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October 31, 1996

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

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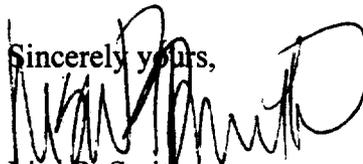
Re: In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98 Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185

Dear Mr. Caton:

Enclosed herewith for filing are the original and eleven (11) copies of the Opposition of MCI Telecommunications Corporation to the Petitions for Reconsideration and/or Clarification regarding the above-captioned matter.

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

Sincerely yours,



Lisa B. Smith

Enclosure

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OCT 31 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

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)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996)	CC Docket No. 96-98
)	
Interconnection between Local Exchange Carriers and Commercial Mobile Radio Providers)	CC Docket No. 95-185
)	

**MCI COMMUNICATIONS CORPORATION
RESPONSE TO PETITIONS FOR RECONSIDERATION**

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October 31, 1996

EXECUTIVE SUMMARY

The Commission should decline the Texas PUC's invitation to "clarify" which state requirements will be found inconsistent with the Act because that determination is better left to proceedings conducted under § 253. If the Commission does address this issue, it should make clear that state requirements that are inconsistent with the Act do not, as the Texas PUC urges, survive as "alternative" state standards. The Commission should also reject the Texas PUC's argument that it lacks the authority under § 208 to review complaints if the carrier complained about is in compliance with a state-approved agreement. The Commission correctly concluded that its broad § 208 authority to enforce the provisions of the Act extends to any action taken by a carrier in contravention of §§ 251 and 252.

The Commission should not reconsider its conclusion that all preexisting interconnection agreements must be filed with and approved by state commissions. The plain language of § 252(a)(1) makes clear that all agreements must be reviewed for anti-competitive and discriminatory provisions.

In the Order, the Commission rightly refused to impose "bona fide request" and other requirements on carriers requesting interconnection and should not now reconsider that decision. The Texas PUC asks that the Commission require carriers requesting interconnection to provide exchange access to also provide exchange service in order to prevent interexchange carriers from avoiding access charges. Because the Texas PUC's fear has been addressed by the Commission's

sua sponte reconsideration order, the Commission need not address this argument. If the Commission chooses to do so, it should reject, as it did in the Order, the Texas PUC's strained interpretation of § 251(c)(2).

The Commission was correct that the term "technically feasible" refers solely to technical or operational concerns and not to economic, space, or site considerations and should not now reconsider that conclusion. Nor should the Commission modify its requirement that incumbent LECs perform functions necessary to combine network elements, provided that it is technically feasible to do so. Directory assistance and operator services are network elements and the Commission should not alter its command that incumbent LECs make those services available to requesting carriers.

Although recognizing that incumbent LECs have the incentive and ability to engage in discrimination, the Commission found the record insufficient to impose a reporting requirement. The Commission should reconsider this decision, because without such a requirement, it will be very difficult to detect discriminatory activity. The Commission should also clarify that § 251(c)(3) requires incumbent LECs to make tandem-switched transport available as an unbundled network element.

The Commission should refuse to reconsider its rules regarding local provisioning intervals, and should not extend the deadline for the implementation of electronic access to operations support systems.

The Commission's determination that ILECs must provide both physical and virtual collocation is clearly correct. Because collocation is a form of

interconnection, and because the statute expressly requires interconnection at any technically feasible point, the Commission's determination that virtual collocation must be provided is not only reasonable, it is required.

The Commission also correctly defined "premises" for collocation purposes. The arguments to the contrary are baseless. The requirement that collocator-to-collocator interconnection be permitted is similarly sound. Requiring these types of interconnection is consistent with the Act and sound public policy. No argument presented suggests otherwise.

Petitioning ILECs ask the Commission to extend the time period within which transitional access charges may be imposed. This request must be denied; petitioners present no argument that would justify the continuation of these non-cost based charges.

