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

SEP 23 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Regulatory Treatment of LEC Provision	)	
of Interexchange Services Originating	)	CC Docket No. 96-149
in the LEC's Local Exchange Area	)	
	)	
and	)	
	)	
Policy and Rules Concerning the	)	CC Docket No. 96-61
Interstate, Interexchange Marketplace	)	

REPLY OF MCI TELECOMMUNICATIONS CORPORATION  
TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION

MCI Telecommunications Corporation (MCI), by its undersigned attorneys, hereby replies to the oppositions and comments filed by various incumbent local exchange carriers (ILECs) and ILEC trade associations with respect to petitions for reconsideration of the Second Report and Order in CC Docket No. 96-149 and Third Report and Order in CC Docket No. 96-61 (Order) released in the above-captioned proceedings on April 18, 1997.<sup>1</sup> For the most part, those oppositions and comments essentially repeat arguments already addressed in MCI's previous comments and its Opposition to the Petitions for Reconsideration filed by four ILECs and ILEC trade associations (MCI Opposition), and MCI will not repeat its arguments in detail here. In order to ensure that the pending petitions for reconsideration are resolved correctly, however, the Commission should be aware of the omissions in the ILEC oppositions and comments.

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<sup>1</sup> FCC 97-142 (released April 18, 1997).

A. The ITTA Comments

The Independent Telephone and Telecommunications Alliance (ITTA), a trade association of mid-sized ILECs, filed comments in support of the petitions for reconsideration of four other ILECs and ILEC trade associations seeking elimination or modification of the requirement in the Order that ILECs be subject to the Commission's Competitive Carrier separation rules<sup>2</sup> in their provision of in-region interstate, interexchange services. In addition to filing an unauthorized pleading,<sup>3</sup> ITTA also fails to add anything to the discussion that MCI and others have not already addressed. Thus, MCI has already explained that Congress did not make a decision either way as to whether some type of

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<sup>2</sup> Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Therefor, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking (Notice), 77 FCC 2d 308 (1979); First Report and Order (First Report), 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Further Notice of Proposed Rulemaking, 47 Fed. Reg. 17308 (1982); Second Report and Order (Second Report), 91 FCC 2d 59 (1982), recon. denied, 93 FCC 2d 54 (1983); Third Report and Order (Third Report), 48 Fed. Reg. 46791 (1983); Fourth Report and Order (Fourth Report), 95 FCC 2d 554 (1983), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), cert. denied, MCI Telecommunications Corp. v. AT&T, 113 S. Ct. 3020 (1993); Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 1191 (1984); Fifth Report and Order (Fifth Report), 98 FCC 2d 1191 (1984); Sixth Report and Order (Sixth Report), 99 FCC 2d 1020 (1985), vacated sub nom., MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985).

<sup>3</sup> The Public Notice of the petitions for reconsideration of the Order authorized the filing of "[o]ppositions to these petitions," not comments in support. See Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings, Public Notice 75968, Report No. 2217 (released Aug. 19, 1997). Section 1.429(f) of the Commission's Rules and Regulations also authorizes only "Oppositions to a petition for reconsideration" in rulemaking proceedings, not comments in support.

separation requirements should be imposed on ILECs; that an automatic sunseting of the Competitive Carrier separation rules is not necessary, given that the Commission will be re-examining those rules in three years; that most ILECs are not pure resellers of end-to-end interexchange services; that to the extent they are resellers, they are still capable of discrimination and cost misallocation; that other safeguards have not obviated the need for the separation requirements and that the Southern New England Telephone Company (SNET), in particular, is capable of, and has engaged in, anticompetitive conduct.<sup>4</sup>

Thus, contrary to ITTA's assertions, the existence of interconnection agreements between ILECs and interexchange carriers (IXCs) containing "most favored nations" provisions do not obviate the need for the Competitive Carrier separation requirements. As MCI explained in its Opposition, ILECs can still discriminate against other IXCs and cross subsidize by conferring monopoly-derived benefits on their interexchange operations at little incremental cost and can carry out price squeezes by simply imposing their current excessive access charges on all interexchange providers. Even if ILECs are reselling the IXCs' interexchange services, the ILECs' excessive access charges are still going to be a net cost only for other IXCs, not for the ILECs' interexchange services, for which access

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<sup>4</sup> See Opposition of MCI Telecommunications Corporation to Petitions for Reconsideration (MCI Opp.) at 4-15, 17-19 (filed Sept. 8, 1997).

charges are merely an intra-company transaction.<sup>5</sup>

B. The Oppositions to the Joint Petition

Although MCI takes no position on the Joint Petition filed by RCN Telecom Services, Inc. and Hyperion Telecommunications, Inc. for reconsideration of the Order (Joint Petition), MCI notes that the ILEC oppositions to the Joint Petition misstate the record. Bell Atlantic argues, for example, that the Bell Operating Companies' (BOCs') interLATA affiliates cannot act anticompetitively.<sup>6</sup> SBC argues that those affiliates cannot exercise any market power in interLATA services.<sup>7</sup> USTA makes both of those arguments as well.<sup>8</sup>

The weakness in all of these presentations is that they ignore the BOC affiliates' abilities and incentives to engage in anticompetitive price squeezes, which the safeguards cited by the BOCs are helpless to prevent. As mentioned above, all ILECs, particularly the BOCs, are able to impose a price squeeze using their current excessive access charges. There is therefore nothing standing in the way of such anticompetitive conduct,

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<sup>5</sup> See id. at 11-14.

