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

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In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended	CC Docket No. 96-61

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REPLY COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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Dated: May 24, 1996

SUMMARY

MCI, based upon the record developed in this proceeding, believes that the Commission does not have the legal authority to mandate detariffing. The new law permits only "permissive detariffing" whenever the Commission can develop a record to satisfy specified statutory criteria, including determinations that tariffs are unnecessary to protect consumer interests, would be inconsistent with the public interest, and are not needed to promote competitive market conditions.

The record in this proceeding will not permit such determinations in connection with "low-end" or "mass market" carrier offerings, such as residential and small business long distance. Application, however, of these criteria to "high-end" or "large customer" service offerings can result in a determination that tariffs are not needed to protect or further the interests of any affected party.

With regard to the question of pricing in the interstate, interexchange market, the record shows that the subject market is effectively competitive, as currently structured, and that additional entry is unnecessary to enhance the level of existing competition. Finally, in connection with the anti-bundling rule, the record fully supports suspension or non-application of the rule for a one-year trial period, after which the rule can be repealed altogether or reimposed, depending upon an assessment of the impact of its non-application on affected markets.

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REPLY COMMENTS

MCI Telecommunications Corporation (MCI) respectfully submits these reply comments in connection with the Commission's "Notice of Proposed Rulemaking" (FCC 96-123), released March 25, 1996 (NPRM). Therein, the Commission sought comments on a number of matters concerning the state of competition in the interstate, interexchange marketplace and the recent, significant modifications made to the Communications Act of 1934.[1]

In this NPRM phase, the Commission is proposing "mandatory detariffing," or requiring that non-dominant carriers withdraw tariffs for all of their domestic service offerings. It also seeks information to determine whether the interstate, interexchange market has oligopolistic tendencies or characteristics, as distinct from being effectively competitive.

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[1] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (hereinafter referred to as "the new law" or the "1996 Act").

The Commission also is seeking to ascertain whether the public interest would be served by repeal of the long-standing rule that prohibits the bundling of basic transmission services with customer premises equipment (CPE) and other products, thus allowing such marketplace undertakings by non-dominant carriers. And, finally, the Commission, if it were to decide not to impose a mandatory detariffing requirement (and if non-dominant carriers continued to use tariffs for their individually negotiated customer service arrangements under a "permissive" detariffing approach), is seeking to assure that carriers do not take unfair advantage of their customers via the tariffing process. Initial comments were filed by more than sixty parties on or about April 25, 1996.[2]

MCI'S "PHASE 2" POSITION

In its Comments, MCI opposed mandatory detariffing, at least insofar as it would affect small business and residential service customers. MCI indicated that the Commission could not at this time satisfy the requirements essential to applying its statutory forbearance authority to these customers (although it suggested that it could do so in connection with individually negotiated customer service arrangements). MCI also stated that, based on its experiences and reasoned economic studies and approaches, the interstate, interexchange market is intensely competitive and

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[2] All references herein to these comments shall be to the filing party in abbreviated fashion and any page citation(s).

that, accordingly, claims or views that it is not are misplaced.

Furthermore, MCI indicated that it did not object to the conditional removal of the Commission's long-standing rule against the bundling of basic transmission services with CPE or "Enhanced Services," provided that carriers continue to make available each of their bundled products on a separate basis. MCI recommended that the Commission suspend application of the anti-bundling rule for a one-year "trial period" in order to fully evaluate the impact of its removal on affected markets. Finally, MCI indicated that marketplace problems resulting from the tariffing of individually negotiated customer service arrangements could be eliminated if these kinds of service arrangements were to be furnished on a detariffed basis.

I. MANDATORY DETARIFFING

A large number of commenters believe that the better approach, from both a legal and policy perspective under the 1996 Act, would be to implement permissive, rather than mandatory, detariffing.[3] This is because the Commission, as explained herein, lacks the statutory authority to mandate detariffing.

[3] Those filing initial comments in Phase 2 of this NPRM can be divided into the following broad classifications: interexchange carriers (IXCs); local exchange carriers (LECs), including Bell Operating Companies (BOCs); consumer organizations; telecommunications consultants; government (federal and state); large users; and equipment providers. With regard to tariffing issues, each commenting party understandably has its own agenda. However, MCI submits that particular attention should be paid to the positions taken by IXCs and consumer organizations, whose constituent members stand to be directly and substantially impacted in their day-to-day functioning by any forced removal of the Section 203 tariff-filing obligation.

