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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

JAN 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Open Network Architecture Tariffs
of Bell Operating Companies

)
) CC Docket No. 92-91
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NYNEX'S OPPOSITION TO MCI'S PETITION FOR RECONSIDERATION

New England Telephone and Telegraph Company and New York Telephone Company ("NYNEX") hereby oppose the Petition for Reconsideration filed by MCI Telecommunications Corporation ("MCI") on January 14, 1994, in response to the Order of the Federal Communications Commission (the "Commission") released on December 15, 1993 in the above-captioned proceeding and numbered FCC 93-532 (the "Order").

MCI's Petition for Reconsideration should be denied in its entirety. There is no merit to MCI's claim that the Commission has engaged in a "foray into secret ratemaking".¹ Indeed, throughout this proceeding, the Commission has gone to extraordinary lengths to ensure that MCI and other intervenors have had a meaningful opportunity to participate.

In July 1991, the Commission commenced a proceeding to investigate the reasonableness of the tariffs charged by the Bell Operating Companies ("BOCs") for Basic Service Elements

¹ See MCI's Petition for Reconsideration, p. 1.

("BSEs").² The Commission's rules allow it to withhold material from publication, which would be protected from public disclosure under the Freedom of Information Act ("FOIA") as "[t]rade secrets and commercial or financial information obtained from any person and privileged or confidential."³ The BOCs accordingly petitioned the Commission in September 1991 for a waiver of a public filing requirement for the Switching Cost Information System ("SCIS") model and, in the case of US West, for the Switching Cost Model ("SCM").

The petition for waiver triggered a careful 4-month review by the Commission of its need for the SCIS and SCM models. After an in camera review of SCIS materials, the Commission determined that the SCIS and SCM models (including associated switch vendor inputs, BOC inputs, and switch-specific outputs) and its supporting documentation should be protected from public disclosure under FOIA.⁴ The Commission concluded that public disclosure of the SCIS and SCM material it needed for the tariff proceeding would (i) cause competitive harm to the switch vendors, (ii) cause competitive harm to the BOCs because their competitively sensitive inputs would allow other BOCs and switch vendors to determine their pricing strategies,

² Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79 and Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, released July 11, 1991, 6 FCC Rcd 4524 (1991).

³ 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

⁴ Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, Order, released December 23, 1991, 7 FCC Rcd 521 (1991).

and (iii) cause competitive harm to Bellcore because disclosure of the models would allow BOCs to avoid Bellcore's substantial licensing fees. The Commission also found that disclosure of the SCIS and SCM models might lead the switch vendors to refuse to provide updated input data for SCIS and SCM, thus rendering SCIS and SCM obsolete, and leaving the Commission with no rational means for apportioning joint and common switch costs to various BSEs.

The Common Carrier Bureau (the "Bureau") therefore required the in camera filing of all necessary SCIS and SCM materials by the BOCs, and directed that the filings not be published. However, to ensure adequate review of SCIS and SCM by other parties and by outside experts, the Bureau took two additional steps.⁵ First, it ordered the BOCs to make redacted versions of the SCIS and SCM documentation and software available to all participants in the tariff proceeding upon execution of confidentiality agreements. A second redaction of SCIS and SCM material was subsequently provided, which included vendor-specific nomenclature, generic switch architecture diagrams, and generic descriptions of SCIS and SCM methodology. The second redaction also enabled participants in the tariff proceeding to use the software to perform actual SCIS and SCM investment studies for a specific switch technology, corresponding to the SCIS and SCM investment studies actually relied upon by the BOCs in their rate development process.

⁵ Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs, Memorandum Opinion and Order, released January 31, 1992, 7 FCC Rcd 1526 (1992).

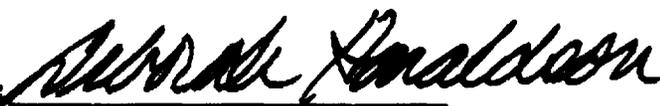
Second, the Bureau required the BOCs to fund an independent audit of the entire SCIS and SCM program by an outside accounting firm, under Commission supervision. That audit was performed on the basis of questions submitted by the Commission and intervenors. The audit, completed in July 1992, produced a report spanning over 600 pages that was made available in a 105-page redacted form to participants pursuant to confidentiality agreements.

All of the issues raised by MCI's Petition for Reconsideration have previously been briefed before the Commission and considered in painstaking detail.⁶ The simple fact that MCI disagrees with the Commission's conclusions is not grounds for the Commission to reconsider or change them. MCI's Petition for Reconsideration should therefore be denied.

Respectfully submitted,

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and
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Dated: January 27, 1994

⁶ See, e.g., Reply of the NYNEX Telephone Companies to Comments on their Direct Case, Appendix, pp. 1-7, dated November 13, 1992, filed in Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91.

CERTIFICATE OF SERVICE

I certify that copies of the foregoing NYNEX's OPPOSITION TO MCI'S PETITION FOR RECONSIDERATION in CC Docket No. 92-91 were served on each of the following parties, this 27th day of January, 1994, by first class United States mail, postage prepaid:



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