Nor do petitioners present any persuasive argument that the Commission's geographic rate deaveraging rule be altered. The Commission properly concluded that deaveraging rates into at least three zones results in rates that more closely approximate actual cost. It is a simple matter for a state to apply this requirement, even when the state chooses to use the Commission's proxy rates.

Contrary to the assertions of some petitioners, the Commission also correctly identified the costs that ILECs will avoid by selling their service wholesale. The alterations requested by petitioners would take away all incentive to actually avoid costs that need not be incurred when selling service wholesale, and must be rejected.

The Commission also correctly concluded that contract and customer-specific offerings must be offered at wholesale rates; the services offered pursuant to these contracts fall squarely within the definition of services that must be provided at wholesale.

Nor should the Commission reconsider its rules with respect to rebranding and customized routing obligations. The Commission's finding that it is technically feasible to do so is amply supported by the record, and provides ILECs the ability to rebut the presumption of technical feasibility if necessary.

The Commission should flatly reject certain petitioners' attempt to avoid their obligation to provide interim transport and termination. These parties argue that "non-rate" terms are not covered by this interim obligation and that, absent agreement on these non-rate terms, interim transport and termination cannot be provided. This argument is, however, no more than an attempt to avoid the interim requirements that the statute explicitly imposes on ILECs.

The Commission also correctly concluded that, when a new entrant's switch serves a geographic area comparable to the area served by the incumbent's tandem, the incumbent should pay the new entrant tandem-switched transport and termination rates. The Commission's focus on the function of the new entrant's network comports with the letter and spirit of the Act, and produces an equitable and efficient result.

A number of utilities also complain about some of the Commission's rules on access to rights of way. Their complaints are unfounded. The Commission

correctly found that utilities are not entitled to preferential access to reserve capacity; any other result would allow utilities to hoard capacity to the detriment of their potential competitors. The Commission also properly protected competition by requiring utilities to exercise their eminent domain power in a competitively neutral manner -- on the same basis as they exercise such power for themselves.

Utilities' attempts to weaken competition by refusing to allow access to excess capacity, even when they themselves access their facilities for wire used to provide internal communications has properly been rejected once, and should be rejected again. If the facility can be, and is being, used for the provision of any wire communications, the Act requires that it be opened to all. Nor can utilities accomplish a similarly anti-competitive result by allowing only wire attachments to their facilities. Again, the plain language of the Act does not support this restriction, and the Commission should reject it.

The complaint by certain petitioners regarding the Commission's rules on "qualified workers" is also utterly unfounded. The Commission established clear safeguards to ensure that contractors accessing utility facilities are qualified; it need not reconsider those rules. The utilities' complaints regarding the amount of notice they must provide competitors attached to their facilities before changing those facilities are similarly baseless. Sixty days is not only reasonable, it mirrors the amount of time utilities have asked that they be allowed to review requests for pole attachment.

Finally, at least two states argue that they may impose requirements on non-incumbent LECs that the statute imposes only on incumbent LECs. As a matter of statutory interpretation this argument is flatly wrong, and must be rejected.

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**MCI COMMUNICATIONS CORPORATION
RESPONSE TO PETITIONS FOR RECONSIDERATION**

A number of parties have asked the Commission to reconsider or clarify aspects of its August 8, 1996 First Report and Order Implementing the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket. No. 96-98. MCI respectfully submits this response to certain of those petitions for reconsideration.

I. Scope of the Commission's Rules

A. State Requirements That Are Inconsistent With The Act Do Not Survive As An "Alternative" Set Of Regulations

The Commission should decline the Texas PUC's invitation to "clarify" which state requirements will be found inconsistent with, and therefore preempted by, the Act.^{1/} See *Petition for Reconsideration of the Public Utility Commission of Texas* at 4-7. The standards to be used in making this determination should be developed not in this general rulemaking but in proceedings conducted under § 253 in which the Commission will have before it particular state regulations. All of the state provisions cited by the Texas PUC as examples are currently the subject of petitions for declaratory ruling and preemption under § 253,^{2/} where the Texas PUC has made the same argument it makes in its petition for reconsideration. The Commission need not assess that argument here.

