



MCI Communications Corporation

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W. -- Room 222  
Washington, DC 20554

Re: Ex Parte CC Docket No. 96-98; RM9101 - Implementation of the Local Competition Provisions of the Telecommunications Act of 1996

Dear Mr. Caton:

Today, John Ruja, Tom O'Donoghue and I, representing MCI, and Jodie Kelley, representing Jenner & Block met with Jake E. Jennings, Radhika Karmarkar, Wendy Lader, Donald K. Stockdale Jr., Brent Olson, Michael Kende, David Kirschner and Florence Setzer, all with the Common Carrier Bureau to discuss MCI's views on performance standards for Operations Support Systems (OSS). The attached document was used as the basis of the discussion, and is being filed for inclusion in the record in the above referenced proceeding.

Two copies of this Notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Sincerely,

  
Amy G. Zirkle

Enclosure

cc: Jake E. Jennings  
Radhika Karmarkar  
Wendy Lader  
Donald K. Stockdale Jr.  
Michael Kende  
David Kirschner  
Florence Setzer  
Brent Olson  
Richard Welch

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## **DISCUSSION OF THE REASONABLENESS PERFORMANCE STANDARD**

In the First Report and Order, the Commission recognized that the requirement that incumbent local exchange carriers (ILECs) provide unbundled elements on "nondiscriminatory" terms requires parity -- that is, ILECs must provide access to unbundled network elements and to resold services on terms and conditions that equal what the incumbent provides itself. The Commission also recognized that the separate requirement that incumbents provide access to unbundled network elements and access on "reasonable" terms and conditions is not synonymous with the nondiscrimination requirement.<sup>1</sup> ¶ 217. That requirement, the Commission concluded, requires ILECs to provide unbundled elements and resold services "under terms and conditions that would provide an efficient competitor with a meaningful opportunity to compete." ¶ 315. It is critical that the Commission apply these basic principles when it acts on LCI's Petition for Expedited Rulemaking concerning performance standards.

There are two, independent ways in which the Commission can and should apply the reasonableness requirement. First, to establishing parity, a number of parties have asked the Commission to determine which functions should be measured, and the methodology by which they should be measured. This will allow competitors to determine if they are receiving service at parity. There may, however, be some functions that ILECs perform for competitive local exchange carriers (CLECs) that have no analogue in services that ILECs perform for their own customers or affiliates. As the Department of Justice has recognized, it is critical that ILECs be subject to performance standards even if a direct determination of parity is not possible. See DOJ Oklahoma 271 Evaluation. The Commission can and should rely on its authority to establish "reasonable" terms and conditions of service to set such standards.

Second, even where a comparison of parity is possible, the level of service an ILEC provides to itself (including its affiliates) may in some cases be so inferior as to be unreasonable. If service at parity is unreasonable, customers switching to CLECs will soon be disenchanted with the service the CLEC provides, and meaningful competition will never take hold. Moreover, in order to meaningfully compete, CLECs must be able to anticipate the level of service they can expect so that they can promise commitment dates and times to customers. If "parity" shifts dramatically from month to month, CLECs will never be able to meet customer expectations and, again, meaningful competition will never develop. Thus, a minimum level of reasonable service is required to fulfill the Act's independent requirements that resale, interconnection and unbundled elements -- not just Operations Support Systems (OSS) -- be

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<sup>1</sup>Telecommunications Act of 1996, Pub. L. No. 104-110 Stat. 56., §§ 251(b)(1), 251(c)(2), 251(c)(3), 251(c)(4).

provided on reasonable terms and conditions.

There are two additional reasons why a minimum level of reasonable service is needed in addition to requirements of parity. First, ILECs faced only with a parity standard will have an incentive to misreport service to themselves. The ILEC may, for example, report that a particular function is completed internally in two weeks, even though the function is, or should be, completed in a matter of hours. This concern is not merely hypothetical. PacBell has recently reported what it claims to be certain intervals of performance to itself. These reports are confidential, but MCI urges the Commission to request copies of the reports from PacBell, and from other ILECs, which will illustrate this problem.

Second, even if an ILEC is reporting its service accurately, it may focus its efforts on particular markets or segments, and allow its service to other segments to deteriorate. This could be done simply because the ILEC has chosen to focus on a different market segment, or it could be done deliberately to make the advent of competition more difficult. This problem is illustrated in recent testimony by PacBell before the California Public Utilities Commission. When asked whether parity might be achieved by degrading the ILEC's service, the PacBell representative cited an example in which the ILEC could choose to provision features to itself in either six hours or in one day. In that situation, PacBell testified that the ILEC might deliberately choose to provision features to itself in the *longer* interval. Testimony of Pacific Bell, MCI Telecommunications Corp. v. Pacific Bell, 96-12-026, Tr. at 500 (May 15, 1997). If performance measures are limited to achieving parity, and are not also grounded in a standard minimum level of reasonable service, CLECs' service will be entirely at the mercy of ILECs, who have every incentive to degrade service provided to their competitors.

There are a number of ways the Commission can establish minimum standards of reasonable service. MCI suggests that the Commission propose that the LCUG standards be put forth as minimum reasonableness performance standards. Because the ILECs have not produced historical data on their own performance, the burden should be placed on the ILECs to prove, based on actual performance data, why any particular LCUG standard is not reasonable.