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June 18 1997 ORIGINAL

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JUN 18 1997

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

Frank W. Krogh  
Senior Counsel and Appellate Coordinator  
Federal Law and Public Policy

Re: Expedited Reconsideration Concerning Section 272(e)(4),  
CC Docket No. 96-149

Dear Mr. Caton:

MCI Telecommunications Corporation (MCI) hereby responds to a purported analysis of Congress' intent in passing Section 272(e)(4) of the Communications Act of 1934, added by the Telecommunications Act of 1996, contained in a memorandum and attachments submitted on behalf of the Bell Operating Companies (BOCs) with a cover letter by Mark L. Evans, dated June 4, 1997. The gist of the memorandum is that a previously undisclosed understanding between the BOCs and two Senators in an earlier Congress somehow supports the BOCs' current interpretation of Section 272(e)(4) as passed in the 1996 Act. According to this memorandum, a predecessor to what is now Section 272(e)(4) was included in S. 1822 in the 103rd Congress, 2d Session, at the insistence of the BOCs. This predecessor provision, according to the memorandum, was intended to implement the BOCs' desire to limit the separate subsidiary requirement to "sales and marketing functions" only, so that the separate subsidiaries would not be "required to construct and use separate facilities" in providing any interLATA services, irrespective of the separate subsidiary requirement.

The problem with this newly minted historical interpretation is that the only evidence of the broad intent the BOCs wish to read into the predecessor provision consists of a letter dated August 4, 1994 from a BOC representative to two members of Congress. Nowhere in S. 1822 or any other legislative proposal, or in any committee report, floor remarks or even letters by those two members or any other member of Congress is the BOCs' reading spelled out or even acknowledged. (Indeed, a second letter from the same BOC representative, dated August 9, 1997, which is also attached to the memorandum, does not even suggest such a broad limitation on the separate subsidiary requirement.) The predecessor provision, like Section 272(e)(4), says nothing about limiting the separate subsidiary requirement otherwise

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applicable to specified interLATA services (such as, for example, language to the effect that "notwithstanding the separate subsidiary requirement in section..."). Without such language indicating a broad limitation on the separate subsidiary requirement in S. 1822 itself, the BOCs get no traction from their self-serving letters.

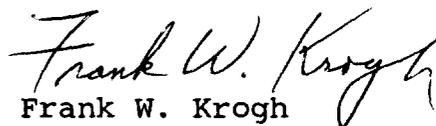
The BOCs' reading is also undercut by the strengthening of the separation requirements in the final version of the 1996 Act, which added the independent operation requirement in Section 272(b)(1) and the separate employee requirement in Section 272(b)(3). Whatever reading the BOCs might advance as to predecessor legislative proposals not containing those strengthened separation requirements cannot be squared with the requirements in the 1996 Act as finally passed. Indeed, if anything, the strengthening of the separation requirements from S. 1822 to the 1996 Act can only be read as a repudiation of the BOCs' bid, in their August 4, 1994 letter attached to the BOC memorandum, for a broad limitation on the separation requirements, if, indeed, any member of Congress was ever aware of the BOCs' request in the first place.

The BOCs' attempt to elevate unanswered letters from a private citizen to members of Congress to the status of legislative history is a perfect illustration of the abuses to which reliance on legislative history can lead. Typically, opponents of the use of legislative history point to evidence of legislative intent "planted" in committee reports or in Congressional remarks as examples of the abuses that undermine any justifiable reliance on legislative history. Here, the BOCs have gone a step further, planting their own views in letters to members of Congress. This is why the text and structure of the legislation itself is the best evidence of legislative intent. In this case, as previously demonstrated by MCI in its comments, the interLATA facilities and services that BOCs are authorized to provide to their affiliates under Section 272(e)(4) can only be those interLATA facilities and services that BOCs are permitted to provide directly, such as out-of-region services. Otherwise, the separation requirements of Section 272(b) will be eviscerated, and the separate subsidiaries required by Sections 271 and 272 will become hollow shells.

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If any Commission staff believe that it would be productive to discuss any of these matters further, please do not hesitate to call me. The original and a copy of this letter are being submitted for filing in this docket.

Yours truly,

  
Frank W. Krogh

cc: Regina Keeney  
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