If, however, the Commission does consider the Texas PUC's arguments, they should be rejected. The Texas PUC asserts that state provisions that are inconsistent with the Act or the Commission's rules should be "viewed as consistent" if those provisions do not actually prevent implementation of the Act or the rules.^{3/} Although the Texas PUC recognizes the differences between provisions of PURA95 on the one hand and the Act and the Commission's Order

^{1/} See Order ¶ 62.

^{2/} In the matter of Consolidated Petitions for Declaratory Rulings Regarding Preemption of Texas Law, CCB Pol 96-14.

^{3/} See generally, MCI reply comments, Texas PUC at 7.

on the other, it nonetheless asserts that the state provisions are not inconsistent with the federal requirements because they "merely provide additional options." This argument is nonsensical. The federal Act does not give the states the option either to adopt federal standards or to implement different ones. Rather, the federal law mandates specific standards that must be followed by carriers and state commissions; there can be no "alternative" state standard.

The Texas PUC's contention that a state regulation may continue to exist on a parallel track, even though it is inconsistent with the federal Act and the Commission's regulations, is premised on a fundamental misunderstanding of the preemptive power of federal law and must be rejected. Where Congress has legislated, the Supremacy Clause mandates that federal law displace inconsistent regulation. "Congressional enactments that do not exclude all state legislation in the same field nevertheless override state laws with which they conflict. . . . Our task is 'to determine whether . . . [the State's] law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" Jones v. Rath Packing Co., 430 U.S. 519, 525-26 (1977) (emphasis added) (quoting Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). "A state law is . . . pre-empted if it interferes with the methods by which the federal statute was designed to reach [its] goal." International Paper Co. v. Quелlette, 479 U.S. 481, 494 (1987).

Characterizing a particular state requirement as "different" or "parallel" does not negate the inherent conflict of that requirement with federal law. The very existence of a parallel track by which states may enact alternative schemes enabling

carriers to choose whether to follow state or federal law clearly "stands as an obstacle to the accomplishment and execution" of the Congressional goal of establishing a "pro-competitive, de-regulatory national policy framework" for the regulation of local telephone exchange markets. S. Conf. Rep. No. 104-23, at 1 (1996) ("Conf. Rep.") (emphasis added). That the creation of a uniform, comprehensive framework was the intent of Congress is evident from the enactment of the federal law. Had Congress wanted to allow states to create their own individual schemes for regulating local markets, no federal law would have been necessary.

B. The Commission Retains Its Authority To Review Complaints Filed Pursuant To § 208.

The Commission's recognition that it may exercise its enforcement authority under § 208 "even if the carrier [that is the subject of the § 208 complaint] is in compliance with an agreement approved by the state commission," Order ¶ 127, is firmly grounded in § 208 itself and is supported by the terms of the Act. The argument advanced by the Texas PUC -- that the Commission has misread the Act and improperly arrogated authority -- should be rejected.

Section 208 grants aggrieved parties the right to file complaints with the Commission alleging acts or omissions in violation of the Act. See 47 U.S.C. § 208. The section grants broad authority to the Commission to enforce the Act by investigating those complaints and issuing appropriate orders. Id. Section 208 is unlimited in its scope: it reaches "anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof." Id.

Because §§ 251 and 252 are provisions of the amended Act, the Commission's authority under § 208 clearly extends to any action taken by a subject carrier in contravention of those sections.

The grant of authority to state commissions to approve interconnection agreements has no impact on this section. No provision of the Act limits the Commission's § 208 authority to consider a complaint against a carrier that is acting pursuant to a state-approved agreement. As the Commission has noted, § 601(c)(1) of the Act states that the Act "shall not be construed to modify, impair or supersede existing federal law unless expressly so provided." Order ¶ 126 (quoting 47 U.S.C. § 601(c)(1)). The Texas PUC has identified no express provision stating that the § 208 complaint procedures are unavailable when a state commission has approved an agreement.

