



MCI Telecommunications  
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1801 Pennsylvania Avenue, NW  
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ORIGINAL

July 3, 1996

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

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JUL 3 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Re: Petition For Reconsideration: Implementation of  
Section 302 of the Telecommunications Act of 1996,  
Open Video Systems, CS Docket No. 96-46**

Dear Mr. Caton:

DOCKET FILE COPY ORIGINAL

Enclosed herewith for filing are the original and 11 copies of MCI Telecommunications Corporation's Petition For Reconsideration in the above-captioned docket.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Petition furnished for such purpose and remit same to the bearer.

Sincerely yours,

Lawrence Fenster

No. of Copies rec'd  
MCI ADOCS

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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JUL 3 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of: )  
)  
Implementation of Section 302 of )  
the Telecommunications Act of 1996 )  
)  
Open Video Systems )

CS Docket No. 96-46

DOCKET FILE COPY ORIGINAL

**PETITION FOR RECONSIDERATION**

MCI Telecommunications Corporation ("MCI"), pursuant to Section 1.429 of the Commission's rules, submits the following petition for reconsideration in the above-captioned proceeding.

In its Second Report and Order implementing Section 302 of the Telecommunications Act of 1996, the Commission adopts rules ensuring that carriage rates for open video service (OVS) are just and reasonable.<sup>1</sup> In that Order the

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<sup>1</sup> Second Report and Order Implement of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, adopted, May 31, 1996.

Commission made three determinations it claimed would ensure that OVS carriage rates are just and reasonable:

1. OVS carriage rates will be presumed just and reasonable where "...at least one unaffiliated video programming provider, or unaffiliated programming providers as a group, occupy capacity equal to the lesser of one-third of the system capacity of that occupied by the open video system operator and its affiliates, and where any rate complained of is no higher than the average of the rates paid by unaffiliated programmers receiving carriage for the open video system operator;"<sup>2</sup>
2. only parties seeking video carriage may bring complaints against the presumptive reasonableness of rates<sup>3</sup>; and
3. "[c]arriage rates subject to complaint shall be presumed just and reasonable if they are no greater than an imputed carriage rate...[that] surpasses what an operator earns from carrying its own programming."<sup>4</sup>

MCI requests the Commission reconsider these pricing rules because they fail to establish a mechanism that prevents incumbent local exchange companies (ILECs) from pricing OVS carriage rates below incremental cost due to the transfer of video-related costs to their telephone customers. The Commission recently expressed just this concern about Bell Atlantic's video dialtone offering in Dover, New Jersey.

*We held at that time that we could not reject as patently unreasonable Bell Atlantic's contention that certain costs were unidentifiable as incremental to video dialtone or that it would be unreasonable to allocate such costs as incremental to video dialtone....We stated however, that an*

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<sup>2</sup> Section 76.1504(c) of the Commission's rules.

<sup>3</sup> Section 76.1504(d) of the Commission's rules.

<sup>4</sup> Section 76.1504(e) of the Commission's rules.

investigation of these assertions is warranted.<sup>5</sup>

"We also stated that although not patently unlawful, an overhead loading factor of 1.2 was low enough to warrant investigation."<sup>6</sup>

Moreover, the Commission has recognized that ILECs have an incentive and opportunity to shift costs from unregulated activities to regulated services. Its recent Joint Audit of Ameritech Services Inc. (ASI) revealed that "ASI has established a classification system that is clearly biased against assigning costs to nonregulated activity."<sup>7</sup>

In fact, the likelihood that OVS carriage rates will be set below incremental costs nearly guarantees that one-third of OVS capacity will be occupied by parties not affiliated with the ILECs, and that ILECs will not receive any complaints from parties seeking video carriage, for they will share in the subsidy provided by the ILEC's telephone customers. Furthermore, the Commission has compounded the problem by unilaterally excluding the parties harmed by the possibility of this cross subsidization from challenging OVS carriage rates, in spite of the fact that the Commission's stated

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<sup>5</sup> In the Matter of Bell Atlantic Telephone Companies Revisions to Tariff F.C.C. No. 10, Rates Terms, and Regulations for Video Dialtone Service in Dover Township, New Jersey, Transmittal Nos. 741, 786, CC Docket No. 95-145, at para. 29.

