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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Applications of	)	GN Docket No. 96-245
MCI Communications Corporation and	)	
British Telecommunications PLC	)	
For Consent to Transfer of Control	)	

REPLY COMMENTS OF
ANDREW L. SOMERS, PRESIDENT
IRISH AMERICAN UNITY CONFERENCE

Andrew L. Somers, President of the Irish American Unity Conference submits these reply comments in response to the Commission's Notice of an Application for FCC Consent for a Proposed Transfer of Control in this docket (GN 96-245), released December 10, 1996. The proposed transfer of control of MCI Communications Corp. (MCI) to British Telecommunications plc (BT) raises profound issues of the security of the United States and of the privacy and rights of its citizens. In considering the instant Application, it is important that the Commission fully address these issues, and not just questions of economic competitiveness.

INTRODUCTION

1. The Irish American Unity Conference is an American non-profit educational organization with a nationwide membership. One of our major concerns is the abuse of human and civil rights in Northern Ireland, and the political and governmental structures that give rise to those abuses. We have also learned to be concerned about the actions of the British government in the United States when the British government is dissatisfied with American citizens' exercising their rights to voice their opposition to British government policies. I am the President of the

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Irish American Unity Conference. I am also an attorney admitted to practice in the State of Wisconsin.

2. British Telecommunications plc (BT) and MCI Communications Corp. (MCI) have proposed to merge their two corporations. BT is a British company and is the largest telephone company in Britain; it is also the main telephone carrier in Northern Ireland. Historically, BT was a state-owned enterprise and only in recent years has it been privatized. The British government continues to hold a large number of shares in the company. The extent to which BT continues to hold its historical monopoly position in the British telephone market, is the focus of other comments filed in this proceeding.

3. MCI is the second largest long-distance carrier in the United States and is actively seeking to enter other telecommunications businesses, including local telephone service. Both companies are actively seeking to expand from telephone-based operations to other forms of telecommunications. The combined assets of the merged companies would be $20.8 billion; it would be the largest-ever foreign takeover of an American company. The structure of the merger is such that BT would totally control MCI. Both companies would merge into a new British company called Concert plc (Concert).

PROHIBITION ON FOREIGN OWNERSHIP

4. Federal statute generally prohibits foreign ownership of the wireless licenses which MCI now owns and proposes to transfer to a foreign company. (47 U.S.C. § 310.) Foreign ownership of up to 20% of a U.S. corporation which holds a wireless license is permitted under the statute. The FCC may waive the ownership restriction and permit up to 100% foreign ownership, if the FCC finds such ownership to be "in the public interest." Thus, in the instant

Application, BT and MCI seek an FCC waiver of the ordinary statutory rule of no foreign ownership. If the FCC does grant the waiver, it would be the first time that the United States has allowed such foreign ownership of a license.

5. Thus far, analysis and comments by the FCC and by MCI's economic competitors, has focused on the economic competition aspects of the merger. In doing so, the industry and the FCC are failing to properly consider the original reason for the statutory prohibition on foreign ownership--the United States' national security interests.

6. Congress first enacted the statutory prohibition in 1927 and did so to prevent alien control of American communications facilities. The lessons of World War I had taught the United States the dangers of espionage and propaganda disseminated through foreign owned radio stations. The clear purpose of the prohibition is to protect national security. (Noe v. FCC, 260 F.2d 739.)

7. It is my understanding that the FCC has never granted a waiver of the foreign ownership provision. Certainly, the FCC has never granted a waiver in a transaction of the magnitude proposed by BT and MCI. So, the Commission must address certain fundamental questions: (a) what is the condition of Great Britain's relationship to the United States of America and (b) whether the proposed BT-MCI merger comports with the national security purpose for which the statutory prohibition was enacted.