Instead, the Texas PUC argues that § 252(e)(6) implicitly restricts the Commission's § 208 complaint jurisdiction by authorizing federal district court review of determinations made by state commissions pursuant to § 252. This argument is without merit. The fact that the Act grants aggrieved parties the right to seek federal judicial review of state commission decisions cannot deprive the Commission of its independent authority under § 208.

Moreover, the Texas PUC's contention that state commission determinations may not be affected by the Commission is belied by § 253. That section explicitly grants the Commission authority to preempt any legal requirement imposed by a state government that the Commission determines to "have the effect of prohibiting

the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253. Section 208 affords remedies to carriers aggrieved by conduct of incumbent LECs pursuant to anticompetitive, preemptive state laws and regulations.

II. Duty to Negotiate in Good Faith

A. All Previously Negotiated Interconnection Agreements Must be Filed With and Approved by State Commissions

The Commission correctly construed the Act when it concluded that § 252(a)(1) required all interconnection agreements to be filed with state commissions for approval pursuant to § 252(e). The argument made by the Public Service Commission of Wisconsin ("PSCW") that Congress intended only that agreements negotiated before the Act but entered into after the Act be approved by state commissions is meritless. The Commission correctly concluded that the final sentence of § 252(a)(1), which requires that "any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the state commission under subsection (e) of this section," makes clear that all agreements, including agreements that pre-date the Act, should be reviewed for anti-competitive and discriminatory provisions. See Order ¶¶ 165-68. As the Commission noted, "[w]hen Congress sought to exclude preexisting contracts from provisions of the new law, it did so expressly." Order ¶ 165 (citing § 276(b)(3)). Nowhere in its petition for reconsideration has PSCW attempted to refute this argument, nor can it.

The PSCW's suggested reading of the final sentence of § 252(a)(1) makes little sense: it is exceedingly unlikely that any interconnection agreement would have been completely negotiated before the enactment of the 1996 Act, and yet not entered into until after the date of the Act's enactment. And if Congress had simply meant to "capture" those interconnection agreements in which negotiations commenced before the date of the Act's enactment yet were concluded after the enactment date, it surely would have used language such as "any agreement entered into after the date of enactment," rather than the past tense "any agreement negotiated before the date of enactment."

The PSCW also claims that the FCC "relied" on a conclusion in a PSCW order that was later rescinded. Regardless of the position taken and later retracted by one of the hundreds of commentators, the Commission's construction of § 252(a)(1) is sound and need not be revisited.

Just as the Commission has already considered and rejected the statutory construction arguments the PSCW now makes, so too has the Commission already considered and ameliorated the administrative burdens about which the PSCW now complains. The Commission was concerned that requiring rapid review of all preexisting agreements might "impair some states' ability to carry out their other duties." Order ¶ 171. Accordingly, the Commission declined to impose such a requirement, despite the pro-competitive effects that would undoubtedly accrue from a rapid review and approval process. Instead, the Commission mandated only that all preexisting agreements between two Class A carriers be filed by June 30,

1997. Id. Although the PSCW does not reveal in its petition how many of its "over 80 telephone companies" have annual revenues from regulated telecommunications operations of \$100,000,000 or more, see Order ¶ 171, n.336, it is safe to assume that the Commission's rule limits the burden on the PSCW. The reduced burden imposed on states is consistent with the Act, and is well justified by the tremendous pro-competitive gains that will be achieved by reviewing preexisting agreements for discriminatory terms and then making approved terms available to new entrants.