Furthermore, permissive detariffing on an "across-the-board" basis would also be inappropriate because there are substantial public interest benefits that tariffing affords to carriers and, importantly, significant classes of customers as well. Plainly, then, a permissive tariffing approach that would allow for the employment of tariffs when they are needed -- and for their avoidance when they are not needed -- would serve the legitimate needs of both consumers and carriers and, therefore, the overall public interest as well.

A. The Commission Does Not Have The Authority To Order Mandatory Detariffing

MCI, like many parties, believes that Section 10(a) of the 1996 Act does not authorize the Commission to adopt a mandatory forbearance policy and thereby preclude IXCs from filing tariffs.[4] Instead, as most parties agree, the 1996 Act finally provides the Commission with a statutory basis to implement the

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[4] See, e.g., AT&T at 7-12; Sprint at 3; LDDS WorldCom at 6-9; CompTel at 21-22; Ameritech at 1; Pacific Telesis at 2-3; American Computer and Electronics Corporation; Telecommunications Information Services; Telecommunications Management Information Systems Coalition at 6; Consumer Federation of America and Consumers Union at 4; National Association of Development Organizations et al. at 3-4; Telecommunications Research and Action Center at 3; America's Carriers' Telecommunications Association at 1; American Telegram Corporation at 2; Business Telecom at 5; Cable & Wireless at 5; Casual Calling Coalition at 4-14; Eastern Telephone Systems at 1-3; General Communications at 2; LCI International at 2-3; LDDS at 6; MFS Communications at 1-5; Scherers Communications Group at 3; Telecommunications Resellers Association at 6; Ursus Telecom at 9; Winstar at 3-7; American Petroleum Institute at para. 3; GTE at 2-6; Louisiana Public Service Commission 7; Missouri Public Service Commission at 3; Pennsylvania Public Service Commission at 6; State of Alaska at 2.

permissive forbearance policy that it had employed for a decade -- until interrupted by the courts.[5] This conclusion is supported by consideration of the background against which the 1996 Act was enacted, the particular language of Section 10(a), and the overall statutory scheme embodied in the Communications Act of 1934.

The Commission's permissive forbearance policy, developed in the Second and Fourth Report and Orders in Competitive Carrier, allowed carriers to file tariffs at their election in order to best structure their relationships with customers. This policy did not at all eliminate the tariffing requirement under Section 203 of the Act but, rather, provided a basis for the Commission to refrain from enforcing that requirement, if carriers classified as non-dominant by the Commission chose not to file tariffs.[6] The courts eventually invalidated the permissive forbearance policy, not because they found it offensive or inconsistent with the Commission's regulatory objectives, but because it simply lacked a statutory basis under the Communications Act. Viewed against this historical, and quite

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[5] Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, Second Report and Order, 91 FCC 2d 59 (1982), Fourth Report and Order, 95 FCC 2d 554 (1983) (Competitive Carrier). See MCI Telecommunications Corp. v. American Tel. & Tel. Co., 114 S.Ct. 2223 (1994) (MCI v. AT&T); American Tel. & Tel. Co. v. FCC, 978 F.2d 727 (D.C. Cir. 1992) (AT&T v. FCC).

[6] By contrast, the short-lived mandatory forbearance policy of the Sixth Report and Order in Competitive Carrier denied the Commission the ability to enforce the tariffing requirement of Section 203. Sixth Report and Order, 99 FCC 2d 1191 (1984), vacated, MCI v. AT&T, 765 F.2d 1186 (D.C. Cir. 1985).

notorious, background of the Commission's strenuous adherence to its permissive forbearance policy for so many years and through so much turbulence, it is plain that Congress' intent in enacting Section 10(a) was simply to furnish the Commission with a statutory basis upon which to support permissive detariffing.