8. That Great Britain is a putative ally does not answer these questions; it merely begs other questions. Several Executive Branch agencies have notified the FCC that the FCC should "expressly preserve" the executive agencies' right to comment on the foreign policy and national security aspects of the merger. (Telecommunications Reports, 12/9/96, at 21.)

9. The burden of proof that the requested waiver does not impinge on national security must lie with those requesting the waiver. Both the burden of coming forward with evidence and the burden of persuasion must be borne by BT and MCI. This allocation of the burden of proof inheres in the very nature of the general statutory prohibition. I submit that BT and MCI have not met their burden, especially in light of the facts and questions raised below.

QUESTIONS OF BRITISH INTERFERENCE IN U.S. GOVERNMENT

10. The United States' relationship with Britain can be a delicate one, particularly as it relates to Northern Ireland. The sordid Mitchell-Pope-Kelly affair is a case very much in point. It raises profound questions of British interference in the workings of the United States Government.

11. Former Senator George Mitchell is a United States Government official, who, for over a year, has been acting as Special Adviser to the President on Irish Affairs. Since June 1996, Sen. Mitchell has been acting as Chairman of peace talks in Northern Ireland which have been sponsored by the British government and which involve most, but not all, of the political parties in Northern Ireland. Great Britain historically resisted any American role in Northern Ireland political discussions and Britain consented to Sen. Mitchell's role only with great reluctance. Some of the political parties which favor continued British control over Northern Ireland have continued to oppose Sen. Mitchell's chairmanship. Their objections have been based on the facts that he is an American and a Catholic, as well as their claim that he is sympathetic to Irish Nationalists, who do not favor continued British control over Northern Ireland.

12. In November and December of 1996, Sen. Mitchell was a leading candidate to replace Secretary of State Warren Christopher. On December 1, 1996, the British newspaper. the Mail

on Sunday, reported that a close aide to Sen. Mitchell, Martha Pope, was involved romantically with one Gerry Kelly. The news article also reported that MI5 had monitored Pope-Kelly liaisons and that British Intelligence had warned President Clinton of the relationship. The story was picked up by news media throughout Britain and the United States, and was a sensation for several weeks.

13. Mr. Kelly had been imprisoned for many years for Irish Republican Army activities. In 1996, he was a leading representative of the Sinn Fein political party in its political efforts to gain entry to the negotiations being chaired by Sen. Mitchell. Mr. Kelly is also an elected member of the Belfast City Council.

14. Martha Pope is a longtime United States diplomat, who has been acting as a key aide to Sen. Mitchell in his role as Special Adviser to the President and Chairman of the peace talks in Northern Ireland. It would have been entirely improper for Ms. Pope to have had the relationship with Mr. Kelly which was alleged. In fact, the allegation was completely false.

15. The story, with all its lurid aspects, was widely published in the British and American press for at least a week. Those Northern Ireland political parties which had opposed Sen. Mitchell's role as Chairman of the peace talks used the story to call for Ms. Pope's dismissal and to impugn Sen. Mitchell's integrity and competence. Ms. Pope's reputation was severely damaged. Sen. Mitchell's own reputation was severely damaged at a crucial time when the President was considering whom he should nominate to be the next Secretary of State for the United States.

16. After several weeks the Mail on Sunday admitted that the story was false, apologized to Ms. Pope, and agreed to a substantial out-of-court settlement of Ms. Pope's claim for

defamation. The newspaper also said that its original source for the story was information supplied by the British Intelligence agency MI5, the British equivalent of the FBI.

17. United States Congressman Peter King has raised serious questions as to whether this dirty-tricks operation by British Intelligence was a smear campaign designed to scuttle Sen. Mitchell's prospects for being appointed Secretary of State. The New York Post (12/3/97) also reported that sources close to the peace process believe that British Intelligence planted the story to destroy Sen. Mitchell's chances to become Secretary of State. The British would be unhappy with Sen. Mitchell as Secretary of State because of their perception of him as being too "soft" on Irish issues. In the end, of course, Sen. Mitchell was not appointed Secretary of State and Mitchell-Pope-Kelly affair could only have damaged his prospects. Congressman King has called upon the State Department to investigate the matter and has also called for Congressional hearings on it.

