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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

In the Matter of Amendments to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice	CC Docket No. 92-117

To: the Commission

PETITION FOR RECONSIDERATION OF
MCI TELECOMMUNICATIONS CORPORATION

Pursuant to Section 1.106 of the Commission's Rules, 47 CFR § 1.106, MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby petitions for reconsideration of the Commission's Report and Order in the captioned proceeding.[1] In the decision, the Commission erroneously represented that MCI did not file reply comments for consideration in this proceeding, nor more importantly, did it consider MCI's Reply Comments in rendering its decision. MCI did, in fact, file reply comments, as demonstrated by the FCC-stamped copy of that document which is appended hereto. Furthermore, an important substantive position advanced by MCI was not adopted by the Commission.

The Commission's Report and Order adopted revised rules for parties seeking investigation, suspension, or rejection of 14-day tariff filings. It requires parties to file their petitions within six calendar days after the date of the tariff filing, and allows

[1] FCC 93-94, released March 11, 1993.

carriers whose tariffs are challenged to file replies within three calendar days after the latest date that petitions could be filed. Order at 2 ¶ 7. Due to the shortened pleading cycle, the Commission required that petitions be served in person or by facsimile on the filing carrier. However, the Commission retained the option for carriers to serve their replies to petitioners by mail.

THE COMMISSION FAILED TO CONSIDER AN MCI PLEADING WHICH WAS DULY FILED.

MCI's position, argued in its Reply Comments (at 2-3), was that carriers against whom a tariff protest is lodged be required to serve challengers with their reply, either personally or by facsimile (FAX). Not only was MCI's position not adopted, but its views were not even considered by the Commission. See Report and Order at ¶ 18. Indeed, it is clear that MCI's position was not considered because the Report and Order indicates that only Aeronautical Radio Inc. argued the position taken by MCI (¶ 14).

Certain commenters urged the Commission to abandon its proposed requirement that carriers personally serve their replies on tariff protesters on the premise that there is no urgency for personal service, as there is no opportunity for protesters to respond to carrier replies in tariff proceedings. Southwestern Bell at 2, US West at 4, [illegible] and BellSouth at 7. MCI's Reply

that are non-responsive, illogical, unsupported or otherwise outrageous before the proposed tariffs take effect. MCI Reply Comments at 2-3. MCI stated that, as tariff proceedings are not subject to ex parte requirements, every opportunity should be made available to tariff challengers to air controversies arising from proposed tariff revisions before they become effective. If replies are not required to be personally served, such potential additional dialogue will be lost, given the shortened protest period.

MCI does not, and indeed cannot, know whether proper consideration of its filing would have affected the outcome on this important question. However, it urges the Commission to reconsider the issue of service of replies in person or by FAX.

The Administrative Procedure Act (APA) requires an agency to make a well-reasoned decision after considering "all relevant matter" presented in the record. 5 USC § 553(c) (1992). The D.C. Circuit has rescinded an agency's action because the agency failed adequately to address alternatives proposed in the comments.[2] The agency's claim that it had in fact considered the alternatives, and its attempt to rely on generalized and conclusory policy considerations as grounds for rejecting the alternatives filed in comments, were inadequate under the Court's scrutiny.

The Court has similarly vacated an agency's elimination of restrictions relating to knitted garments, stating that:

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[2] Action on Smoking and Health v. CAB, 699 F.2d 1209 (D.C. Cir.), opinion supplemented, 713 F.2d 795 (D.C. Cir. 1983) (rescinding Civil Aeronautics Board's restrictions on smoking in airplanes).

> We do not suggest that [the Secretary of Labor] had to opt for any particular one of these proposals. However, he was required to address commmon and known or otherwise reasonable options, and to explain any decision to reject such options. His complete failure to satisfy these quintessential aspects of reasoned decisionmaking is the primary basis for our decision to vacate his rescission of the restrictions in the knitted outerwear industry.

International Ladies' Garment Union v. Donovan, 722 F.2d 795 (1983).

The conclusions in the Commission's Report and Order in the captioned docket do not reflect consideration of reply comments duly filed by a party in the proceeding as required by the Administrative Procedure Act and judicial rulings. Reconsideration of the final conclusions is necessary to ensure that the analysis and conclusions drawn in the Order are reasoned.