III. Interconnection

A. "Bona Fide Request" and Similar Requirements Should Not be Imposed on Carriers Requesting Interconnection

The LEC Coalition asks the Commission to reconsider its decision not to impose requirements -- including "bona fide request" requirements -- on parties requesting interconnection.^{4/} Purportedly concerned that frivolous requests by interconnectors -- of which they provide no evidence -- will require incumbent LECs to incur costs that they cannot recover, the LEC Coalition also asks the Commission to require an interconnector to commit to take service for, at a minimum, a period of time sufficient to recover the costs of providing the services.^{5/} The LEC Coalition also asks the Commission to permit incumbent LECs to charge "termination liabilities" to ensure that interconnectors pay for all costs "incurred", and to require all interconnectors to provide demand forecasts for

^{4/} LEC Coalition at 19.

^{5/} Id. at 19-20.

the services to be interconnected.^{9/} The LEC Coalition's requests should be dismissed out of hand.

As the Commission correctly noted, § 251(c) does not require new entrants seeking to interconnect or to purchase unbundled elements to from non-rural incumbent LECs to submit a "bona fide request," or to jump through any of the other hoops the LEC Coalition proposes. If Congress wanted to impose a "bona fide request" requirement, it knew how to do so. Section 251(f)(1) provides that a rural telephone company is exempt from the requirements of 251(c) until, among other things, it receives a "bona fide request" for interconnection, services, or network elements. If Congress had intended to impose a "bona fide request" requirement on carriers' interconnection from incumbent LEC, it would have made that requirement explicit.

Even if such a requirement were allowed by the statute, it should not be imposed because it would impede entry of new entrants. Requiring a new entrant to provide a "bona fide request," as the LEC Coalition suggests would delay negotiations and inflate the interconnector's costs. It would also require interconnectors to divulge sensitive marketing and strategic information to their largest competitor, and would not allow a new entrant to respond quickly to changing market conditions. The LEC Coalition's proposals must be rejected because they will needlessly delay the emergence of competition and increase new entrants' costs.

^{9/} Id.

B. Carriers May Obtain Interconnection Pursuant To § 251(c)(2) To Provide Exchange Access or Local Exchange Service.

In the Order, the Commission concluded that a carrier may obtain interconnection pursuant to § 251(c)(2) in order to provide exchange service, exchange access, or both. The Texas PUC, concerned that this interpretation would allow IXCs to buy unbundled switching to provide interexchange service to end users for whom the IXC does not provide local service, and thereby avoid paying access charges, asks the Commission to interpret § 251(c)(2) to allow carriers to obtain interconnection only if they provide both exchange service and exchange access. Because the Commission has already sua sponte issued a reconsideration order indicating that interexchange carriers may not avoid access charges by purchasing unbundled switching,²¹ there is no need to address the Texas PUC's argument.

If the Commission chooses to consider the Texas PUC's argument, it should be rejected. The Commission's interpretation of the language in § 251(c)(2) that requires incumbent LECs to provide interconnection "for the transmission and routing of telephone exchange service and exchange access" is the only plausible one. That language cannot be read to require the requesting carrier to provide both exchange service and exchange access. Indeed, that section specifically requires incumbent LECs to provide interconnection for "any requesting

²¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-394 (released September 27, 1996) (Order on Reconsideration) at ¶¶ 10-13.

telecommunications carrier," including local exchange carriers who are defined in the Act as "any person engaged in the provision of telephone exchange service or exchange access." § 3(a)(44) (emphasis added). See Order ¶ 184. Thus, § 251(c) makes clear that incumbent LECs must provide interconnection for both carriers providing exchange service and for carriers providing exchange access.

Furthermore, as the Commission found, this interpretation is the only one consistent with the Congressional intent to promote competition in the local exchange market. See Order ¶ 185. To read § 251(c) as requiring carriers to offer local exchange service as well as access service in order to obtain interconnection would create barriers to entry, not eliminate them.

C. Congress Clearly Intended Technical Feasibility To Refer Solely To Technical Or Operation Concerns

In the Order, the Commission correctly concluded that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations, and that §§ 251(c)(2) and 251(c)(3) require incumbent LECs to modify their facilities to the extent necessary to accommodate interconnection or access to network elements. The Commission also concluded that a requesting carrier that wishes a "technically feasible" but expensive interconnection would, pursuant to § 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit. See Order ¶ 199.

