims that to do otherwise would create a competitive disparity among New Hampshire carriers.

C. Office Of Consumer Advocate

It is the position of the OCA that WorldCom's petition should be denied and that the information should be made available to the public as required by the rule. The OCA is not convinced that there has been enough of a showing that the information that WorldCom is requesting be kept confidential is indeed competitively damaging. The OCA does not see a logical connection between knowledge of the information by a competitor and an unfair advantage that it may or may not cause. The OCA believes that the public interest would be best served by maintaining that information as public. The OCA would, however, be willing to support a modification of the report format and presentation to ratepayers such as that suggested by Staff.

D. Staff

Staff notes that the purpose of the quality of service reporting requirements of Admin. Rule Puc 1308.04 is to provide the general public, or consumers, with information to aide them in making an informed decision regarding their service provider. Staff claims that in today's competitive market, a savvy consumer will not only look at cost, but also at the quality of service being provided by competing utilities and, therefore, should be given sufficient information to help that consumer make an informed decision. Although the Commission has the

authority under Puc 201.05 to grant a waiver, it also has a responsibility to ensure that the consumer is provided that quality of service information. Staff, therefore, suggests that an alternative method of reporting to the public be considered by the Commission.

Staff proposed, at the May 29, 2002 hearing, that all telephone utilities provide the information required by Puc 1308.04, broken into subsections to obtain as much information as practicable. Staff suggests that a working group (Quality of Service Work Group or Work Group), should be established by the Commission to evaluate the information provided by the utilities and report it to the public in accordance with a rating system established by the Work Group. Staff suggested that the Work Group establish a rating system and develop criteria for rating. Once the criteria are established, a utility would file the required quality of service information provided in its report. Thus, consumers would have access to a telephone utility "report card" that contained no confidential or proprietary information.

Staff proposes that by September 30, 2002, the Commission would have in place the finalized product appropriate for consumer viewing that would be easily understood by an average ratepayer, and still meets the requirements of Puc 1308.04.

Staff recommends that a separate docket be opened for the purpose of establishing a Quality of Service Work Group and determining a rating system. Staff proposes affording any interested telephone utility registered in New Hampshire the opportunity to participate in the docket by allowing intervenor status upon its motion to the Commission. Intervenors would be encouraged to determine criteria by which to rate companies: designate uniform information to be included in the rating process; and establish the means by which the Commission would disseminate the "report card" to the public.

III. COMMISSION ANALYSIS

This docket was opened to consider whether WorldCom should be relieved of its obligation to publicly disclose quality of service information required by NH Admin. Rule Puc 1308.04. That rule requires that,

"CLECs and ILECs shall file with the commission, for public availability, . . . (1) The average number of days between date of request for service and installation of service; (2) The percentage of installation appointments which the CLEC or ILEC failed to keep; (3) The average answer time to connect caller to repair service operator; (4) The percentage of calls to a repair number that are abandoned; (5) The percentage of service outages lasting longer than 24 hours; (6) The average length of repair time...; and (7) The percentage of repair appointments which the reporting CLEC or ILEC failed to keep."

In making our decision on the petition, we first consider whether the rule should be waived. The Commission may, if it deems that the public interest is served, grant a waiver to a telephone utility under NH Admin. Rule Puc 201.05. In determining whether the public interest is served, we should analyze whether the purpose of the rule is satisfied by an alternative method. See Puc 201.05(d)(2). Here, we recognize that the information required by Puc 1308.04 is crucial. It is important for a consumer to have information regarding the quality of service of utilities competing for their business, not merely costs for the services provided. But we also believe that consumers should be given information they can easily understand and use.

We are persuaded that there is potentially a better format for providing consumers with quality of service information. We, therefore, will open a new docket, DT 02-105, to examine the issue of quality of service reporting by telephone utilities. In this proceeding, a working group will be established in accordance with Staff's recommendations above, and an alternate form of reporting and dissemination to consumers will be proposed for our review.

We intend to hold to the fast-track procedure suggested by the Parties. Therefore, an Order of Notice will be

issued forthwith scheduling a first Technical Session.

Following the first Technical Session, a schedule including at least two additional Technical Sessions will be submitted for approval. A final proposal must be submitted for approval on or before August 31, 2002, so that we can issue its final order on or before September 30, 2002.

Finally, we grant temporarily the petition of WorldCom for a waiver of Puc 1308.04 and will afford confidential treatment to quality of service information submitted in conjunction with WorldCom's 2002 annual report pending the outcome of the docket regarding quality of service reporting.

Based upon the foregoing, it is hereby

ORDERED, that a new docket be opened to establish a rating system for telephone utility quality of service reporting; and it is

FURTHER ORDERED, that WorldCom's Petition for a waiver of Puc 1308.04 be granted temporarily, pending the outcome of the quality of service docket.

By order of the Public Utilities Commission of New
Hampshire this twenty-first day of June, 2002.

Thomas B. Getz
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary