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NOV 14 1996

Federal Communications Commission
Office of Secretary

November 14, 1996

William F. Caton, Secretary
Federal Communications Commission
1919 M Street NW
Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

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,

Lisa B. Smith
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Enclosure

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

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

MCI COMMUNICATIONS CORPORATION'S
REPLY

MCI Communications Corporation ("MCI") respectfully submits its reply in the above-captioned proceeding.

I. The Commission Should Maintain the January 1, 1997 Deadline for Electronic Access to OSS Functions

In their reply comments, various incumbent LECs support the request of Sprint and the LEC Coalition that the Commission reconsider its January 1, 1997 deadline for providing nondiscriminatory access to operations support systems (OSS).^{1/} The incumbent LECs argue that standards-setting activities have not advanced as rapidly as the Commission anticipated when it established the January 1, 1997 deadline, and that the Commission should therefore allow additional time for the implementation of nondiscriminatory interfaces.^{2/}

As MCI stated in its Response to Petitions for Reconsideration, the Commission should not allow the incumbent LECs to use delays in the standards-

^{1/} See, e.g., NYNEX Comments at 2.

^{2/} See, e.g., BellSouth Opposition and Comments at 7-8.

setting process as an excuse to postpone new entrants' electronic access to OSS functions.^{3/} Electronic access to OSS functions is essential to the ability of new entrants to compete effectively in the local exchange market. The Commission should not permit the incumbent LECs to frustrate the deployment of electronic access to OSS systems by obstructing the progress of standards committees.

Linking the deadline for deployment of electronic interfaces to the progress of standards-setting activities would only encourage the incumbent LECs to engage in such a strategy.

II. Non-recurring Charges Must Be Cost-based

Incumbent LECs object to proposals made by AT&T that, if adopted, would require ILECs to price nonrecurring charges at incremental cost^{4/}. As MCI and others have shown, such constraints are necessary because ILECs, which operate in both competitive and non-competitive sectors of the market, have incentive and opportunity to impose upon new entrants costs incurred in the non-competitive portion of their business.^{5/}

AT&T's proposals to allocate non-recurring costs across all providers, and to require non-recurring charges to be based on forward-looking costs, conform to MCI's request that the Commission allow ILECs to recover only the average

^{3/} MCI Response at 21.

^{4/} See e.g., Bell Atlantic Opposition to Petitions for Reconsideration at 3; Ameritech Opposition to Petitions for Reconsideration at 21; USTA Opposition at 5.

^{5/} MCI Reply Comments at 9; MCI Response to Petitions for Reconsideration at 33.

incremental cost of modifying rights of way and upgrading network elements in response to requests for interconnection.^{6/} Other commenting parties have similarly requested that the Commission develop more explicit principles governing prices for the recovery of non-recurring costs.^{7/} MCI urges the Commission to do so.

III. State Regulations on Access to Poles, Ducts, Conduits, and Rights of Way do not Automatically Preempt the FCC's Rules

In their Comments, EEI and UTC oppose NCTA's request that the FCC require states to certify that they regulate the provision of access by utilities. They also assert that "[s]tate regulation of 'access to poles, ducts, conduits, and rights-of-way as provided in subsection (f)' has preemptive effect under Section 224(c)(1) without regard to certification to the FCC or any procedural requirements for handling complaints." EEI/UTC Comments at 8. To the extent that these comments ask the Commission to find that any state regulation in this area preempts the FCC's rules, even if there is no procedure in place to enforce violations of state regulations, that suggestion should be quickly and firmly rejected.

The access duties imposed on utilities under § 224(f), and on ILECs under § 251(c)(4), are an integral part of establishing competition in the local marketplace. To the extent that a state is implementing these duties in accordance

^{6/} AT&T Petition for Clarification and Reconsideration at 11, 16; and MCI Petition for Reconsideration at 33.

^{7/} See e.g., ALTS Reply to Petitions for Clarification and Reconsideration at 3; General Communication, Inc., Comments at 9; WorldCom Petition for Reconsideration at 21; Comptel Comments at 5; MFS Response to Petitions for Reconsideration at 5; US One Communications Corp., Petition for Reconsideration at 7.

with the Act, the Commission has found that its rules in this area are preempted. But regulation in the absence of prompt and effective enforcement is meaningless. Thus, the Commission's finding that a party claiming state preemption must "cite to state laws and regulations governing access and establishing a procedure for resolving access complaints in a state forum" represents the lower bond of what is acceptable. Any attempts to preempt the Commission's rules by pointing to regulations that are not adequate should be dismissed.

