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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
MCI TELECOMMUNICATIONS CORPORATION) CC Docket No. 96-149
)
Petition for Declaratory Ruling)
Regarding the Joint Marketing)
Restriction in Section 271(e)(1) of the)
Communications Act of 1934, as amended) DOCKET FILE COPY ORIGINAL
by the Telecommunications Act of 1996)

REPLY COMMENTS OF AT&T CORP.

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Summary

AT&T demonstrated in its initial comments that the materials presented to the Commission by MCI, as well as the additional AT&T materials introduced in this proceeding, are wholly proper under the Commission's NonAccounting Safeguards Order, which implemented the joint marketing restriction contained in Section 271(e)(1) of the Communications Act of 1934, as amended.

None of the other commenters demonstrate that the types of marketing materials at issue in this proceeding violate the joint marketing restriction. To the contrary, as AT&T demonstrates here and in its initial comments, interexchange carriers may: (1) reference their status as long distance providers when marketing local services; (2) discuss their ability to provide joint customer care services; and (3) provide end users a single telephone number for the ordering, billing, and maintenance of local and long distance services, so long as they do not provide -- and do not create the appearance of providing -- one-stop shopping through a single transaction. The contrary and overly restrictive interpretation of the joint marketing restriction advocated by the other commenters simply goes beyond the statutory restriction, and would have a chilling effect on the development of local competition.

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REPLY COMMENTS OF AT&T CORP.

Pursuant to the Commission's May 9, 1997 Public Notice, AT&T Corp. ("AT&T") hereby submits these reply comments regarding the petition of MCI Telecommunications Corporation ("MCI") for a declaratory ruling concerning the joint marketing restriction contained in Section 271(e)(1) of the Communications Act of 1934, as amended (the "Act").

Aside from AT&T, comments on MCI's petition were filed by (1) SBC Communications, Inc. ("SBC"), (2) the Ameritech Operating Companies ("Ameritech"), (3) US WEST, Inc. ("US WEST"), (4) Time Warner Communications Holdings, Inc. ("Time Warner"), and (5) Bell Atlantic and NYNEX (collectively, the "commenters"). None of the commenters has demonstrated that any of the materials discussed herein or in AT&T's initial comments violate the joint marketing restriction. In addition, the vastly divergent

interpretations of the Commission's NonAccounting Safeguards Order expressed by the commenters on the one hand, and AT&T and MCI on the other, confirm the appropriateness of MCI's petition for a declaratory ruling.

I. MCI'S PETITION IS NOT A PETITION FOR RECONSIDERATION OF THE COMMISSION'S 271(E) (1) RULES

As a threshold matter, Ameritech -- alone among the commenters -- argues that MCI's petition is tantamount to a petition for reconsideration of the Commission's First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 96-149, FCC 96-489 (December 24, 1996) (the "NonAccounting Safeguards Order"), and should therefore be denied. (Ameritech Comments at 5-7.) Ameritech's claim should be summarily rejected.

As demonstrated in AT&T's initial comments and this reply, the materials presented to the Commission by MCI, as well as the additional AT&T materials introduced in this proceeding, fall squarely within the scope of permissible marketing activities recognized in the Commission's Nonaccounting Safeguards Order. Reconsideration of that order is neither sought nor warranted for proper disposition of MCI's petition.

To the contrary, the Commission's regulations expressly provide that the Commission "may . . . on motion issue a declaratory ruling terminating a controversy or removing uncertainty." 47 C.F.R. § 1.2. Here, it is the

Bell Operating Companies ("BOCs") that have created the controversies that have led to MCI's petition, and threaten to chill the vigor of competitive entry in the monopoly local markets. Indeed, it is hard to conceive of an issue that is more appropriate for resolution through issuance of a declaratory ruling than MCI's petition. The BOCs have already filed one formal complaint before this Commission¹ and another complaint before the California Public Utilities Commission concerning these matters.² Moreover, the threat of inconsistent and overly restrictive interpretations of the joint marketing restriction has significant potential to chill the IXCs' efforts to enter the local market. Thus, as MCI pointed out in its petition, declaratory relief is especially appropriate where, as here, confusion over the meaning and application of a particular policy or rule threatens to spawn unnecessary litigation that may result in conflicting rulings in different jurisdictions. MCI Petition at 6, fn. 17 (citing cases).