Thus, Section 10(a) requires the Commission to:

> forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service . . . if the Commission determines that -
>
> (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, or classifications . . . are just and reasonable . . .;
>
> (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
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> (3) forbearance from applying such provision or regulation is consistent with the public interest.[7]

In interpreting the meaning of "forbear" and "forbearance" in Section 10(a), the Commission must turn to the dictionary definitions of those terms, just as the courts considered the definitions of "modify" in Section 203(b)(2) in interpreting that provision in their review of the Commission's permissive

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[7] 1996 Act at Section 401 (adding Section 10(a)). A fourth requirement involves the Commission's consideration of "whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services." NPRM at para. 17. See also, Order, In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Services, FCC 96-209, rel. May 14, 1996, at para. 95, which confirms the existence of a "fourth element" needed to be satisfied in order for the Commission to forbear from imposing any statutory requirement under the 1996 Act.

forbearance policy.[8] "Forbear" and "forbearance" are uniformly defined as measures of restraint, not prohibition. See, e.g., Webster's Third International Dictionary 886 (1981) ("to refrain from, abstain"); The Random House Dictionary of the English Language 515 (1969) ("to refrain; hold back"; "an abstaining from the enforcement of a right"); The Compact Edition of the Oxford English Dictionary 1048 (1971) ("To abstain, refrain"; "Abstinence from enforcing what is due"); Black's Law Dictionary 580 (5th ed. 1979) ("Refraining from action").

In light of these unambiguous definitions, only one interpretation of Section 10(a) is reasonable, indeed, permissible, namely, that the terms "forbear" and "forbearance" only allow the Commission to refrain from enforcing the tariffing requirement and not to displace it altogether. This, then, is the essence of a permissive detariffing policy. Because these terms cannot be defined as "prohibiting," "precluding," or otherwise "eliminating," they cannot be interpreted as authorizing the Commission to prevent or foreclose carriers from filing tariffs. Thus, Congress has not authorized the Commission to abolish the tariff-filing obligation set forth in Section 203.

Indeed, in enacting Section 10(a) Congress gave no indication that it was authorizing the Commission to eviscerate Section 203 by adopting a mandatory forbearance policy. Had Congress intended so drastic an outcome, it explicitly would have

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[8] See MCI v. AT&T, 114 S.C. at 2229; AT&T v. FCC, 978 F2.d. at 736.

instructed the Commission to prohibit carriers from filing tariffs, but it did not do so. It is clear, therefore, that in employing the terms "forbear" and "forbearance" in Section 10(a), Congress only intended for the Commission to refrain from enforcing the tariffing requirement.[9] The Commission also is mistaken in reasoning that its interpretation of Section 10(a) is supported by its authority under Section 332(c)(1)(A) of the Act to employ a mandatory forbearance policy with regard to CMRS providers.[10]

That Section expressly allows the Commission to declare the provisions of Title II "inapplicable" to MRS providers, but there is no parallel language in Section 10(a) of the 1996 Act. In Section 10(a), Congress did not authorize the Commission to find the tariff filing requirements of Section 203 "inapplicable," but rather only authorized the Commission to "forbear" from applying those requirements, thereby sanctioning adoption of a permissive, not mandatory, forbearance approach.

In view of the foregoing, there is no Congressional warrant for mandatory detariffing. Rather, the Commission now is empowered to implement permissive detariffing -- which authority

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[9]As GTE correctly points out (at 7), "[t]he legislative history of the 1996 Act similarly offers no support for the Commission's current proposal. Congress neither expressly discussed the scope of forbearance nor amended the tariff filing requirements of Section 203."

[10] See NPRM at para. 35, citing Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994).

it lacked throughout the prior period in which it embraced that policy under the "old" Communications Act -- in appropriate circumstances.

B. The Commission Could Not In Any Event Satisfy the Statutory Requirements To Support Detariffing Of All Services

As noted above, to forbear from imposing the Section 203 tariffing obligation, the Commission first must find and conclude that tariffing: (1) is unnecessary to assure carrier compliance with Title II requirements; (2) is not needed to protect consumers; (3) is inconsistent with the public interest; and (4) does not enhance marketplace competition among service providers.

Failure to satisfy any one or more of these criteria means that the Commission cannot, under the new law, permit detariffing, i.e., nullify the tariffing obligation set forth in Section 203 of the Communications Act. As explained below, three of these criteria cannot be satisfied by applying a detariffing proposal to the "low-end" or "mass markets," which involve residential and small business long distance services. On the other hand, the requisite statutory findings can be made in connection with individually negotiated service arrangements or "contract-tariffs."