In this respect MCI supports California Cable Television Association's ("CCTA's") opposition to the Petition for Reconsideration and Clarification of Pacific Gas & Electric. As CCTA correctly recognizes, states that have previously certified to the FCC on rate matters do not necessarily regulate access. The FCC must make an independent determination of whether these states also adequately regulate access before the state's rules can be deemed preemptive.

IV. The Commission Should Preserve its Definition of Technically Feasible

NYNEX asks the Commission to clarify that ". . . LECs are not required to deploy new technology or construct new facilities in their network in order to satisfy a request for interconnection or an unbundled element."^{8/}

NYNEX argues that if it does not provide a facility or a technology, it should not be required to deploy such facilities or technologies upon request of a new entrant. NYNEX's request for "clarification" is in fact a request that the Commission change its definition of technically feasible to a definition the Commission has explicitly rejected. In essence, NYNEX requests the Commission to limit its definition of

^{8/} NYNEX Comments at 3.

technically feasible to what is currently available. The Commission, however, explicitly rejected this standard when it concluded that sections 251(c)(2) and 251(c)(3) encompass "more than what is merely 'practical' or similar to what is ordinarily done. That is, use of the term 'feasible' implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment."^{9/}

NYNEX also asks the Commission to exclude the video functionalities of its network from its Part 51 rules.^{10/} NYNEX argues that granting new entrants access to broadband functionalities would be inconsistent with the Commission's rules governing telephone company entry into video. Although the Commission has yet to adopt rules that would equitably allocate the joint and common costs of broadband facilities among video and telephone services, NYNEX's argument flies in the face of its arguments, and the arguments made by other ILECs, in CC Docket 96-112, that the vast majority of its broadband loop, distribution and transmission facilities are intended for telephony.^{11/} The

^{9/} Order ¶ 202.

^{10/} Id. at 4.

^{11/} See, e.g., NYNEX Comments, CC Docket No. 96-112 at 10 ("both telephony and video signals will be carried over the same cable"); Bell Atlantic Comments, CC Docket No. 96-112 at 9 (indicating that in Bell Atlantic's network in Dover Township, New Jersey, 28% or less of costs are appropriately allocated to non-regulated video services).

Commission correctly concluded that requesting carriers should have access to these network elements.^{12/}

V. Attachment To Transmission Towers Should Not Be Prohibited

Utility companies argue that no facilities may be attached to electric transmission towers.^{13/} For example, EEI, *et. al.* argue that "the pole attachment provisions speak in terms of poles, ducts, conduits and right-of-way owned or controlled by the utility; it does not contemplate access to any and all utility facilities or facilities for which utilities do not have legal control."^{14/} These arguments are without merit, and should be rejected by the Commission. The Commission correctly made clear that §224(f)(1) requires a broad interpretation of access to any utility company rights-of-way.^{15/} Utility companies fail to offer any engineering, safety, or other reason to unilaterally exclude their transmission facilities from the Commission's pole attachment rules. Indeed, as noted in the Opposition of Continental Cablevision *et al.*, utility companies regularly have permitted telecommunications companies to attach facilities to those towers.^{16/}

^{12/} "The incumbent LEC must also provide, to the extent discussed below, all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier levels (e.g. OC-3/12/48/96) that the competing provider could use to provide telecommunications services." Order ¶ 440.

^{13/} See e.g., Petitions for Reconsideration of the Edison Electric Institute and UTC at 4; ConEd at 11; FP&L at 33-36; and AEP *et al.* at 37-40.

^{14/} Joint Consolidated Comments of the Edison Electric Institute and UTC on Petitions for Reconsideration and/or Clarification, at 3.

^{15/} See Order ¶ 1184.

^{16/} Opposition to Petitions for Reconsideration Regarding access to Poles, Conduits and Rights-of-Way, Continental Cablevision, Inc., *et al.* at 10.