Ironically, Ameritech cites the Commission's stated intention to examine the factual circumstances surrounding any claims that the joint marketing restriction has been violated as

¹ Ameritech Corporation v. MCI Telecommunications Corp., File No. E-97-17 (FCC).

² Pacific Bell v. AT&T Communications of California, Inc. & MCI Telecommunications Corp., Case No. 97-03-016 (Cal. PUC).

somehow supporting its assertion that MCI is acting improperly by requesting the Commission to review certain of its marketing materials to determine whether any of them violate the joint marketing restriction. (Ameritech Comments at 5-6.) However, it is precisely because the Commission recognized in its NonAccounting Safeguards Order that it would need to revisit its order in the future because it could not predict all of the marketing strategies that IXCs might initiate that makes MCI's petition appropriate for a declaratory ruling.³ Ameritech's assertion that MCI's Petition is improper should be rejected.

II. AN OVERLY BROAD INTERPRETATION OF THE JOINT MARKETING RESTRICTION WOULD HAVE A CHILLING EFFECT ON THE DEVELOPMENT OF LOCAL COMPETITION

A number of the commenters dismiss MCI's concern that an overly broad interpretation of the joint marketing restriction would have a chilling effect on the development of local competition. (Ameritech Comments at 6; SBC Comments at 4-5; Time Warner Comments at 6-7.) SBC, for example, argues that the clarification that MCI seeks would

³ In any event, Ameritech's claim that MCI cannot seek clarification of the Commission's order cannot be squared with its own request that the Commission reconsider its decision to allow carriers to market new services to an existing subscriber, once that customer subscribes to both resold local and interLATA services from the IXC. Specifically, Ameritech urges the Commission to "take this opportunity to make clear" that IXCs "may not engage in pre- or post-sale joint marketing of resold local and long distance services." Ameritech Comments at 10. Ameritech cannot claim that MCI's petition for a declaratory ruling is somehow

contravene the purpose of the joint marketing restriction, and that consumers would be harmed by giving IXCs an "unrestricted opportunity" to "jointly" market resold local and long distance services. (SBC Comments at 4-5). The commenters are wrong.

As an initial matter, neither AT&T nor MCI has argued, as SBC represents, that the IXCs' ability to market resold local and long distance service prior to BOC entry should be "unrestricted." At the same time, the Commission should not, as the commenters suggest, restrict IXC marketing activities beyond that required by the Act. US WEST, for example, goes so far as to suggest that the joint marketing restriction should prohibit IXCs from stating that they can provide both local and long distance services. See US WEST Comments at 4 (stating that one of MCI's ads is objectionable because, *inter alia*, "anyone reading [the] ad will know that they may obtain both local and long distance" services from MCI). However, the purpose of the joint marketing restriction is not, as the commenters apparently believe, to prevent customers from being able to purchase both local services and long distance services from IXCs prior to BOC entry into the long distance market, but rather generally to prevent the largest IXCs from being able to

(Footnote continued from previous page)

inappropriate while, at the same time, it, in fact, seeks reconsideration of the NonAccounting Safeguards Order.

offer bundled packages of resold local and long distance services or one-stop shopping through a single transaction before the BOCs gain such entry. See Report of the Committee on Commerce, Science & Transportation on S. 652, S. Rpt. 104-23, at 23 (Mar. 30, 1995); NonAccounting Safeguards Order at ¶¶ 277-288, 280.⁴

SBC and the other commenters ignore the balance that Congress tried to achieve between, on the one hand, facilitating efforts by IXCs and other industry participants to achieve the Act's fundamental purpose -- to break the BOCs' monopoly stranglehold on the local market -- and, on the other hand, not giving the IXCs what was deemed an unfair advantage in the marketplace. It is the derailment of this carefully struck balance as a result of an overly broad interpretation of the joint marketing restriction that will harm consumers because of its adverse effect on the