<sup>6</sup> Id. at para. 34.

<sup>7</sup> Review of Affiliate Transactions at Ameritech Services, Inc. [No Number in Original], Federal Communications Commission, 1995 FCC Lexis 4555, May 9, 1995.

purpose in this proceeding was to “prescribe regulations that will ‘ensure that the rates, terms, and conditions’ for the carriage of video programming on an open video system ‘are just and reasonable...’ ” not only not discriminatory.<sup>8</sup>

The Commission’s OVS pricing rules also permit ILECs to charge discriminatory rates once one-third of their OVS capacity is occupied by non-affiliates. In this situation the Commission requires a complaining party to show not only that the rate they have been offered is above the weighted average of rates offered to non-affiliated programmers occupying OVS capacity, they must also show that the rate they have been offered is above the sum of the incremental and common cost of providing OVS carriage, plus other opportunity costs.<sup>9</sup> Given the large amount of common costs the Commission has recognized exist in the provision of OVS,<sup>10</sup> there will be quite a gap between the below incremental cost rate (due to cross subsidies) offered to existing non-affiliated programmers and a rate equal to incremental cost plus common costs.

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<sup>8</sup> In the Matter of Implementation of Section 302 of the Telecommunications Act of 1996, Open Video Systems, CS Docket No. 96-46, Report and Order and Notice of Proposed Rulemaking, March 11, 1996, at 13.

<sup>9</sup> The Commission has adopted the efficient component pricing rule, which sets the price of an intermediate input equal to the direct incremental cost of the input, plus the opportunity cost from the loss of net contribution toward common fixed costs resulting from the use of this input by another firm. See William Baumol and Gregory Sidak, *Toward Competition in Local Telephony*, 1994, p.100.

<sup>10</sup> In the Matter of Costs Associated with Local Exchange Carrier Provision of Video Programming Services, Notice of Proposed Rulemaking, CC Docket 96-112, May 10, 1996, at 10.

Finally, the Commission has not established a mechanism permitting a party complaining of an OVS carriage rate to determine (or verify in case the ILEC has the burden of proof at this point) whether the rate it has been offered is above incremental video plus costs common to video and telephony, plus other legitimate opportunity costs. At a minimum, one would need to know the incremental and stand alone cost of providing telephone and video services, appropriate subscriber or usage measures for video and telephony depending on the units of measure used to bill OVS carriage services, as well as an estimate of revenues foregone by making OVS capacity available to others. However, the Commission has recently concluded that "...as an administrative matter, it would be difficult for a regulatory agency to determine a carrier's actual opportunity cost."<sup>11</sup> There is no practical method of determining whether an OVS carriage rate is greater than the rate that would be established by the efficient component pricing rule. Consequently, the Commission may not use this rule as a means of ensuring nondiscriminatory OVS carriage rates.

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<sup>11</sup> Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Notice of Proposed Rulemaking, April 19, 1996, at 52.

The Commission should, therefore, reconsider its action, and: (1) permit any party potentially affected by an OVS carriage rate to file a complaint with the Commission; (2) require ILECs to charge video carriage rates in excess of the incremental cost of providing video service; and (3) require telephone companies seeking OVS status to publicly file incremental and stand alone telephone and video cost studies, along with appropriate subscriber and usage data as part of their OVS applications.

Respectfully submitted,  
MCI TELECOMMUNICATIONS CORPORATION

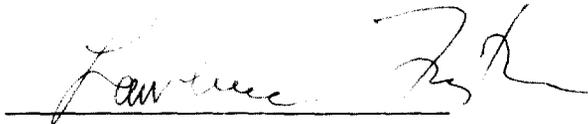
A handwritten signature in cursive script, appearing to read "Lawrence Fenster".

Lawrence Fenster  
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July 3, 1996

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on July 3, 1996.

A handwritten signature in cursive script, appearing to read "Lawrence Fenster", is written over a horizontal line.

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