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Before the  
Federal Communications Commission  
Washington, D.C. 20554

NOV - 6 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
International Settlement Rates )  
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IB Docket No. 96-261

**Reply of MCI Telecommunications Corporation**

MCI hereby replies to the oppositions and comments filed in response to the petitions for reconsideration of the Commission's *Benchmarks Order*.<sup>1</sup> In particular, MCI responds to the comments of the Philippines Parties and the opposition filed by AT&T.<sup>2</sup>

**The Philippines Parties' Jurisdictional Challenge is Completely Without Merit**

In their comments, the Philippines Parties claim that, because conflicts may arise between the policy and rules established by the *Benchmarks Order* and the policies or laws of some foreign countries,<sup>3</sup> it follows that the Commission should not assert jurisdiction over the accounting rates paid by U.S. carriers to their foreign correspondents. In the same vein, the Philippines Parties note that foreign governments or regulators may also decide to regulate settlement rates paid by carriers under their jurisdiction.

<sup>1</sup> *In the Matter of International Settlement Rates*, Report and Order, IB Docket No. 96-261, FCC 97-280 ("Benchmarks Order").

<sup>2</sup> In addition, Telefonica Internacional incorrectly argues in its opposition that lowering the benchmark rate as a condition of entry violates U.S. GATS obligations. These same issues have already been addressed and appropriately rejected as legitimate concerns in the *Benchmarks Order*. Further consideration on reconsideration is unwarranted.

<sup>3</sup> The Philippines Parties bootstrapped this argument on the argument, discussed more fully in the following section, that the benchmark entry condition should apply only to affiliates of foreign carriers with

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The Philippines Parties' argument leads nowhere. The *Benchmarks Order* plainly establishes the Commission's jurisdiction to regulate the accounting rates negotiated by U.S. carriers. It is true that some governments may adopt laws, regulations or policies that conflict with implementation of the *Benchmarks Order*. If such cases arise, however, the governments will need to resolve the issue in bilateral discussions, as is common in situations of this kind. Such situations arise frequently in international relations and routinely are resolved by the U.S. Government. For example, the United States regularly negotiates agreements that control the permitted international routes for U.S. and foreign airlines. On occasion, the negotiation of these agreements gives rise to conflicts between the United States and its negotiating partner, but the U.S. Government always has been able to resolve these disputes.<sup>4</sup>

The Philippines Parties' reliance on potential conflicts of law as a basis for challenging the *Benchmarks Order* must therefore be rejected.

**The Commission's Goals Will be Better Served by Applying the Benchmark Entry Condition to Carriers with a Significant Degree of Market Power**

In its Petition, MCI urged the Commission to reconsider or clarify that aspect of its decision which requires "existing Section 214 certificate holders that serve affiliated markets to negotiate ... a settlement rate for the affiliated route that is at or below the appropriate benchmark within 90 days of the effective date of the Order."<sup>5</sup> MCI recommended that, on reconsideration, the Commission should limit the benchmark entry

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market power, in which Mexico – whose regulations allow only the dominant carrier to negotiate accounting rates with foreign carriers – was used as an example. See MCI Petition at 2.

<sup>4</sup> In addition, there are several international bodies in which conflicts between governments can be settled more formally.

<sup>5</sup> *Benchmarks Order* at ¶ 228.

condition to U.S. carriers affiliated with foreign operators possessing some degree of market power.<sup>6</sup> While MCI was responding to the specific language of the *Benchmarks Order*, it is important to note that the same logic would (and should) apply to future applicants affiliated with foreign carriers lacking market power as well.<sup>7</sup> Thus, if the Commission decides not to apply the automatic benchmarks conditions to *existing* affiliates without market power, it should apply the same rule to all *future* affiliates meeting the same test.

In its opposition, AT&T contends that MCI has not proven that anticompetitive practices are limited to carriers with market power. While MCI doubts that anyone is in a position to offer proof positive on this point, it stands to reason that a carrier without market power is less likely to be able to gain an anticompetitive advantage in the relevant market, and therefore is likely to present less risk of market distortion than those that possess market power. If the Commission is nonetheless of the view that the risk is equally great in all cases, then the Commission should grant waivers in those instances where it can be demonstrated that there is an express conflict of law which prevents a carrier whose foreign affiliate lacks market power from complying with the *Benchmarks Order*.

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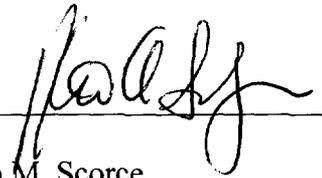
<sup>6</sup> Market power could be either control of bottleneck services or facilities, or where traffic on the route between the U.S. carrier and its affiliate is greater than 25% of the inbound or outbound traffic on the route. MCI Petition at p. 3.

<sup>7</sup> This modification would also have the benefit of minimizing the number of potential jurisdictional conflicts. In a number of foreign countries, a version of the Commission's International Settlements Policy has been adopted, including the rule requiring parallel or uniform accounting rates (which could make it difficult for affiliates to reduce their accounting rates on a non-parallel basis).

**Conclusion**

For all of the foregoing reasons, the Commission should affirm its decision in the *Benchmarks Order*, with the qualification discussed in MCI's Petition (as clarified herein).

Respectfully Submitted,

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November 6, 1997

## CERTIFICATE OF SERVICE

I, Damion S. Hutchins, hereby certify that on the 6th day of November 1997, a true copy of the foregoing Reply was delivered, either by hand or first-class mail, to the following:

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