CONCLUSION

Therefore, based on the foregoing, MCI respecfully requests

CERTIFICATE OF SERVICE

I, Vernell V. Garey, hereby certify that copies of MCI Telecommunications Corporation's "PETITION FOR RECONSIDERATION" in Case No. 92-117 have been served this 5th day of May, 1993, by first-class mail, postage prepaid, unless otherwise noted, to the persons listed below.

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*Served by hand

APPENDIX

RECEIPT
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In the Matter of	)	
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Amendments to Section 1.773 of the Commission's Rules Regarding Pleading Cycle for Petitions Against Tariff Filings Made on 14 Days' Notice	)	CC Docket No. 92-117

REPLY COMMENTS

MCI Telecommunications Corporation (MCI) hereby provides its reply comments in response to the comments filed by several parties in response to the Commission's "Notice of Proposed Rulemaking" (NPRM), released June 1, 1992, in the afore-captioned proceeding.[1] In this proceeding, the Commission is proposing to reduce, by one day, the deadline for protesting 14-day tariff filings and, by several days, the deadline for carrier replies to filed protests.[2] Additionally, the Commission is proposing that both tariff protests and carrier replies be "personally served," thereby removing as a factor the U.S. Postal Service.

In its initial comments, MCI indicated that it did not oppose the proposed rule modifications, even though it stood to be adversely affected by new constraints that would apply to its protests of other carriers' 14-day filings and to its defense of its own challenged tariffs. Further, MCI supported the Commission's proposal that personal service of both initial

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[1] FCC 92-215.

[2] The proposal is to reduce from four to three calendar days the deadline for replies. This could be more than a one day reduction because, under the current rule, intermediate "holidays," e.g., Saturdays and Sundays, are not counted.

tariff protests and carrier replies, if required, be permitted to be achieved by facsimile, with subsequent mailings to affected parties. MCI noted that this would be an efficient way to realize same-day service, and it proposed additional rule changes to accommodate personal service via facsimile.

Generally, those filing initial comments support the Commission's proposed rule modifications, in clear recognition of the fact that the current rules are unworkable because pleading cycles can extend beyond the 14-day deadline for Commission action on proposed tariffs. Some, however, suggest additional modifications because they believe that the proposed protest and reply periods are unreasonable.[3] MCI will not address their

parties nevertheless should have an opportunity to respond, if only informally, to any replies that are non-responsive, illogical, unsupported or otherwise outrageous. As tariff proceedings are not subject to ex parte rule requirements, every opportunity should be available to tariff challengers (and Commission staff, as well) to air controversies arising from proposed tariffs before they become effective. If replies are not required to be personally served, such potential additional dialogue will be lost.

The American Telephone and Telegraph Company (AT&T) characterizes competitor challenges to its legally questionable tariff proposals as "routine" and "meritless on their face" (at 2, n. 3). It accordingly suggests that "the filing carrier need not reply to such petitions, and the Commission need not expend the resources to deny the petitions...," with a view toward "simply" allowing the tariff "to go into effect as scheduled." There is nothing that requires AT&T to respond to tariff protests, as the rule confers a right, not a duty, to reply. If

therefore, issue decisions with respect to challenged tariffs

and as MCI stated in its initial comments (at 2, n. 4), it is

there is an initial question as to which "parties" are "interested." Logic says that all a carrier's existing and potential customers are "interested" in tariff filings that would affect in any way the services they receive, or contemplate receiving. Does this then translate into a requirement that a carrier should be obligated to send its transmittal letter to an entire universe of users? The cost and administrative burden on carriers would be overwhelming[5/] and, it should be noted, the proponent of this approach offers no payment for the personalized service it is seeking. Tariff filings are, as they always have been, constructive notice to the public of binding changes upon customers, and this long-established legal fact should not be altered by the Association's proposal. Finally, there are commercial enterprises which perform the service sought by the Association; and no reason is offered as to why the Association could not obtain the tariff service it seeks from those entities.

The Commission respectfully is requested to take these comments into account when it considers adoption of the subject rule modifications.

By: _____

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Its Attorney

Dated: August 7, 1992

[5/] The Association wants to receive not one but two fax transmittals in order to ensure that it receives actual notice of tariff proposals.

CERTIFICATE OF SERVICE

I, Karen E. Dove, hereby certify that MCI Telecommunications Corporation's "REPLY COMMENTS" in Case No. 92-117 have been served this 7th day of August, 1992, by first-class mail, postage prepaid, unless otherwise noted, to the persons listed below.

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