1. The Tariff Filing Requirement Protects Consumer Interests

In its initial comments, MCI showed that the tariff filing requirement served to protect the interests of consumers in the "low-end" or "mass market" portion of the market who clearly benefit from the existence of tariffs.[11] There is substantial and widespread agreement on this point.[12] Many commenters speak to the vital role that tariffs play defining the relationship between carriers and their customers, including the means by which relationships are formalized with speed, ease and minimal cost.[13] This is especially important when the customer base consists of many millions of consumers.

Commenters recognize that the costs that would be associated with implementing alternative means for carrier transacting will be significant, and those costs more than likely would be passed on to consumers in the form of higher service rates.[14] AT&T and Sprint indicate that the burden associated with these additional transactional costs would fall most heavily on those who make few, if any calls,[15] and Sprint adds that, for such customers, and for smaller customers generally, carriers might find it

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[11] MCI Comments at 10-13.

[12] See, e.g., Comments of Consumer Federation of America and Consumers Union at 2; National Association of Development Organizations et al at 3; Casual Calling Coalition at 8; Eastern Telephone Systems at 3; General Communications at 2; and Telecommunications Research and Action Center at 4.

[13] See, e.g., Ameritech at 2.

[14] See, e.g., Pacific Telesis at 5; AT&T at 4; Eastern Telephone Systems at 3; LCI International at 2; and Sprint at 14. Sprint estimates that the potential cost of alternative contracting (by separate mailers to customers) would be approximately $3.50 per customer for a single page and $.10 per customer for each additional page. Bill stuffers, according to Sprint at 15, would add between $.05 and $.14 per bill.

[15] AT&T at 19; Sprint at 15.

necessary to seek to recover the costs of providing contract notices of changes in their services, etc., through a special monthly surcharge.[16]

And, finally, there are current situations covered by tariffs that simply cannot effectively be dealt with in "contracts" because there is no pre-existing relationship between carriers and consumers of their services. In effect, each transaction itself constitutes the basis of the relationship in which the carrier serves and the customer consumes, incurring an obligation to pay for service in the process. Thus, for instance, operator service offerings that are available to the general public on a per-call basis and do not require any presubscription or other contractual relationship between the carrier and the customer rely on tariffs to provide the legal basis for the relationship, including establishing the terms and conditions and prices, which bind consumers who use and benefit from the services to pay for them.

Consumer groups also express serious concerns about the potential lack of availability of carrier and service-related information that can be provided to their constituents.[17] As the Telecommunications Research and Action Center states: "The goal of the Commission should be to promote a market place that empowers most consumers to make informed decisions about which

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[16] Sprint at 16.

[17] See, e.g., Consumer Federation of America and Consumers Union at 3; Telecommunications Research and Action Center at 2.

long distance service to purchase based on the actual prices available to them."[18] This position is supported by the Consumer Federation of America and Consumers Union, which asserts that "publicly available information about interexchange rates can result in meaningful savings in the pockets of the long distance consumer."[19] The conclusion thus is inescapable that carriers and consumers alike view tariffing as an effective means to make available to "mass market" consumers or their representatives essential pricing and service information upon which knowledgeable "buy" decisions can be made.

Some commenters address the delay in introducing new "mass market" products and pricing that inevitably would result from detariffing,[20] which result plainly would be contrary to the Commission's expressed goal of "enabling non-dominant carriers to respond quickly to changes in the market....[21] Under the current tariffing regime, all non-dominant carriers providing domestic services can implement service changes, including the introduction of new products, on one day's notice. This has proved to be a most effective means of quickly bringing new offerings and changes to existing products to the "low-end"

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[18] Telecommunications Research and Action Center at 4. This group also states, correctly, that "[c]ompetition is harmed if purchasing decisions are based on incorrect information or misimpressions."

[19] Consumer Federation of America and Consumers Union at 6.

[20] See, e.g., Ameritech at 4; Sprint at 20.

[21] NPRM at para. 31.

market. No alternative transactional mechanism would serve as effectively as tariffing to achieve this important Commission goal.[29]

On the other hand, all these considerations are unnecessary, indeed even counter-productive, when applied to the "high-end" or "large-user" market, where customers have the ability to negotiate individually tailored or customized service arrangements to meet their particular business needs. As MCI explained in its Comments,[30] these customers are fully capable of advancing or protecting their interests during the negotiations process, which is not at all the case with millions and millions of residential and small business users. In fact, as the Commission itself clearly recognizes, given the substantial discussion in the NPRM on how tariffing can adversely affect "high-end" transactions,[31] the statutory criteria necessary to permit detariffing easily can be satisfied in connection with carrier service transactions in the large-user market.

