

interexchange competition." 1987 DOJ Response 24, 27.

"Considerable theoretical and evidentiary difficulties . . . would be involved in deciding whether a BOC's marketing and consulting activities related only to permitted out-of-region interexchange services or whether they involved prohibited in-region services as well," and "[o]ther functions that a BOC might perform in interconnecting its intraLATA services and its out-of-region interLATA services with in-region interLATA links procured 'independently' by a private customer could create further definitional and enforcement problems." 1987 DOJ Response at 42-43. For example, how would SWB's proposed limitation apply if it sought to team with the interexchange carrier whose services it resells in-region to respond to an invitation to bid for a private network including both in-region and out-of-region locations, or if SWB provided private line services or 800 services? As the Department concluded in 1987, "ambiguities, definitional disputes, and conflicts with regulatory decisions and policies would be likely to result from attempts by the Department and the Court to define the limits of 'terminating' service in what is essentially a two-way market." 1987 DOJ Response 38.

5. *Irrelevance of the Generic International Waiver.* The generic international waiver does not provide support for SWB's request waiver. But see SWB Mem. 27-31. The generic international waiver was careful to limit BOC participation to foreign telecommunications markets. For example, that waiver prohibited the BOCs from providing

interexchange services between points in the United States, from owning interexchange facilities in the United States, and from marketing interexchange services in the United States. Order ¶¶ 3-5 (D.D.C. filed Feb. 4, 1993). Contrary to SWB's proposal for its domestic long-distance affiliate, the BOCs' overseas affiliates are required to hand traffic off to unaffiliated carriers on a non-discriminatory basis (for example, proportional return), and they are prohibited from terminating the traffic in the United States, through resale or otherwise. In supporting international waivers, the Department emphasized that discrimination would be unlikely to occur precisely because of these restrictions.^{5/} Here, however, SWB proposes to compete directly in the U.S. market against interexchange carriers wholly dependent on SWB in a substantial portion of that market. SWB's incentives, and the risk to competition, would be qualitatively and

^{5/} Memorandum of the United States in Support of Bell Companies' Motion for a Generic Waiver of Section II(D) of the Decree to Permit Them to Provide, Through Foreign Telecommunications Entities, International Telecommunications Between Foreign Countries and the United States, at 5-9 (filed Aug. 11, 1992) ("1992 DOJ Mem."); Memorandum of the United States in Support of the Motions of BellSouth Corporation, Bell Atlantic and Ameritech for Waivers of Section II(D) of the Modification of Final Judgment to Permit Those Corporations to Provide International Telecommunications Between the United States and Australia, at 8 (filed Sept. 27, 1991) ("1991 DOJ Mem."). Other factors also distinguish these international waivers, such as the small significance of revenues from traffic to the petitioning BOC's region, or the minority nature of BOC interests. 1992 DOJ Mem. 7-9 & n.11-12; 1991 DOJ Mem. 10.

quantitatively different than when it competes in overseas markets.^{6/}

6. *Lack of Effect on Local Exchange Competition.*

SWB argues that an independent reason for granting this waiver is to facilitate SWB's ability to provide local competition to other BOCs outside its region, primarily through investments in cellular systems or cable television systems that may eventually provide telephony services. *E.g.*, SWB Mem. 1-2, 4-5, 38-43. However, to the extent that SWB or any other BOC wants to provide local exchange services outside its region, broad interexchange relief is not necessary. As proven by the experience of the BOCs themselves, local service providers -- both wireline and wireless -- can be extremely successful without themselves providing interexchange service, simply by offering equal access to interexchange carriers. To the extent that any limited interexchange relief might be necessary or appropriate, it can and should be granted on a case-by-case basis. SWB itself promptly obtained the interexchange waivers it sought in connection with its acquisition of cable systems in the Washington metropolitan area. Compare Order (D.D.C. Sept. 21, 1993) with SWB Mem. 41. The BOCs, and SWB in particular, have also separately sought interexchange relief with respect to cellular service.

^{6/} SWB's reliance on the GTE experience is equally misplaced. See *United States v. GTE Corp.*, 603 F. Supp. 730, 736-37 (D.D.C. 1983); Letter to Richard L. Rosen from Anthony C. Epstein, at 47 & n.36 (dated Feb. 7, 1994) (Waiver No. M0023).

Furthermore, as MCI has previously explained, the claim that BOCs are going to provide vigorous local exchange competition, or vigorous cable television competition, should be greeted with great skepticism. Letter to Richard L. Rosen from Anthony C. Epstein at 2-5, 12-13, 18-19 (dated Nov. 1, 1993) (Waiver No. W0186); Letter to Richard L. Rosen from Anthony C. Epstein at 7-9 (dated Feb. 1, 1993) (Waiver No. W0192). To MCI's knowledge, no BOC competes as a Competitive Access Provider ("CAP") in the region of any other BOC. The Department found that cellular service has not become a substitute for local wireline service in part because BOCs like SWB have kept the price of cellular service artificially high. See Memorandum of the United States in Response to the Bell Companies' Motions for Generic Wireless Waivers, at 14-19 (filed July 25, 1994) (citing internal SWB documents).

For these reasons, the Department should recommend to the Court that it deny SWB's petition.

Dated: August 1, 1994.