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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Open Network Architecture Tariffs)
of Bell Operating Companies)

CC Docket No. 92-91

OPPOSITION TO PETITION FOR RECONSIDERATION

U S WEST Communications, Inc. ("U S WEST"), through counsel, and pursuant to Section 1.106(g) of the Federal Communications Commission's ("Commission" or "FCC") Rules,¹ hereby files this Opposition to a Petition for Reconsideration ("Petition") filed January 14, 1994, by MCI Telecommunications Corporation ("MCI") in the above-captioned docket. MCI challenges the procedures adopted by the Commission to protect highly sensitive and confidential information (of U S WEST and independent switch vendors) used to develop Open Network Architecture ("ONA") tariff rates.² MCI requests in its Petition that:

[a]ccordingly, the ONA Investigative Final Order should be reconsidered, in order that the investigation be conducted in a manner that permits meaningful participation by intervenors, thereby permitting a review of all of the issues necessary to assure reasonable ONA rates.³

MCI's Petition should be summarily denied.

¹47 CFR § 1.106(g).

²In the Matter of Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, Order, FCC 93-352, rel. Dec. 15, 1993 ("Order").

³Petition at 8.

First, the Commission's Rules are quite specific that a valid petition for reconsideration "shall state with particularity the respects in which petitioner believes the action taken by the Commission . . . should be changed. The petition shall state specifically the form or [sic] relief sought."⁴ MCI's general adjuration, quoted above, that the Commission should be more fair than it was in the Order challenged in the Petition, is quite obviously a far cry from the bare minimum necessary to constitute a lawful petition. The Petition should be dismissed for failure to properly request cognizable relief.

Second, the Petition relies entirely on unsubstantiated conclusions to the effect that "MCI and the other intervenors were prevented from participating effectively in this proceeding on account of the inadequate disclosure authorized by [the various FCC orders leading up to the Order for which reconsideration is sought]."⁵ No facts at all are put on the record, or even alleged, other than the undeniable fact that MCI's ability to gain access to highly confidential commercial information about its competitors was limited by the Commission. While MCI's rhetoric is indeed impressive,⁶ flaming rhetoric without a

⁴47 CFR § 1.106(d)(1).

⁵Petition at 6.

⁶The Commission's decision is characterized as "so grossly mischaracteriz[ing] the extent of [MCI's and the other intervenors'] participation in this investigation, that the public interest requires that MCI lend whatever additional assistance may be necessary to clear up the Commission's evident confusion." Petition at 3.

factual basis is legally irrelevant (and, as in the case here, generally indicative of a groundless legal and factual position).⁷ All this Petition really does is reargue earlier positions rejected by the Commission, a clearly improper use of the reconsideration process.⁸

Finally, the MCI Petition points to the wisdom of eliminating as quickly as possible cost support such as was required in these cases. The FCC, less than two weeks ago, represented to the United States Supreme Court that the vast majority of tariff challenges came from competitors, not customers, and that this consistent abuse of the administrative process was an excellent reason for permitting MCI to offer interstate carrier services without any tariff filings at all.⁹ MCI has announced that it plans to enter the local exchange business in a massive way, and

⁷MCI does argue that it has a constitutional right to review carrier cost support data in a tariff proceeding. Petition at 1, 7. This position seems to be based on the fact that the Commission used the phrase "due process" once in a tariff order in the mid-1970's -- without reference to the Constitution at all. American Television Relay, Inc., 63 FCC 2d 911, 921 ¶ 27 (1977). While we agree that all parties to an administrative proceeding have certain process rights -- which derive from the nature of the proceeding itself -- it is rare indeed that these rights reach constitutional dimensions. In a tariff proceeding -- which is generally discretionary with the Commission in the first place -- to claim that MCI has a constitutional right to the proprietary data of its competitors is simply laughable.

⁸Beth Knight, 8 FCC Rcd. 3543 (1993). We should note that both the Commission and the filing carriers bent over backward to permit MCI to participate fully in the tariff proceeding. MCI's substantive claims are simply frivolous.

⁹Brief for the Federal Petitioners at 30-31, MCI Telecommunications Corporation v. American Telephone & Telegraph Company (U.S. Oct. Term 1993) (Nos. 93-356 and 93-521).

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to wage "the biggest war we can possibly make" against local exchange carriers such as U S WEST.¹⁰ Its thoroughly frivolous attacks on U S WEST's ONA tariffs, and its equally frivolous attempts to obtain the confidential information of its competitors, are obviously part of that war. The FCC's representations to the Supreme Court are indeed accurate -- and are typified by MCI's conduct in this proceeding. The FCC must take steps to modernize the tariff process to give MCI fewer opportunities to attempt to abuse that process for its own competitive advantage.

For the foregoing reasons, the MCI Petition for Reconsideration should be denied.

Respectfully submitted,

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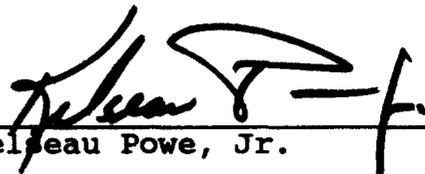
Of Counsel,
Laurie J. Bennett

January 27, 1994

¹⁰Telecommunications Reports, Jan. 10, 1994, at 1.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 27th day of January, 1994, I have caused a copy of the foregoing **OPPOSITION TO PETITION FOR RECONSIDERATION** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

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