MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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June 9, 1995

Mr. William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: Written *Ex Parte* Submission by MCI Telecommunications in CC Docket Nos. 91-141, 93-162, and 94-97

Dear Mr. Caton:

MCI Telecommunications Corporation ("MCI") hereby responds to recent suggestions made on the record in this proceeding that costs incurred by the LEC in provisioning a central office for physical collocation should be either (1) incurred by the interconnector; or (2) recovered by the LEC through an exogenous adjustment under price cap rules. In the wake of Bell Atlantic v. FCC, Bell Atlantic Telephone Companies v. FCC, No. 92-1619 (D.C. Cir June 10, 1994) ("Bell Atlantic v. FCC"), the Commission stated in the Virtual Collocation Order that local exchange carriers ("LECs") would have the ability to terminate existing physical collocation arrangements and transition to virtual agreements. Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Rcd 5154 (1994)("Virtual Collocation Order"). The Commission declined to establish detailed rules to govern the terms of the transition to virtual collocation, and instead, delegated authority to the Chief of the Common Carrier Bureau to resolve such issues on a case-by-case basis. Id. at ¶213.

Several LECs have since attempted to charge interconnectors that had requested physical collocation the construction expenses incurred by the LEC to provision for a physical collocation arrangement. For example, on May 16, 1995, Bell Atlantic filed Transmittal No. 780, proposing the imposition of a "no refunds" policy for nonrecurring charges ("NRCs") paid for physical collocation arrangements that are terminated by unilateral LEC action. These costs include:

> The refurbishing of the collocation area which may involve the construction of new walls, installation of new doors, and the removal of debris;

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The installation of security devices such as electronic access card readers; and,

The upgrading of existing power facilities and ventilation systems to meet the demand created by the presence of the collocator's equipment.

MCI strongly believes that interconnectors should not be charged for the above-mentioned NRCs for several reasons. First, the NRCs that the LECs want interconnectors to pay are for cages, walls, security, etc. These excessive features were required by the LEC, yet served no necessary technical purpose. Second, security devices, ventilation, and the removal of debris are features that add value to LEC central offices, and will benefit the LEC in the future. Third, the imposition of a "no refunds" policy is a flagrant attempt to penalize interconnectors for merely seeking to implement the Commission's expanded interconnection policies. Finally, interconnectors only abandoned the physical collocation arrangements because the LEC required them to do so.

In several filings before the Commission, MFS Communications Company, Inc. ("MFS") has proposed that, rather than requiring the interconnectors to pay these NRCs, LECs should be permitted to recover the NRCs through an exogenous adjustment under price cap rules. Written *Ex Parte* Submission by MFS Communications Company, Inc. in CC Docket Nos. 91-141, 93-162, and 94-97, December 1, 1994. MCI has learned that MFS has recently been promoting exogenous cost treatment as a solution to the issue of abandoned physical collocation costs. MCI disagrees with MFS' proposal. The Commission has ruled that expanded interconnection costs should not be regulated under price caps, and therefore, should be excluded from price caps. 47 C.F.R. §61.42(f). Absent a rule change, MCI submits that expanded interconnection cost cannot be the basis for a price cap exogenous cost adjustment. Nor would MCI favor such a rule change. MFS offers the logic that costs that would greatly impact MFS, would have a *de minimis* impact on interstate access customers if LECs recovered these NRCs through an exogenous adjustment under price cap rules. Clearly such a solution would benefit interconnectors in the short term, but it would allow LECs, which should bear the NRCs themselves, to pass the burden of their anticompetitive behavior on to access ratepayers.

It is irrelevant whether or not the impact of shifting the costs from interconnectors to industry would be *de minimis* for each access ratepayer. MFS' rationale is not consistent with the Commission's rules or stated policy. Access ratepayers, who may or may not be customers of an interconnector, should not be required to reimburse the LECs for the cost of an abandoned interconnection arrangement through access charge increases.

The LECs unilateral termination of existing physical collocation arrangements constitutes the kind of unfair surprise and disruption of rate stability that the Commission consistently has sought to avoid. The LECs should not be permitted to recover those costs through an exogenous cost adjustment under price cap rules, and they should not be permitted to shift the burden of their own anticompetitive behavior onto access ratepayers.

Yours truly,

Don Sussman
Regulatory Analyst

cc: Geraldine Matise
David Nall
David Sieradzki
Jim Schlichting
Andrew D. Lipman
Cindy Z. Schonhaut