There clearly is no basis for the LEC Coalition's request that the Commission clarify -- in reality alter -- its position to say that it really intended for incumbent LECs to offer interconnection only where it is not costly or where it

would not require major changes to the existing technologies already deployed in the incumbent LEC's network.^{8/} No ambiguity exists in the Commission's definition of "technical feasibility," nor in the application of this term to the incumbent LECs. The Commission explained at great length that incumbent LECs are obligated to provide interconnection to their networks and access to unbundled elements at any "technically feasible point," and that this obligation is not dependent on economic considerations. Order ¶ 199. The Order correctly explains that (1) the Act bars consideration of costs in determining "technically feasible" points of interconnection or access; (2) in the Act, Congress distinguished "technical" considerations from economic concerns; and (3) the House committee that considered H.R. 1555 dropped the term "economically reasonable" from its unbundling provision because "this requirement could result in certain unbundled . . . elements . . . not being made available."^{9/} See Order ¶ 199.^{10/} Clearly, there can be no doubt that Congress and the Commission intend for the incumbent LECs to offer interconnection and unbundled elements as long as it is technically feasible to do so, without reference to economic cost. The Commission should not consider permitting incumbent LECs to offer interconnection or access to unbundled elements only where incumbent LECs they would not be required to

^{8/} See LEC Coalition at 29-31.

^{9/} H. Rep. 104-204, 71 (1995).

^{10/} Id. at ¶ 199.

make changes in their networks or deploy new technologies, because this would be inconsistent with the intent of the Act.

IV. Access to Unbundled Network Elements.

A. Incumbent LECs Must Perform Functions Necessary to Combine Elements Requested by New Entrants

The Commission should not modify its requirement that incumbent LECs perform the functions necessary to combine elements, provided that such combination is technically feasible. See Order ¶ 296; § 51.315(c). The LEC Coalition asserts that this requirement improperly places an incumbent LEC in the role of a systems integrator for its competitors.^{11/} However, as the Commission correctly noted, because new entrants lack facilities and information about the incumbent LEC's network, it would be difficult, if not impossible for them to combine unbundled elements. The Commission was correct to conclude that Congress, having created the opportunity to enter local markets through the use of unbundled elements, could not have intended to undermine that opportunity by imposing technical obligations on requesting carriers that they might not be able to meet readily. See Order ¶ 293.

Also, contrary to the LEC Coalition's contention, it is completely irrelevant whether the incumbent LEC currently combines elements in the manner in which the new entrant requests that such elements be combined, as long as such a combination is technically feasible. New entrants are required to compensate

^{11/} LEC Coalition at 31.

incumbent LECs for the provision of service that is higher in quality than that which the incumbent LEC provides to itself and the incumbent LEC is permitted to charge a rate that recovers all costs plus a reasonable profit. Restricting a new entrant's offering of services to those currently offered by the incumbent LEC would harm the new entrant's ability to compete with the incumbent LEC, would delay the benefits of competition from reaching the consumer, and would effectively discriminate in favor of the incumbent LEC, which can combine or disaggregate elements for its own purposes as it wishes. End users would see fewer new, efficient, creative products if new entrants could not offer services other than those currently offered by the incumbent LEC. Such a scenario clearly would contradict Congress' intentions.

B. The Commission Should Not Reconsider Its Conclusion That Directory And Operator Assistance Services Are Network Elements

The LEC Coalition's argument that directory assistance and operator services are not network elements subject to the resale requirements was flatly rejected by the Commission in its Order. In rejecting that position, the Commission stated that:

[i]f we were to conclude that any functionality sold directly to end users as a service, such as call forwarding or caller ID, cannot be defined as a network element, then incumbent LECs could provide local service to end users by selling them unbundled loops and switch elements, and thereby entirely evade the unbundling requirement in section 251(c)(3). We are confident that Congress did not intend such a result.