⁴ Indeed, contrary to the position that SBC is now taking, it espoused a very different - and much more narrow -- interpretation of the joint marketing restriction prior to issuance of the NonAccounting Safeguards Order. In a letter to the California Public Utilities Commission dated May 9, 1996, Pacific Telesis Group's General Counsel Richard Odgers stated:

"The term "jointly market" is not defined in the Act but we believe the proper interpretation is that it precludes marketing in which, for example, local and interLATA products are bundled or packaged together. But we do not believe the "jointly market" prohibition of 271(e) (1) prevents AT&T -- on a single call -- from selling local and long distance, so long as the products are not bundled together."

Letter from Richard W. Odgers to Gregory Conlon dated May 9, 1996 at 1 (emphasis in original).

ability of the IXCs to break the BOCs' monopoly -- not, as SBC argues, a ruling confirming that the types of materials that the IXCs have been using to date are lawful.

III. MARKETING MATERIALS THAT DISCUSS THE IXCS' ABILITY TO PROVIDE JOINT CUSTOMER CARE FOR BOTH RESOLD LOCAL AND LONG DISTANCE SERVICE DO NOT VIOLATE THE JOINT MARKETING RESTRICTION

The commenters also complain about MCI marketing efforts that discuss MCI's ability to provide joint customer care -- i.e., a single bill and a single point-of-contact for maintenance and repairs. (E.g., Ameritech Comments at 9-10; Time Warner Comments at 10.) In addition, SBC annexed to its comments an AT&T marketing piece that states that AT&T provides a single number for customer service. (See Attachment 7 to SBC's Comments.) The commenters, however, do not dispute that the Commission's NonAccounting Safeguards Order expressly permits IXCs to provide such services -- they just object to the fact that IXCs are marketing their ability to provide them. At bottom, the commenters' interpretation of the NonAccounting Safeguards Order would reduce the IXCs' ability to discuss their joint customer care services to nothing more than a statement that "We can offer you a service, we just can't tell you what it is." Obviously, the NonAccounting Safeguards Order cannot be read to require such an absurd result. As the Commission recognized in that Order, carriers cannot be precluded from discussing their ability to provide services that they are lawfully entitled to provide. As noted in AT&T's initial

comments, a contrary ruling would raise serious First Amendment concerns. 44 Liquormart v. Rhode Island, 116 S. Ct. 1495, 1505 (1996) (First Amendment provides constitutional protection of accurate and nonmisleading commercial messages); see AT&T Comments at 12.

The commenters also mistakenly assert that MCI had created the impression of one-stop shopping by virtue of its statement that it offered customers "one company to consult for all your communications." (E.g., Ameritech Comments at 9; SBC Comments at 6.) SBC also complains about AT&T statements in a local service ad and a radio interview that it can provide both local and long distance services. (SBC Comments at 8.⁵) The conclusion that such statements imply one stop-shopping is erroneous, and illustrates a problem with the commenters' overly broad interpretation of the prohibition against joint marketing.

Contrary to the commenters' view, IXCs are not prohibited under the NonAccounting Safeguards Order from stating that they provide both local and long distance services. The Commission's NonAccounting Safeguards Order

⁵ Specifically, SBC attaches an AT&T ad that states: "[n]ow the company that guarantees your calls across the country . . . guarantees them across the street" (Attachment 5 to SBC's Comments), and a statement by an AT&T spokeswoman in a radio interview that "[w]hether they want local, long distance . . . of which AT&T offers all, they can deal with one company for any combination of those services or all of them that they want (Attachment 6 to SBC's Comments). Both of these items were also annexed to AT&T's initial comments (see Exhibit B, items 1 and 3, respectively), and were discussed in detail therein.

instead contains the much narrower restriction that carriers may not state or imply that they can provide one-stop shopping through a single transaction, and the statements at issue do not violate that restriction.⁶

