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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 Corp.	
Petition for Expedited Declaratory Ruling Preempting Arkansas Telecommunications Regulatory Reform Act of 1997 Pursuant to §§ 251, 252 and 253 of the Communications Act of 1934, as amended	**CC Docket No. 97-100**

COMMENTS OF THE TELECOMMUNICATIONS RESELLERS ASSOCIATION ON PETITION OF MCI TELECOMMUNICATIONS CORP. FOR EXPEDITED DECLARATORY RULING

The Telecommunications Resellers Association ("TRA"), through undersigned counsel and pursuant to Section 1.2 of the Commission's Rules, 47 C.F.R. § 1.2, and Public Notice, DA 97-1190, released June 6, 1997, hereby submits its comments in support of the Petition for Expedited Declaratory Ruling filed by MCI Telecommunications Corp. ("MCI") in the above-captioned matter. TRA urges the Commission to grant the MCI Petition and preempt those portions of Sections 5 and 9 of the Arkansas Telecommunications Regulatory Reform Act of 1997 (the "Arkansas Act") which will have the effect of prohibiting the ability of new market entrants to provide local exchange/exchange access services within the State of Arkansas and will

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otherwise thwart or impede critical Federal telecommunications policies embodied in the Telecommunications Act of 1996 (the "Telecommunications Act") and the Commission's implementing rules and regulations. Accordingly, in keeping with TRA's earlier submissions in connection with the Petition for Expedited Declaratory Ruling of the American Communications Services, Inc. ("ACSI"), in this matter, TRA urges the Commission to exercise its authority granted pursuant to Sections 251, 252 and 253 of the Communications Act of 1934, as amended, 47 U.S.C. §§251, 252 and 253 (the "Communications Act"), to preempt the identified provisions of Arkansas Act Sections 5 and 9, and to enjoin the enforcement of those sections to the extent necessary to bring the Arkansas Act into conformity with the precepts embodied in the Telecommunications Act.

A national trade association, TRA represents more than 500 entities engaged in, or providing products and services in support of, telecommunications resale. TRA was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry and to protect and further the interests of entities engaged in the resale of telecommunications services. Although initially engaged almost exclusively in the provision of domestic interexchange telecommunications services, TRA's resale carrier members have aggressively entered new markets and are now actively reselling international, wireless, enhanced and internet services. TRA's resale carrier members also are or will be among the many new market entrants that will soon be offering local exchange telecommunications services.

Many of TRA's resale carrier members are national service providers, offering telecommunications services throughout the contiguous United States, including the State of Arkansas. TRA's resale carrier members hence are among the many potential competitors whose

market entry and competitive provision of local exchange/exchange access service will be hindered by the Arkansas Act. Indeed, among new market entrants, TRA's resale carrier members, as small and mid-sized providers, are likely to be the most seriously disadvantaged by preferential treatment of incumbent local exchange carriers (LECs") and barriers to competitive entry. Accordingly, TRA has submitted comments and reply comments in this proceeding supporting the Petition for Expedited Declaratory Ruling filed by ACSI seeking preemption of various portions of the Arkansas Act. Inasmuch as MCI's Petition for Expedited Declaratory Ruling raises similar concerns regarding the anticompetitive effect of certain provisions of the Arkansas Act, TRA here repeats its support for the requested relief. TRA thus joins MCI in seeking preemption of those portions of Sections 5 and 9 of the Arkansas Act which will unduly prefer incumbent local exchange carriers to the detriment of new entrant carriers in violation of the precepts of the Telecommunications Act.

Congress enacted the Telecommunications Act to speed the advent of a "pro-competitive, de-regulatory national policy framework" which would serve as a solid foundation for the competitive offering of telecommunications services by established companies and new enterprises alike. A constant theme running through the provisions of the Telecommunications Act is an unmistakable commitment to support the development of new and expanded telecommunications service options. Toward that end, Congress decreed, in Section 251 of the Communications Act, that incumbent LECs must provide for physical interconnection to their network facilities, unbundled access to network elements and resale of their retail service offerings at wholesale rates.[1] Through Section 252, Congress has provided specific guidance for state commission review of interconnection agreements and statements of generally available

[1] 47 U.S.C. § 251.

terms.[2] Further, pursuant to Section 253 of the Communications Act, the Commission is compelled to preempt any State or local statute, regulation or legal requirement that prohibits or may have the effect of prohibiting "the ability of any entity to provide any interstate or intrastate telecommunications service."[3]

