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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
Rules and Policies on Foreign Participation)
in the U.S. Telecommunications Market)
)

IB Docket No. 97-142

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby replies to comments in response to the Notice of Proposed Rulemaking (Notice)¹ issued by the Federal Communications Commission (Commission) in the above-captioned proceeding. In its Notice, the Commission proposed a framework for implementing the WTO Agreement, under which the United States committed to open its telecommunications services market to other signatories of the Agreement.²

Comments were submitted by over forty parties. A number of commenters contend that most, if not all, of the regulatory safeguards proposed by the Commission either are unnecessary

¹ Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Notice of Proposed Rulemaking, IB Docket No. 97-142, (rel. June 4, 1997).

² Generally, the Commission has proposed to apply a rebuttable presumption that it is in the public interest to authorize foreign carriers from WTO countries, or their affiliates, to provide international services to and from the United States. Notice at ¶¶ 28-52. However, to prevent the potential for competitive distortion in the U.S. market, the Commission has proposed regulatory safeguards that would apply to U.S. carriers based upon the degree of market power in the home markets of the foreign carriers with which they are affiliated or have dealings. The most stringent safeguards would be reserved for those situations involving foreign carriers that do not face international facilities-based competition in their home markets. Id. at ¶¶ 78-123.

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or would violate the commitments made by the United States pursuant to the WTO Agreement, and should not be adopted.³ Other commenters argue that the Commission's proposals do not go far enough and that the Commission should implement even more stringent safeguards.⁴ In MCI's view, the approach outlined in the Notice -- with some fine tuning, as set out in MCI's initial comments -- provides a sound framework for meeting U.S. obligations under the WTO while at the same time instituting reasonable safeguards to minimize the risk of competitive distortion in the U.S. international services market.

Until the WTO Agreement and market forces succeed in providing U.S. carriers with genuine opportunities to compete in foreign markets, foreign carriers with unconstrained market power in their home markets have the potential seriously to undermine competition in the U.S.

³ See, e.g., Cable & Wireless at 4-9 (arguing that the proposed safeguards are unnecessary, would inhibit the ability of foreign carriers to compete with U.S. carriers, and are inconsistent with GATS principles); Deutsche Telekom at 22-28 (arguing that the proposed "tripartite" regulatory classification of foreign carriers conflicts with GATS Most Favored Nation (MFN), national treatment, and regulatory principles, and that prohibitions on "special concessions" will stifle innovation); GTE at 18-21 (arguing that the proposed supplemental dominance safeguards are unnecessary, may violate the GATS national treatment obligation by creating a competitive disadvantage for carriers subject to these safeguards, and may violate U.S. MFN commitments by treating certain foreign carriers more favorably than others); and the Government of Japan at 3-4 (arguing that the proposed safeguards are unclear and might discriminate unfairly against foreign carriers, and that the separate supplemental safeguards are inconsistent with GATS because they require differential treatment among foreign carriers).

⁴ See, e.g., AT&T at 43-52 (arguing that the proposed basic dominant safeguards should be strengthened by requiring notification for each circuit addition or discontinuation on the dominant route and by requiring more specific traffic and revenue information, and that supplemental dominance safeguards should apply unless the carrier demonstrates not only that the foreign carrier's destination market is competitive, but also that it has fully implemented the WTO Reference Paper commitments); PanAmSat at 2-4 (arguing that, for basic dominant carriers, the Commission should not loosen its tariff requirements and should continue to require approval for circuit additions).

international services market. It is therefore important for the Commission to take actions, consistent with U.S. WTO obligations, to limit the potential for competitive distortion. With the recent establishment of new, lower benchmarks for international settlement rates, the Commission has taken a significant step that should help reduce the potential for such distortion.⁵

But because the newly-established benchmarks remain well above the actual costs of terminating international traffic, the potential for foreign carriers with unconstrained market power in their home markets to distort competition in the U.S. international services market will continue to exist. Additional safeguards are therefore necessary. The Commission, however, should limit additional prescriptive safeguards to those situations that pose the greatest risk of competitive distortion in the U.S. international services market, and place greater reliance on its enforcement powers to address any anticompetitive situations that may actually arise after the U.S. market is further opened to foreign competition.

A balanced approach to the competitive concerns raised by the entry of foreign carriers with market power abroad is important for several reasons. First, as several commenters recognize, if the Commission were perceived to be taking an excessively regulatory approach in its implementation of U.S. WTO commitments, the consensus that allowed the successful conclusion of the WTO Agreement itself could be severely undermined, with negative

⁵ See News Release, Commission Adopts International Settlement Rate Benchmarks, Report No. 97-24 (August 7, 1997).

consequences for both U.S. carriers and consumers.⁶ Second, adopting excessive regulatory prohibitions as suggested by some parties could unwittingly act to the detriment of U.S. consumers by stifling the development of new and innovative services, new technologies, and more efficient routing mechanisms.⁷ Finally, carriers from countries that have removed legal restrictions on competition, and in which actual international facilities-based competition is developing, present a reduced threat of distorting competition.

It is neither necessary nor desirable for the Commission to attempt to anticipate and prohibit in advance every conceivable instance of anti-competitive behavior that could occur as a result of the further opening of the U.S. telecommunications market. As set out in MCI's initial comments, strict regulatory safeguards should be reserved for those carriers that pose the

⁶ MCI at 6. See also Deutsche Telekom at 2 (arguing that the Commission's proposals could encourage other countries to impose onerous regulations on and restrict access to their markets by U.S. carriers); France Telecom at 4-5 (noting that if the U.S. is perceived as protecting its market, other countries may rely on the Commission's actions to justify their own protectionist policies or may revisit existing policies to make them more restrictive); GTE at 23 (asserting that by focusing on protecting the U.S. market from competitive harm, the Commission may encourage foreign carriers to impose barriers on U.S. carriers trying to compete in overseas markets); and Telefonica de Espana at 5-6 (arguing that if the U.S. maintains or adopts new barriers to entry, other countries will be more likely to maintain their own barriers to entry or add new ones).

⁷ See, e.g., AT&T at 43-52 (proposing the strengthening of basic dominance, supplemental dominance, and "no special concessions" safeguards). Switched hubbing, for example, would allow carriers to route their traffic flows more efficiently and would promote the development of international competition. Such routing, however, would arguably be prohibited even for "basic dominant" carriers under the Commission's proposed "no special concessions" conditions, without any clear indication of the anti-competitive effects that could result from such activity. Similarly, although the Commission's proposed condition involving carrier confidential information may be necessary in those situations involving carriers facing no international facilities-based competition, a broad restriction could undermine the ability of carriers facing competition to structure their internal operations in the most efficient manner possible. See also MCI at 6-7.

greatest risk to competition in the U.S. market -- U.S. carriers that are affiliated or have dealings with foreign carriers that do not face international facilities-based competition in their home markets.⁸ Safeguards imposed on foreign-affiliated carriers with market power that face competition in their home markets should be limited to the reporting and record keeping requirements proposed by the Commission in the Notice.⁹

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⁸ See MCI at 7-8. These safeguards would include the proposed supplemental dominance and “no special concessions” conditions.

⁹ See Id. at 5-7.

CERTIFICATE OF SERVICE

I, Damion S. Hutchins, do hereby certify that a copy of the foregoing Comments of MCI Telecommunications Corporation was hand delivered or sent by first class United States mail, postage paid on this 12th day of August, 1997, to the following:

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