18. At least as of early January 1997, the British government was still refusing to comment on the involvement of its intelligence services in this matter. To my knowledge, they have not yet explained the role of British Intelligence in this affair.

19. This matter raises profound and troubling questions of possible British government interference in the American process of choosing a Secretary of State. Naturally, it is virtually impossible for ordinary citizens, such as those in the Irish American Unity Conference, to definitively answer such questions. We have no access to the inner workings of British Intelligence service. However, such a burden is not ours to bear in this proceeding. It is for BT and the British Government to definitively establish that there is no such interference in order to satisfy this Commission that BT should be granted the extraordinary national security waiver

which it seeks.

THE BT-BRITISH INTELLIGENCE CONNECTION

20. BT has a long history of direct involvement in British Intelligence operations, especially MI5 and especially in Northern Ireland. This includes wiretapping and other electronic surveillance on a scale so pervasive as to boggle American minds.

21. One important electronic surveillance facility is based in a BT building in the southwest of London. It is staffed by a special squad of BT engineers, who have no contact with ordinary telephone staff. This operation is the national BT tapping center and is known as "Tinkerbell." From this facility BT taps telephone calls and relays the calls directly to British Government Communications Headquarters (GCHQ) for tape-recording. Through GCHQ all of the British Intelligence agencies--MI5, MI6 and Special Branch--have access to the services of BT telephone tapping. Estimates are that at least thirty thousand individual telephone lines are tapped in this way each year. Overseas conversations are particularly targeted. (Murray, Enemies of the State, Simon & Schuster [1993], at p. 112; Milne, The Enemy Within: MI5, Maxwell and the Scargill Affair, Verso [1994], at p. 280).

22. BT's direct and ongoing involvement in British Intelligence operations undercuts any claim that this British company operating in America would be free from influence and even control by British Intelligence agencies. And there is sound reason to question whether those foreign intelligence agencies can be completely trusted in matters involving the security and integrity of the United States government, as evidenced in the Mitchell-Pope-kelly affair.

PRIVACY CONCERNS OF AMERICAN CITIZENS.

23. As a British company operating in America, there are real questions as to whether BT

would maintain the telephone and telecommunications privacy of ordinary American citizens, and even governmental officials. BT would have access to the telephone records and actual conversations of millions of American citizens. Presumably some of these people would be important United States government officials. Of course, invasions of individuals privacy might also be used in ways contrary to the national security interests of the United States. After all, the attack on Ms. Pope was a bungled attempt to invade her privacy.

24. The overseas telephone calls sent and received by Americans using what is now MCI would be in obvious danger. It is far from clear that the new company would be bound by United States' privacy laws for calls that are not entirely within the borders of the United States. Would, for example, the new British company Concert adhere to American law regarding calls originating from the United States and being placed to Britain? Or, would current British law and practice mean that such calls would be subject to monitoring?

25. Even as to domestic United States telephone calls, serious questions exist. United States law does prohibit a telephone company from eavesdropping on the contents of telephone calls. However, a foreign telephone company may be subject to overriding demands or pressures from the government of its home country.

26. A further problem is that of American citizens' customer proprietary network information (CPNI), which includes the telephone toll records that show to whom they talk. The new British company, Concert, will possess this data on millions of Americans. The extent to which Concert may legally use this information under the Telecommunications Act of 1996 remains an open question currently being considered by the Commission in a separate proceeding--CC Docket No. 96-115. Even assuming that CPNI is protected under American law, there may

be nothing preventing Concert from transferring that information to its home base in Britain, where it may not be subject to American law.

