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MAY 6 1997

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

In the Matter of)
)
Petition of MCI) File No. CCBPol 97-4
for Declaratory Ruling) CC Docket No. 96-98

REPLY COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION

The Telecommunications Industry Association ("TIA"), hereby submits the following reply to initial comments submitted in response to the questions posed in the Commission's March 14 Public Notice concerning MCI's above-captioned request for a declaratory ruling.¹

TIA is a national trade association whose membership includes over 625 manufacturers and suppliers of all types of telecommunications equipment and related products and services. TIA's members collectively provide the bulk of the physical plant and associated equipment and software used to support and improve the nation's telecommunications infrastructure. Many of TIA's members are current or potential suppliers of products purchased by incumbent local exchange carriers (ILEC) which are embedded in or utilized in connection with ILEC network facilities and services.

¹ Public Notice, "Pleading Cycle Established for Comments on Petition of MCI for Declaratory Ruling that New Entrants Need Not Obtain Separate License or Right-to-Use Agreements Before Purchasing Unbundled Elements," CCBPol 97-4, CC Docket No. 96-98, DA 97-557 (released March 14, 1997) ("Public Notice").

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In its public notice, the Commission requested comment on whether the intellectual property rights of equipment vendors are implicated when ILECs provide requesting telecommunications carriers with unbundled network elements or services for resale pursuant to Section 251 of the Communications Act, as amended by the Telecommunications Act of 1996.² As the initial comments submitted by several of TIA's members indicate,³ depending on the particular circumstances, the provision of any unbundled network element or resold service may implicate the intellectual property and related rights of equipment vendors. While TIA supports the removal of barriers to competition in the provision of local telecommunications services,⁴ TIA strongly urges the Commission, in implementing the requirements of Section 251 and related provisions, to make every effort to ensure that where the intellectual property rights of one or more vendors are implicated, those rights are protected.⁵

Whether vendor intellectual property rights are implicated and, in turn, whether additional licenses or rights-of-use agreements are required in specific cases will depend on the nature of the intellectual property included in the unbundled network element or resold service, the terms of existing agreements, the nature of the requesting carrier's access and use, and the

² 47 U.S.C. § 251.

³ See Comments of Lucent Technologies, Inc., ("Lucent Comments") at 4-5; Comments of Northern Telecom, Inc. at 2, 5-8.

⁴ See Comments of Telecommunications Industry Association in Response to Notice of Proposed Rulemaking, CC Docket 96-98 (May 16, 1996).

⁵ As one commenting party notes, a manufacturer's intellectual property typically represents one of its most valuable assets. See Lucent Comments at 1.

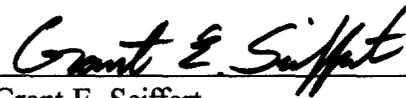
governing law with respect to the creation, use and licensing of intellectual property.⁶ Once all of these factors have been considered, a vendor may well determine that its rights are not implicated or that no additional license is required. However, where an ILEC's provision of unbundled elements or resold services to a requesting carrier implicates vendor rights that are not fully protected under existing agreements, it may be necessary for the vendor to negotiate additional agreements with the ILEC and/or the requesting carrier which provide such protection.⁷

⁶ See e.g., Lucent Comments at 3, 6.

⁷ Determinations as to whether vendor intellectual property rights are implicated and how such rights are to be protected in particular circumstances are appropriately left in the first instance to the individual vendors, in consultation with the affected ILECs and requesting carriers. The Commission clearly is ill-equipped to make such determinations. Any disputes which may arise with respect to the nature and extent of a vendor's intellectual property rights and associated agreements can best be resolved by the private parties themselves or, where necessary, by the courts and/or administrative agencies charged with resolving claims in this area. See Nortel Comments at 5.

Accordingly, TIA urges the Commission, in responding to MCI's petition, to refrain from taking any action which would preclude vendors from maintaining and asserting their intellectual property rights and negotiating such additional agreements as may be required in order to fully protect such rights.

Respectfully submitted,



Grant E. Seiffert
Director of Government Relations
**Telecommunications Industry
Association**
1201 Pennsylvania Ave., N.W.
Suite 315
Washington, DC 20044-0407
Phone: (202) 383-1483

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