The Telecommunications Act not only forbid incumbent LECs from preventing the resale of telecommunications services but also requires that incumbent LECs must "offer for resale at wholesale rates *any telecommunications service* that the carrier provides at retail to subscribers who are not telecommunications carriers."[4] As the Commission has noted, "[r]ecognizing that incumbent LECs possess market power, Congress prohibited unreasonable restrictions and conditions on resale."[5] Thus, the Commission has stated that "[g]iven the probability that restrictions and conditions may have anticompetitive results, we conclude that it is consistent with the procompetitive goals of the 1996 Act to presume resale restrictions and conditions to be unreasonable and in violation of section 251(c)(4)."[6] As MCI notes, the provisions of Section 9(d) of the Arkansas Act unduly limit the ability of carriers to obtain services to be offered on a resale basis by removing from the universe of telecommunications services which must be offered for resale "[p]romotional prices, service packages, trial offerings,

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[2] 47 U.S.C. § 252.

[3] 47 U.S.C. § 253.

[4] 47 U.S.C. § 251(c)(4).

[5] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 939 (1996), *motion for stay denied,* 11 FCC Rcd. 11754, *recon.* 11 FCC Rcd. 13042 (1996), *further recon.* 11 FCC Rcd. 19734 (1996), *further recon. pending, pet. for rev. pending sub nom.* Iowa Utilities Board v. FCC (and consolidated cases), Case No. 96-3321, *et al.,* (8th Cir. Sept. 5, 1996), *partial stay granted* 109 F.3d 1418 (1996), *stay lifted in part* (Nov. 1, 1996), *motion to vacate stay denied* 117 S.Ct. 429 (1996).

[6] Id.

or temporary discounts offered by the local exchange carrier to its end-user customers".[7] Likewise, Section 9(g) further restricts the ability of carriers to competitively offer telecommunications services by adopting a basis for calculating wholesale discounts which does not adequately reflect "net avoided costs" and thus conflicts with the mandate of the Telecommunications Act.[8] These provisions, according to MCI, constitute "barriers to entry in violation of §253 . . . and directly conflict with the commands of §251(c)(4) and the First Report and Order."[9] TRA agrees.

MCI also contends that Section 9(i) "impermissibly alters the level of scrutiny required by the [Telecommunications] Act for SGATs"[10] by requiring Commission approval of "any negotiated interconnection agreement or statement of generally available terms . . . unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of Section 251 of the Federal Act."[11] TRA agrees that the provisions of Section 9(i) constrain the Arkansas PSC from performing the tasks envisioned for it under the Telecommunications Act, including the ability to actually evaluate the merits of individual interconnection agreements or statements of generally available terms as contemplated by Section 252. Section 9(i) would effectively abrogate the authority granted the Arkansas PSC pursuant to Section 252 and thus, must be preempted.

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[7] Act 77 of 1997, Senate Bill 54, 81st General Assembly, Regular Session ("Arkansas Act"), § 9(d).

[8] Arkansas Act, § 9(g).

[9] MCI Petition for Expedited Declaratory Ruling at 6-7.

[10] Id. at 9.

[11] Arkansas Act, § 9(i).

TRA further agrees with MCI that preemption of Sections 5(b) and (d) of the Arkansas Act would be appropriate. As MCI notes, incumbent LECs are automatically deemed to be eligible telecommunications carriers within a service area while other carriers may achieve this designation only by satisfying criteria which exceed the requirements set forth in the 1996 Act. Indeed, the Arkansas Act precludes a competitive LEC from receiving State-driven universal service support unless it has effectively replicated the incumbent LEC's network, sharply limiting the State-driven universal service support that a competitive LEC that is not entirely facilities-based may receive. As TRA has previously noted, effectively reserving State-driven universal service support to incumbent LECs provides such incumbent providers with a clear competitive advantage, thereby erecting a barrier to competitive entry which the Commission should remedy through exercise its Section 253 preemption authority.

By reason of the foregoing, and consistent with its position on the above issues more fully set forth in its comments and reply comments submitted in connection with the Petition for Expedited Declaratory Ruling of ACSI, the Telecommunications Resellers Association urges the Commission to grant the relief requested by MCI in order to eliminate the impermissible barrier to entry which the Arkansas Act would create and to ensure that new entrant carriers may enjoy the full benefits secured for them under the Telecommunications Act in the State of Arkansas as well as elsewhere.

Respectfully submitted,

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July 7, 1997

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CERTIFICATE OF SERVICE

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