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

In the Matter of	)	
	)	
Amendment of Policies and Rules	)	CC Docket No. 94-158
Concerning Operator Services	)	
Providers and Call Aggregators	)	

COMMENTS

MCI Telecommunications Corporation (MCI) hereby comments on the Commission's "Notice of Proposed Rule Making and Notice of Inquiry" (Notice)[1] concerning proposed changes to its rules governing operator service providers (OSPs) and call aggregators. For the reasons expressed below, MCI strongly opposes a rule that would require additional branding on collect calls, and it opposes any modification of the status of inmate-only phones.

In the Notice, the Commission interprets -- for the first time[2] -- the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA)[3] to require branding to the parties on both ends of a collect call.[4] The statutory language which binds the Commission reads as follows: "The purpose of the bill is to protect consumers who make

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[1] FCC 94-352, released February 8, 1995.

[2] The Commission failed to render this "interpretation" -- although it certainly could have -- within the context of the nearly two-year old complaint referenced in the Notice at ¶ 4, n. 12.

[3] TOCSIA is reflected as Section 226 of the Communications Act.

[4] Notice at ¶ 5.

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interstate operator services calls from pay telephones, hotels and other public locations against unreasonably high rates and anticompetitive practices."[5] With respect to branding, Section 226(b)(1)(A) states that each OSP must "identify itself, audibly and distinctly, to the consumer at the beginning of each telephone call and <u>before the consumer incurs any charge for the call</u>."[6] A "consumer" is "a person initiating any interstate telephone call using operator services."[7]

The Commission contends that the Act and the rule are "unclear" as to which party -- caller or called -- in a collect call needs to hear the brand, therefore requiring this late interpretation by the Commission. The statute, however, is sufficiently clear on its face to require no such interpretation. Plainly, the "consumer" needs to hear the brand and, given the Act's purposes, the consumer can <u>only</u> be the person intended to be protected from "unreasonably high rates and anticompetitive practices," and that is the one who may be bound to pay for the call. In tariff parlance, this "consumer" is the "customer," and he or she is the only one toward whom the serving carrier has rights and obligations.

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[5] <u>Notice</u> at ¶ 4, citing 47 U.S.C. § 226(d)(1)(A), (B); <u>see</u> S. Rep. No. 439, 101st Cong. 2d Sess. 1 (1990).

[6] 47 U.S.C. § 226(b)(1)(A).

[7] <u>See</u> Section 226(a)(4) of the Communications Act and Section 64.708(d) of the Commission's rules.

Despite this unmistakable result, the Commission states that both the calling and called party in a collect call "make decisions that require informed choices, and each may need protection from unfair and deceptive OSP practices that may have an impact on calling costs and call acceptance."[8] Thus, the Commission concludes, "both the calling party, who places the call, and the called party, who must accept the charges in order for the message portion of the call to begin, cooperatively initiate the call as consumers and should receive a brand before they commence their portion of the collect call transaction."[9]

This is pure makeweight, and is insupportable as a matter of both logic or law. Section 226(b)(1)(A) makes it clear that branding is necessary to the party paying for the call and, in the context of a collect call, only the called party initiates a call and incurs a charge. In addition, the Act clearly requires branding to only one party. Thus, there is no reasonable argument that the Act in any way requires branding the calling party on collect calls.

In any event, even assuming that there were room for statutory "interpretation" here, the Commission has no record support, and thus no basis whatsoever, to require dual branding. Although it appears that the proposed rule would apply to all collect operator service calls, including

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[8] Notice at ¶ 5.

[9] Id.

those accessed by dialing the operator, in the Notice, the only service that the Commission references as raising a branding issue is "1-800-COLLECT." And, the only complaint referenced by the Commission concerning the branding of 1-800-COLLECT was filed by AT&T, MCI's primary competitor, even though millions of consumers have used 1-800-COLLECT since that time.

The total lack of consumer complaints is proof that a practice that results in branding to the called party -- that is, the customer of a collect call -- is eminently fair and reasonable. Thus, it clearly is not necessary to require branding to the calling party in order to foreclose any unfair and deceptive OSP practices with respect to branding 1-800-COLLECT or other collect call services for that matter.