27. Wherever the precise legal lines of American law may be drawn as to privacy, an overriding problem for American citizens and for this Commission will be enforcement of those laws. With an American company, it is generally fair to assume a lack of ulterior motive and to assume a measure of good faith when it comes to privacy. It is highly unlikely that an American company would have much motive to engage in domestic spying and to conceal that fact from the Commission. The same cannot be said of a British telecommunications company with the kind of the extremely close ties to British Intelligence operations, which BT has. This Commission is not equipped with the resources and expertise to police Concert's behavior in a way that could guarantee American citizens' privacy.

THE FIRST AMENDMENT QUESTION

28. The transfer to BT of MCI's Direct Broadcast Satellite (DBS) authorization raises serious problems under the First Amendment which the Commission must address if it is to protect the interests of the American people. DBS is a media service and the British government, which licenses BT, does not recognize freedom of the press as that term is understood in the United States. Indeed, according to the Norwegian Helsinki Committee, Britain is the leading exponent of media and press censorship in Western Europe. [1]

29. Indicative of this censorship is the British government's Broadcasting Ban under which Sinn Fein, a legal political party in Northern Ireland, was silenced on British radio and

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[1] See "Irish Terrorism or British Colonialism? The Violation of Human Rights In Northern Ireland", Chapter III, Freedom of the Press In Britain, p. 16, published by the Norwegian Helsinki Committee, Oslo, July 1990.

television for six years from 1988 through 1994. It was not until after President Clinton courageously granted a visa to Gerry Adams, the leader of Sinn Fein, in January 1994, enabling Adams to come to New York to speak freely to the world's news media, that the British government in September, 1994, finally ended the Broadcasting Ban. [2]

30. The Commission must address the Broadcasting Ban and its implications before it turns an American satellite service over to a party as closely identified with the British government as BT. In this regard it is important to note that under British law imposition of the Broadcasting Ban did not require any action by the British Parliament. The Ban was administratively imposed by the Home Secretary. Broadcasting is a state monopoly in Britain under the Wireless Telegraphy Act (1949) and requires a special license from the Home Secretary. Licenses are "subject to such terms, provisions and limitations as the Home Secretary ... may think fit" (Wireless Telegraphy Act 1949, Part I, Sec. 1(2)). If the Home Secretary decides to order British licensees, both telephone and broadcast, not to carry news or other programming adverse to the government's position on Northern Ireland, as the Home Secretary did in 1988, or on some other matter of importance to the British government,[3] will the BT satellite operation comply ? Concert plc is to be a British corporation based in London where it will be subject to not only British law but the power of the British government. How does the

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[2] For an extensive discussion of the Broadcasting Ban, see the Petition For Declaratory Ruling filed with the Commission on January 6, 1994, by The Irish National Caucus and James V. Mullin of the Irish American Unity Conference, South Jersey Chapter, requesting a ruling that BBC and other British programming about Northern Ireland was censored by the British government.

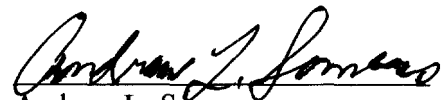
[3] Northern Ireland is not the only subject on which the Home Secretary has issued such notices, merely the most recent. See, "The History Behind A Mistake", British Journalism Review, Vol. 1, No. 2, Winter, 1990, p. 34 etc.

Commission propose to assure the American people that MCI's DBS operations will be immune from censorship or other more subtle manipulation by the British government?

CONCLUSION

31. The Commission should exercise extreme caution in judging whether the instant request for a waiver of the ordinary statutory prohibition on foreign ownership is in the public interest. The public interest here is more than just what might be economically good for MCI or for an American company that might want to do business in Great Britain. The Commission's primary concerns must be the national security interests of the United States and the related issues of the privacy and First Amendment interests of American citizens. The burden should be on BT and MCI to fully justify why the Commission should grant the extraordinary waiver which they are requesting. Unless and until BT and MCI completely and satisfactorily resolve the questions raised above, the Commission should deny them that waiver.

Respectfully submitted,



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