<sup>6</sup> Opposition of Bell Atlantic Long Distance Carriers to Joint Petition for Reconsideration and Clarification at 4-5.

<sup>7</sup> Opposition of SBC Communications Inc. to Joint Petition for Reconsideration of RCN Telecom Services, Inc. and Hyperion Telecommunications, Inc. at 2-5.

<sup>8</sup> Opposition to Petition for Reconsideration United States Telephone Association at 2-3, 8-9.

which the Commission has not taken into account in the Order.<sup>9</sup>

The risk of abusive price squeezes is aggravated by the Commission's previous refusal in its Non-Accounting Safeguards Order<sup>10</sup> to take any steps to implement the imputation requirement in Section 272(e)(3) of the Act. There, the Commission found that two factors obviated any need to implement that requirement by reviewing the BOC affiliates' interLATA service rates to make sure they cover all costs, imputed or actual. First, the problem of excessive access charges would be addressed in the Access Reform proceeding, thereby diminishing the incentive and ability to impute access costs improperly, and, second, IXCs and other competitors would be able to avoid access charges through the purchase of unbundled network elements "if those unbundled elements are properly priced."<sup>11</sup> In the Order in the instant proceedings, the Commission again cited those reasons, among others, in refusing to guard against price squeezes by reviewing BOC affiliate tariff filings.<sup>12</sup>

Unfortunately, neither of those reasons has any validity at

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<sup>9</sup> See MCI Opp. at 11-14.

<sup>10</sup> First Report and Order and Further Notice of Proposed Rulemaking, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489 (released Dec. 24, 1996), petitions for recon. pending, pet. for review pending sub nom. SBC Communications v. FCC, No. 97-1118 (D.C. Cir. filed Mar. 6, 1997), Order on Reconsideration, FCC 97-52 (released Feb. 19, 1997), Second Order on Reconsideration, FCC 97-222 (released June 24, 1997).

<sup>11</sup> Id. at ¶ 258.

<sup>12</sup> Order at ¶ 130.

this point. The Commission admitted in its Access Charge Reform Order<sup>13</sup> that it was eliminating only "some of the distortions" that prevent access charges from "reflect[ing] the true cost of service" and that its reductions "represent [only] the first step toward ... moving such charges toward economically efficient levels."<sup>14</sup> The Commission went so far as to concede that a further reduction of access charges to competitive levels "would require dramatic cuts in access charges for some carriers," resulting in "a substantial decrease in revenue for incumbent LECS."<sup>15</sup>

Thus, the BOCs' and other ILECs' access charges are still grossly excessive, allowing them to impose a price squeeze on IXCs immediately. Nothing more has to be done to raise rivals' access costs to an unreasonable level. Moreover, this tactic can be implemented just as effectively by an ILEC's failing to pass along reductions in the cost of providing access as by raising access rates. The ILECs are thus already in a position to inflict significant harm on interexchange competition by forcing excessive costs on the IXCs.

Furthermore, the theoretical availability of unbundled network elements (UNEs) cannot be relied upon to bypass excessive access charges, since the vacating of the Commission's UNE

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<sup>13</sup> Access Charge Reform, et al., CC Docket No. 96-262, et al. 62 Fed Reg 31868 (June 11, 1997).

<sup>14</sup> Id. at 31875.

<sup>15</sup> Id. at 31876.

pricing rules by the Eighth Circuit makes the determination of such pricing much more problematical.<sup>16</sup> The Commission can no longer ensure that UNEs "are properly priced," as it assumed in refusing to take steps to implement the imputation requirement in the Non-Accounting Safeguards Order.

Accordingly, there is little standing in the way of anticompetitive price squeezes by the BOCs and their affiliates. The Commission should therefore not decide the Joint Petition on the assumption that it can adequately control such conduct under its current regulations, as any such rationale would be deemed arbitrary and capricious by a reviewing court.<sup>17</sup>

WHEREFORE, the improper filing by ITTA should be rejected, both on procedural and substantive grounds, and the Commission should not decide the Joint Petition on the ground that it can

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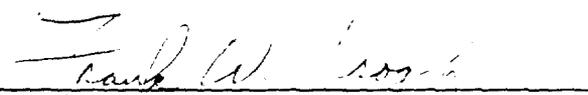
<sup>16</sup> See Iowa Utilities Board v. FCC, et al., Nos. 96-3321, et al. (8<sup>th</sup> Cir. July 18, 1997).

<sup>17</sup> See Burlington Truck Lines, Inc. v. United States, 371 U.S. 156, 168 (1962) (agency decision must reflect a "rational connection between the facts found and the choices made"). See also, International Union v. Pendergrass, 878 F.2d 389, 396 (D.C. Cir. 1989) (agency decision arbitrary where it "acknowledged the truth of facts that appear to compel" the opposite conclusion).

adequately control anticompetitive price squeezes by the BOCs and their Section 272 affiliates.

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Dated: September 23, 1997

CERTIFICATE OF SERVICE

I, Sylvia Chukuwocha, do hereby certify that copies of the foregoing "REPLY OF MCI TELECOMMUNICATIONS CORPORATION TO OPPOSITIONS TO PETITIONS FOR RECONSIDERATION" were sent via first class, mail, postage paid to the following on the 23rd day of September, 1997.

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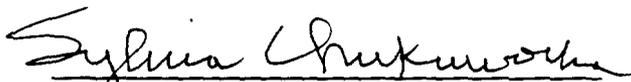
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