Thus, tariffs serve to protect consumer interests by providing, among other things, an efficient means of transacting

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[29] As pointed out by MCI in its initial comments (at 12) and by many other commenters as well, the notion that tariffing delays the introduction of new products or changes to existing products simply does not hold true today, at least for "mass market" products. That might have been the result in 1984 when the Commission first adopted a mandatory detariffing approach because there was then a fourteen day notice requirement for non-dominant carrier tariff modifications, and AT&T had to file tariff changes under much greater notice period requirements.

[30] See, e.g., MCI Comments at n.44.

[31] AT paras. 92-101.

with millions of customers at lower transactional costs that ultimately are reflected in the rates charged by carriers; by permitting carriers and customers to receive service and pricing changes quickly; by allowing for the prompt introduction and availability of new services; and by serving as a central, publicly available repository of information about carrier services that customers, or their representatives, can obtain and analyze in order to make, or advise on, informed purchase decisions.

2. Detariffing of All Non-Dominant Carrier Services Would be Inconsistent with the Public Interest

The detariffing by all non-dominant carriers of all their service offerings would be inconsistent with the public interest,[32] which is a view shared by numerous parties filing initial comments. Many commenters cite tariffed liability provisions as having a positive effect on the public interest.[33] Ameritech, for example, correctly states that, because service outages and network problems are inevitable, carriers, in the absence of reasonable liability-limitation provisions contained in their tariffs, would be exposed to substantial claims, the costs of which could have a substantial impact on their ability to provide affordable service, or perhaps even their viability.[34]

The administrative burdens of being required to do business

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[32] MCI Comments at 14-15.

[33] See, e.g., Ameritech at 5; Competitive Telecommunications Association at 9; LDDS WorldCom at 13; Sprint at 6.

[34] Ameritech at 5.

without tariffs, as noted, would be contrary to the public interest because the higher risks and costs incurred by carriers necessarily will be borne by consumers.[35] AT&T thus refers to the "practical economics of serving well over 100 million existing consumers and small business customers without tariffs...."[36] On the other hand, a policy of permissive detariffing, when appropriate, would be more administratively efficient and, therefore, would serve the public interest because such a policy would afford carriers the choice of proceeding with or without tariffs as the transactional mechanism by which to conduct their business operations.[37]

The Rural Telephone Coalition, in comments filed during the first phase of the NPRM, sets forth still another reason why tariffing is important to the public interest, given the Commissions's policy, as well as the new statute, addressing nationwide, geographic rate-averaging. "Without public rate filings by IXCs," the Coalition claims, "the FCC cannot effectively establish, monitor, and enforce compliance with the 1996 Act's geographic rate averaging and rate integration mandates."[38] It thus views tariffing as an essential tool in the enforcement of what it perceives to be a crucial Congressional and Commission policy objective. In view of the foregoing, the record overwhelmingly establishes that tariffing, for varying and diverse reasons, is essential to satisfying the public interest

[35] See, e.g., AT&T at 15-16; Business Telecom at 5.

[36] AT&T Comments at 16.

[37] See, e.g., Eastern Telephone Systems at 6; Ursus Telecom Corporation at 3; Winstar Communications at 9.

[38] Comments of the Rural Telephone Coalition, dated April 19, 1996, at 4.

standard.

3. Detariffing of All Non-Dominant Carrier Services <u>Will Not Promote Competitive Market Conditions</u>

In its initial comments, MCI showed that mandatory detariffing, rather than promoting competitive market conditions, could have just the opposite effect.[39] Many commenters have expressed a similar view. Indeed, several view tariffing as actually being pro-competitive.[40] The Telecommunications Research and Action Center stresses the fact that the ready availability of information about carrier services, which the act of tariffing provides, is a pro-competitive result.[41]

Consumer choice, then, is a primary beneficiary of tariffing. As LDDS correctly recognizes, "[t]he most 'pro-competitive, deregulatory regime' is one that gives the consumers maximum choices in the marketplace, not one which forecloses such choices altogether"[42] and, as Ameritech indicates, "[w]ritten contracts would... make it much more burdensome for consumers to sign for services or to change carriers" which, in turn, would amount to "added burdens" that "would likely have a negative impact on interexchange competition."[43] And Sprint correctly points to the "ease with which customers can utilize various

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[39] MCI Comments at 15-19.