VI. CLECs Should Be Permitted to Collocate Remote Switching Modules

In their reply comments, several incumbent LECs oppose AT&T and MFS's request that the Commission clarify that remote switching modules (RSMs) may be collocated.^{17/} The incumbent LECs argue that the Order permits the collocation only of transmission equipment, not switching equipment. In fact, the Order recognizes that Section 251(c)(6) requires collocation of any equipment used for interconnection or access to unbundled elements. Order ¶ 581. Further, the Order recognizes that "modern technology has tended to blur the line between switching equipment and multiplexing equipment, which we permit to be collocated." *Id.* Thus, new entrants should be permitted to collocate RSMs that are predominantly used to perform multiplexing and other transmission functions. As AT&T notes in its petition, the use of RSMs to access unbundled loops may provide significant operational benefits that would help ensure parity of service with the incumbent LEC.^{18/}

VII. Subcontracting of Work Outside Cages Should Be Permitted

MCI agrees with ALTS that the Commission should reject the LEC Coalition's request that restrictions be placed on interconnectors' right to subcontract the construction of physical collocation arrangements.^{19/} In the Order, the Commission correctly determined that the cost of constructing collocation arrangements could serve as a significant barrier to entry, and required

^{17/} See, e.g., Bell Atlantic Opposition at 20.

^{18/} AT&T Petition for Reconsideration at 33-34.

^{19/} ALTS Reply at 23.

incumbent LECs to permit new entrants to subcontract the construction of physical collocation arrangements. Order ¶ 598. The LEC Coalition asks the Commission to "clarify" that any work associated with the collocation performed outside the cage should not be subject to the right of a collocator to subcontract.

As ALTS notes in its reply, the LEC Coalition has not provided any justification for its request other than a generalized assertion of potential harm. Furthermore, the LEC Coalition has failed to explain why the Commission's rules are not adequate to ensure the integrity of the incumbent LEC's facilities. Pursuant to Section 51.323(j) of the Commission's rules, any contractor would have to be approved by the incumbent LEC, subject only to the condition that the incumbent LEC shall not unreasonably withhold approval of contractors. In addition, Section 51.323(j) states that the LEC's approval of contractors shall be based on the same criteria it uses in approving contractors for its own purposes. Subcontracting by new entrants thus presents no unique potential for harm to the incumbent LEC's network.

VIII. Shared Facilities Should not be Narrowly Defined

NYNEX asks the Commission to "clarify" that access to shared transmission facilities "between end offices and the tandem switch," means only access to shared transmission facilities between the ILEC's end offices and the ILEC's tandem switch.^{20/} NYNEX's request should be rejected.

^{20/} NYNEX Comments at 10.

The Order properly demonstrates a commitment to making available all elements which are useful in opening local markets, and which are technically feasible to provide. For example, as NYNEX noted, the Commission also required incumbent LECs to provide unbundled access to dedicated transmission facilities between LEC central offices or between such offices and those of competing carriers. It further requires incumbent LECs to provide access to shared and dedicated interoffice facilities, including facilities between incumbent LEC end offices, new entrant's switching offices and LEC switching offices.

NYNEX provides no basis for limiting the Order on shared transmission facilities. It does not, for example, argue that it is technically infeasible to provide access to shared facilities between an ILEC's network and the switching facilities of another carrier. Nor does it point to any proprietary or other concern that the Commission failed to consider. Instead, it merely argues that, "traditionally," shared facilities have been provided between an incumbent LEC's central offices and its own tandems. This does not begin, of course, to provide a basis to alter the Order, and the Commission should refuse to do so.

IX. The Commission Should Not Modify Its Definition of "Premises"

Section 251(c)(6) of the 1996 Act requires that incumbent LECs provide physical collocation "at the premises of the local exchange carrier." In the Order, the Commission defines "premises" broadly to include LEC central offices, serving wire centers, and tandem offices, as well as all buildings or similar structures owned or leased by incumbent LECs. Order ¶ 573. In its Petition for

Reconsideration, the LEC Coalition asks the Commission to remove vaults and other small structures from the definition of "premises," arguing that these structures do not provide sufficient space for collocators' equipment.^{21/} NYNEX has supported this request.^{22/}

The Commission should reject these requests to modify its definition of "premises." Nothing in the Act limits the scope of "premises." Furthermore, generalized assertions that space limitations would limit the opportunities for physical collocation in certain classes of structures do not justify modification of the definition of "premises." The Order makes clear that space considerations will be addressed on a case-by-case basis, and that physical collocation will not be required in locations where there are space limitations. Order ¶ 575.

Respectfully submitted,

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^{21/} LEC Coalition Petition for Reconsideration at 6.

^{22/} NYNEX Comments at 7.

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I, Martha Bishop, do hereby certify that copies of the foregoing Opposition to Petitions for Reconsideration were sent via first class mail, postage paid, to the following on this 14th day of November 1996.

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