Nor is that restriction violated by the provision of a single telephone number for consumers to call that is referenced in one of the MCI ads (e.g., Ameritech Comments at 8; US WEST Comments at 3; Time Warner Comments at 8), or AT&T's statement that it can provide "one number to call to handle all of your order, billing and maintenance needs." (See SBC Comments at 8 and Attachment 8 thereto.) The joint marketing restriction was not designed to make it more difficult for customers to order both resold local and long distance services from a single company. Recognizing this fact, the Commission did not require separate sales forces to be established for each service, much less separate phone numbers. Indeed, the NonAccounting Safeguards Order provides that:

a single sales agent is permitted to market interLATA services in the context of one communication, and to market BOC resold local

⁶ In any event, the comments demonstrate a fundamental misunderstanding of the term "joint marketing." The AT&T ad and the MCI marketing pieces at issue are designed to market local service, not both local and long distance services, as the documents themselves make clear. Thus, contrary to the commenters' claims (e.g., Bell Atlantic and NYNEX Comments at 3), no "joint" marketing of both services took place. The AT&T radio interview simply does not constitute marketing, joint or otherwise.

services to the potential customer in the context of a separate communication.

NonAccounting Safeguards Order ¶ 278.

The use of a single number, even for ordering, moreover, does not mean that customers will obtain resold local and interexchange services in a single communication or transaction. In AT&T's case, for instance, a customer that calls a single number clearly will not obtain both BOC resold local and long distance services through a single transaction. Indeed, AT&T's current practice falls well within the scope of the NonAccounting Safeguards Order. The service representative that first answers the call markets only one of the services with the customer, and -- if the customer is interested -- transfers the customer to another service agent to market the other service in a separate transaction. While SBC suggests that this practice should be deemed impermissible (SBC Comments at 4, fn. 11), the practice clearly and properly falls within the scope of activities permitted by the NonAccounting Safeguards Order.⁷

In any event, there is no basis for concluding merely from the use of a single telephone number that customers will erroneously assume that they could order both resold local and long distance services in a single transaction. Moreover, to avoid any risk that the

⁷ A number of other arrangements could also satisfy the Commission's requirements.

advertisement of both services or a single number could mislead the public, AT&T began, following release of the NonAccounting Safeguards Order, to include on such advertising the explicit disclaimer that resold local and long distance services are sold separately.

IV. AT&T HAS NEVER BUNDLED LOCAL RESOLD SERVICE WITH INTERLATA SERVICE

Although Time Warner professes concern about reports that "certain IXCs subject to [the joint marketing] restriction have been tying long distance service price discounts to customer commitments to purchase local service from the long distance carrier" (Time Warner Comments at 4), nowhere does it allege, because it cannot, that AT&T has bundled BOC resold local service purchased at a wholesale discount with long distance service. Thus, insofar as Time Warner attempts to imply that AT&T has been engaged in such activity, its allegation should be disregarded.

For its part, SBC complains about an AT&T marketing piece (See Attachment 8 to SBC's Comments) that discusses the customer's ability to bundle its AT&T long distance service and local service, and states that "[l]ocal and long distance usage may be aggregated for volume discounts." SBC conveniently fails to mention, however, that this piece, relates to the offer of AT&T Digital Link Service, which is a local offering that utilizes AT&T's own switches and not resold local services. Thus, permitting the customer to "bundle" its services by aggregating this

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local and long distance usage for volume discounts does not at all implicate the joint marketing restriction.

V. CONCLUSION

For the reasons stated above and in AT&T's initial comments, the Commission should issue a declaratory ruling on MCI's petition that makes clear that the types of marketing represented by the materials discussed above and in AT&T's initial comments do not violate the joint marketing restriction contained in Section 271(e) of the Act.

Respectfully submitted,

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June 24, 1997

CERTIFICATE OF SERVICE

I, Helen Elia, do hereby certify that on this 24th day of June, 1997, a copy of the foregoing "Reply Comments of AT&T Corp." was mailed by U.S. first class mail, postage prepaid, upon the parties listed below.

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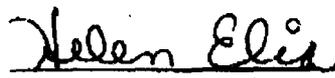
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