Indeed, the only harm caused by 1-800-COLLECT is to AT&T in the competitive marketplace. AT&T has been unable thus far to derail 1-800-COLLECT in the marketplace, even though it has spent millions of dollars in advertising against 1-800-COLLECT. AT&T thus is seeking to use the Commission's processes to eliminate this competitive threat and to protect it from competition.

There also is no merit to the Commission's contention that the calling party needs "protection" from OSPs through branding because the calling party selects the carrier to use for the call and, ultimately, may be responsible for the

charges if the call is placed to his or her own home or office number. When carefully considered, the Commission's argument is nonsensical because, if the calling party to a collect call has a preference as to which carrier handles the call that party could access its preferred carrier. In any event, this argument does not apply to 1-800-COLLECT because the calling party affirmatively selects 1-800-COLLECT each time he or she dials the number. In other words, 1-800-COLLECT is the service that the calling party intends to reach and, accordingly, 1-800-COLLECT is the brand that the calling party hears and should hear.

Finally, the Commission's proposed rule is not in the public interest because it would increase carrier costs and decrease network efficiency which, ultimately, would lead to higher rates to consumers for collect call services. In addition, with respect to 1-800-COLLECT, the proposed rule could lead to consumer confusion.

MCI estimates that by requiring a brand to the calling party, the Commission's rule would unnecessarily add 3 seconds to each collect call. Since millions of collect calls are made every year, the cumulative impact in call set-up time would be significant. Moreover, the additional call set-up time would increase carrier access charge costs by $0.0038 for each collect call. Thus, for example, the incremental carrier expense for every 100 million collect calls would amount to approximately $3.8 million which,

ultimately, would be passed along to consumers. This increased network inefficiency and expense is unjustifiable in light of the total lack of demonstrated consumer need for this additional branding requirement.

In addition, the Commission's proposed rule would force MCI to expend considerable resources re-educating consumers about accessing 1-800-COLLECT in order to prevent confusion. Over the past two years, MCI has successfully educated consumers about 1-800-COLLECT, such that they recognize that brand and understand that there are significant savings associated with using this service. Consumers currently understand that the service is available to everyone and from every telephone, regardless of which carrier the consumer has selected as his or her primary interexchange carrier (PIC) for 1+ service or which carrier is the presubscribed carrier at a particular telephone. By requiring MCI to identify its service differently after two years in the marketplace, consumers could mistakenly believe that the service is different or that now it is only available to MCI 1+ customers or from telephones presubscribed to MCI. Ultimately, this confusion will be to the detriment of consumers. It also would play into the hands of AT&T, who, with 60% of the presubscribed market, would like its customers to believe that they cannot use other services without jeopardizing their 1+ PIC.

Thus, as demonstrated above, in addition to there being

no basis for so tardy a Commission "interpretation" of the law, there also is no justification for the Commission's proposed rule which, in fact, would negatively impact carriers and consumers. Accordingly, the proposed rule should not be adopted because it is unneeded and it would impose an unnecessary regulatory burden.

The Commission also requests comments on the changes, if any, that should be made to the rules applicable to inmate-only telephones in correctional institutions. Currently, correctional institutions, to the extent they provide inmate-only telephones, are excluded from the definition of "aggregator" and, therefore, they are exempt from the requirements of TOCSIA and the Commission's implementing regulations. The Commission's decision in this respect was sound and should not be modified.

TOCSIA defines "aggregator" as any person "that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."[10] Inmates are neither members of the "public," nor are they "transient users" of the premises. Accordingly, correctional institutions are not "aggregators" under TOCSIA in connection with their provision of telephone calling capabilities to prison inmates.

In addition, there are strong public interest reasons

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[10] 47 U.S.C. § 226(a)(2).

to control inmate access to the public switched network -- both to protect members of the public and to prevent fraudulent use of carrier services. Thus, the "exceptional circumstances" which warranted the exclusion of inmate-only telephones from the TOCSIA requirement still exist and, therefore, the Commission should not modify its decision in this respect.

Finally, to the extent the Commission believes certain OSPs are charging unreasonable rates for calls from correctional facilities, the Commission has the authority to investigate and order rate reductions, as appropriate. No new Commission rule is required.

Based on the foregoing, MCI respectfully urges the Commission to adopt its recommendations as contained herein.

Respectfully submitted,

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