[40] <u>See</u>, <u>e.g.</u>, MFS at 7; Pactel at 5; AT&T at 13; Consumer Federation of America and Consumers Union at 7; Telecommunications Research and Action Center at 3; General Communication at 3; CompTel at 7; LDDS at 14; and Sprint at 12.

[41] At 4 ("It is axiomatic that the more informed the consumer the more competitive the market").

[42] LDDS at 14.

[43] Ameritech at 2-3.

carriers' services [which] has undoubtedly contributed to the development of a substantially competitive ... market."[44]

Also, it is essential to point out once again, as MCI did in its initial comments,[45] that to deprive non-dominant carriers of the competitive benefits of tariffing -- while allowing such benefits to inure to the benefit of carriers likely to be classified and regulated as dominant when they are permitted to enter the interstate, interexchange marketplace -- would be an unconscionable and completely unintended result of imposing a detariffing requirement. Clearly, then, in the "low-end" or "mass market" arena, at least, dominant carriers would have an unwarranted competitive advantage if they alone could order their business relationship by tariff, while their non-dominant carrier competitors could not do the same.

Finally, as some parties correctly note, tariffing does not lead to, or result in, price co-ordination among competitors.[46] The claim that it does will not serve to justify detariffing, especially since the vast majority of tariffs are being filed on only one day's notice.

In view of the foregoing, mandatory detariffing would more than likely diminish, and not increase, competition in the interstate, interexchange market.

III. PRICING ISSUES

Some parties contend that the interstate, interexchange

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[44] Sprint at 12.

[45] At 15-16.

[46] See, e.g., Pacific Telesis at 4; Casual Calling Coalition at 6-7; Office of Ohio Consumers' Counsel at 7-8.

telecommunications services market is not effectively competitive and that such shortcoming will only be remedied when the BOCs are allowed to compete fully in that market. These views are clearly incorrect.

Appended hereto and incorporated herein is Dr. Robert E. Hall's "Response to Analyses of Long-Distance Competition Prepared by Professors Jerry Hausman and Paul MacAvoy on Behalf of BellSouth." Dr. Hall's Response addresses and rebuts the Hausman and MacAvoy thesis that the long distance industry in the United States is an uncompetitive oligopoly where a small number of entrenched sellers collude to keep prices high. To the contrary, the opening of the long-distance market to free competition has delivered huge benefits to American consumers as a result of the aggressive competition that exists today among the nation's four major long distance companies. Indeed, should there be any failure of competition, there are a number of aspirants already well established in the market which are capable of displacing any carrier unwilling to provide the best possible offer to their customers.

Dr. Hall also rebuts the Hausman and MacAvoy view that the opening of the long-distance market to local telephone companies, including the RBOCs, would be beneficial to consumers. Most notable among the objections to such entry is the very real possibility that long-distance carriers unaffiliated with local telephone companies will receive less-than-adequate essential connections from those against whom they would be competing in the marketplace. Further improvement in long-distance performance depends, not on the entry of local telephone companies into long distance, but on the furnishing to long-distance carriers of access connections to local networks that are based on actual cost. Simply put, long-distance services are more expensive than they need to be because essential access is priced so substantially above cost by local telephone companies.[47]

III. BUNDLING OF CUSTOMER PREMISES EQUIPMENT

Most commenting parties support repeal of the Commission's anti-bundling rule,2

[48] and several contend, as MCI does, that each bundled product ought to remain available on a separate basis.[49] Some argue that removal of the rule should apply to all carriers, dominant as well as non-dominant.[50] And a few argue that the rule should be retained.[51] Like MCI, some suggest that the Commission should "proceed with great caution,"[52] including deferring the question

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[47] See Hatfield Associates, Inc., "The Cost of Basic Network Elements: Theory, Modeling and Policy Implications" (March, 1996), appended to "Comments of MCI Telecommunications Corporation,"dated May 16, 1996, CC Docket No. 96-98.

