

ORIGINAL

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

In the Matter of)
)
Amendment of 47 C.F.R. Sec. 1.1200)
et. seq. Concerning Ex Parte)
Presentations in Commission)
Proceedings)

GC Docket No. 95-21

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MCI REPLY COMMENTS

MCI Telecommunications Corporation (MCI) hereby submits comments in reply to comments filed in response to the Commission's Notice of Proposed Rulemaking (NPRM), adopted and released February 7, 1995, FCC 95-52, in the above captioned matter. Therein, the Commission is proposing changes in its rules governing ex parte communications in Commission proceedings.

As noted in its initial comments, MCI is concerned that the practical consequences of several of the proposals may be inconsistent with the goals established in the NPRM. First, MCI submits that the Commission should foreclose ex parte communications whenever a party contemplates filing a formal complaint. Second, communications between carriers and the Commission regarding tariff matters prior to the initiation of an investigation should not be subject to ex parte rules, nor should informal complaints. Third, allowing a three-day period to pass after an ex parte presentation is made but before it is reported would not permit sufficient time for interested persons to respond in a timely manner. Next, otherwise non-restricted

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proceedings should only be restricted by the Commission following a public notice articulating reasons for the restriction. And, finally, comments of other federal agencies should not be exempt from ex parte limitations.¹

Under the proposed rules, informal complaints, once served, would be subject to permit-but-disclose requirements.² MCI disagrees with this proposal because by subjecting informal complaints to ex parte requirements, the Commission may stifle the free exchange of information crucial to achieving negotiated settlements, particularly with the "give-and-take" that is critical to informal dispute resolution.³ MCI thus concurs in the view that settlements of informal complaint proceedings is "significantly streamlined" by the ability of parties to discuss all relevant issues freely with the Commission and its staff."⁴

However, the flexibility needed in informal complaint proceedings should be eliminated whenever a party decides to file a formal complaint, or immediately upon referral of a court case to the Commission under the doctrine of primary jurisdiction. At such times, there should be no further contacts allowed between the potential formal complainant (or its representative) and

¹ In these comments, MCI's failure to address certain comments of other parties or proposals should not be construed as either an endorsement or opposition of any proposal or position.

² NPRM at para. 29.

³ See Comments of Ameritech Operating Companies (Ameritech) at 5.

⁴ See Comments of Southwestern Bell Corporation (Southwestern Bell) at 2.

Commission decision-makers concerning the subject of the complaint.

In resolving formal complaints, the Commission indeed acts as an "adjudicator of private rights."⁵ In contrast to informal complaint proceedings, formal complaint proceedings normally involve issues where the parties have a larger stake in the outcome and are far less likely to reach settlement. Therefore, parties in formal complaint proceedings are far more dependent upon Commission procedures to ensure fair play and the protection of Constitutional due process. For this reason, MCI categorically disagrees with NYNEX Telephone Companies' (NYNEX's) position that formal complaint proceedings should be moved to the "permit-but-disclose" category. Contrary to NYNEX's assertion,⁶ such an approach would compromise, if not altogether remove, the parties' ability to respond to their opponents' comments. As the Federal Communications Bar Association (FCBA) has pointed out, if litigants could make personal appeals to Commission decision-makers, any response to an oral ex parte presentation could never fully comprehend the argument that was made in that presentation, thus severely limiting the opportunity to respond.⁷ Thus, the Commission should revise its rules to foreclose ex parte communications whenever a formal complaint is contemplated and, certainly, once a complaint is filed.

⁵ Id. at 3.

⁶ See Comments of NYNEX at 3.

⁷ See, e.g., Comments of FCBA at 5-6.

Often, it takes over two weeks for the Commission to issue public notices of ex parte contacts. As was correctly pointed out, this makes it extremely difficult for parties to respond to such arguments on a timely basis.⁸ Because timing is so central an issue to disclosure of ex parte communications, MCI does not support the proposal to allow three days after an oral ex parte presentation for filing written notification thereof and a like period after filing a written ex parte communication.⁹ While MCI agrees with the FCBA that adoption of the proposal would enable parties to easily comply with the Commission's notification proposal regarding the content of the ex parte presentation, it believes that, by itself, this is inadequate justification for the proposal. This "compliance" would be accomplished at the expense of the ability of others to respond in a timely manner.¹⁰ Allowing three additional days would only exacerbate the existing problem with additional delays.¹¹ Perhaps one day would achieve a reasonable balance. MCI would have no objection to the adoption of a rule that provided for next-day reporting of ex parte contacts.

⁸ See Comments of BellSouth Telecommunications, Inc. (BellSouth) at 7.

⁹ Unfortunately, the April 24, 1995 edition of the "Telecommunications Reports" at p. 35 mischaracterized MCI's comments on the proposed rules: "MCI said that ... carriers should be given more than the proposed three days to submit written ex parte notifications."

¹⁰ See Comments of Southwestern Bell at 5.

¹¹ Id.

The proposed rules appear to embrace changing tariff proceedings from "exempt" to the "permit-but-disclose" category; that is, after protests are filed but before investigations are ordered. MCI opposes this proposal as do others commenting on this proposal.¹² There has been no indication that the current system is unfair or otherwise results in a systematic bias against any particular group.¹³ Therefore, the Commission's long-standing practice of exempting from ex parte requirements tariffs not yet subject to investigation should remain undisturbed.¹⁴

Finally, MCI cannot support the proposal that would deny affected parties the ability to address positions taken as the Commission by other agencies concerning matters before the Commission. MCI agrees that if another agency wishes to assume a position on an issue pending in a permit-but-disclose proceeding, the agency should either become a party to the proceeding or disclose to the public the substance of any ex parte communications made to the Commission or its staff.¹⁵ MCI shares the view¹⁶ that only the most compelling of circumstances

¹² See Comments of FCBA at 10; AT&T at 13; Rochester Telephone Corp. (Rochester) at 2; Ameritech at 3-4; BellSouth at 5.

¹³ See Comments of Rochester at 2.

¹⁴ See Comments of AT&T Corp. (AT&T) at 7; See In the Matter of Ex Parte Communications and Presentations in Commission Proceedings, 2 FCCR 3011, 3016 (1987), recon., 2 FCCR 6053 (1987).

¹⁵ See Comments of BellSouth at 3.

¹⁶ See Comments of Pacific Bell & Nevada Bell at 4.

should be used to justify shutting the public out of inter-agency deliberations on matters of "open" public proceedings. Such compelling circumstances do not exist here.

CONCLUSION

WHEREFORE, MCI requests that the Commission consider the above comments in fashioning new rules and in otherwise addressing the issues in the NPRM.

Respectfully,

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April 28, 1995

CERTIFICATE OF SERVICE

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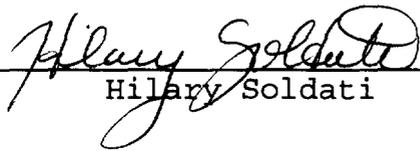
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