[48] See, e.g., Cato Institute at 4-5; America's Carriers Telecommunications Association at 17-18 (but AT&T should be reclassified as a dominant carrier); AT&T at 26 (and removal ought to be extended to eliminate the bundling restriction on IXC services and "Enhanced Services"); General Communication at 5; Sprint at 26; Ameritech Petroleum Institute at 13: Office of Ohio Consumers' Counsel at 8.

[49] See Pacific Telesis at 11; Telecommunications Resellers Association at 42: GTE at 10-11; USTA at 3-4; Louisiana Public Service Commission at 10; Ad Hoc Telecommunications Users Committee at 12-13.

[50] See, e.g., Bell Atlantic at 5; NYNEX at 6; SBC at 7. Of course, this position runs counter to the reason justifying the removal of the rule, specifically, that no entity is dominant in any market affected by bundled products.

[51] Information Technology Association at 3; Compaq at 4; Consumer Electronics Retailers Ass'n at 3 (but if rule repealed, Commission should require separate availability of bundled products); Independent Data Communications Manufacturers Ass' at 3.

[52] Pennsylvania Public Utility Commission at 3.

altogether for a three-year period.[53]

It is apparent that many parties are as concerned about the potential effect of the rule's repeal as MCI, which is all the more reason to adopt MCI's recommended approach of suspending the rule for a one-year "trial period" and, thereafter, reviewing the full impact of the rule's non-application on affected markets. This cautious and measured approach will permit a full evaluation of the rule before it is removed altogether or reimposed.

IV. OTHER ISSUES

Not many parties commented on the conflict inherent in the tariffing obligation, on one hand, and the pro-competitive approach engendered by carriers being permitted, on the other hand, to enter into individually negotiated contracts with their customers. However, that conflict is real and, as indicated by MCI in its initial comments, easily should be remedied by allowing non-tariffing for these particular business relationships. In effect, carriers, if permitted (or if required as a result of their negotiations with their customers), would no longer need to reduce their agreements to tariffs or contract-tariffs and file them with the Commission.

With this the case, the conflict between long-established law on the supersedence of filed tariffs over inconsistent private contracts would cease to exist, and the resources of the Commission and private parties could better be spent in undertakings other than addressing and resolving nasty disputes that involve private, not public, interest considerations. It is in this area of telecommunications service commerce, as noted above, that the statutory criteria can be satisfied to allow for

[53] IDCMA at 42.

detariffing because the interests of all affected parties -- the carriers, their customers and the Commission's -- clearly would be furthered. Unlike "low-end" or "mass market" consumers, who demonstrably benefit from tariffing, large customers are fully capable of protecting their interests through the contract process.

CONCLUSION

The Commission should take into account MCI's comments and these reply comments in addressing and deciding the important issues raised in this proceeding.

Respectfully submitted,

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Dated: May 24, 1996

Response to Analyses of Long-Distance Competition Prepared by Professors Jerry Hausman and Paul MacAvoy on Behalf of BellSouth

Robert E. Hall

May 24, 1996

I. Introduction

MCI has asked me to prepare an appraisal of BellSouth's experts' analyses of competition in the long-distance market. My appraisal reaches the following two basic conclusions: First, I disagree with Professors MacAvoy and Hausman's condemnation of the long-distance industry in the United States as an uncompetitive oligopoly where a small number of entrenched sellers collude to keep prices high. I believe, on the contrary, that the opening of the long-distance market to free competition has delivered huge benefits to the American consumer. The four major long-distance carriers compete with each other aggressively. Should they hesitate to compete aggressively, a number of aspirants are already well established in the market and could displace carriers who fail to provide the best possible deal to their customers.

Second, I disagree with Professors Hausman and MacAvoy's conclusion that the opening of the long-distance market to participation by local telephone companies would be beneficial to the consumer. The long-distance industry has completely free entry already—any firm can set up a long-distance carrier and compete in any way it chooses. According to the standard analysis of competition, the number of competitors in a market is fixed by the amount of profit available. Entry by one particular firm, such as a local telephone company, discourages the entry of one other seller and leaves the total number of sellers—and the degree of competition—unchanged. Further, the hazards of permitting local telephone companies to extend into long distance are considerable. Vertical integration will inhibit local competition. Further, the success of the telephone network depends critically on cooperation among the firms that provide the elements of the network. Cooperation between local carriers and long-distance carriers is particularly crucial. This

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