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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	CC Docket No. 95-116
Telephone Number Portability	)	RM-8535
	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION IN OPPOSITION TO THE PETITION FOR RECONSIDERATION OF THE ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT OF SMALL TELECOMMUNICATIONS COMPANIES AND THE UNITED STATES TELEPHONE ASSOCIATION

MCI Telecommunications Corporation (MCI), by counsel, pursuant to 47 C.F.R. § 1.429, hereby submits these comments in response to the Petition For Reconsideration filed on October 17, 1997, by the Organization For The Promotion and Advancement Of Small Telecommunications Companies (OPASTCO) and the United States Telephone Association (USTA) (Petition).[1] For the reasons stated herein, MCI opposes OPASTCO's and USTA's Petition.

I. OPASTCO And USTA Present No Good Reasons For The Federal Communications Commission To Reconsider Its Decision.

In their Petition, OPASTCO and USTA ask the Federal Communications Commission (Commission) to reconsider its carefully crafted Order adopting the North American Numbering Council's (NANC's) recommendation that limited liability corporations (LLCs) provide oversight and management of the regional local number portability administrators (LNPAs) on

[1] 62 Fed.Reg. 60,712 (1997)

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an interim basis.[2] In that Order, the Commission thoroughly addressed and disposed of USTA's and other parties' arguments that the LLCs were incapable of providing fair and impartial management and oversight of the LNPAs.[3] The Commission concluded that each LLC is in the best position to oversee and manage the LNPA in its region because the LLCs have "the greatest expertise regarding the structure and operation of the database . . . ."[4] The Commission also concluded that any other alternative would substantially increase the chances of delay, and would waste the LLCs' valuable expertise.[5]

In order to address USTA's concerns, however, the Commission established several mechanisms to ensure that the LLCs conduct their oversight and management responsibilities in a fair and impartial manner. Specifically, the Commission:

> expressly delegate[d] authority to the Chief of the Common Carrier Bureau to monitor the activities of the carriers that comprise the LLCs and to take any action necessary to remedy possible partiality by those carriers with respect to the LLCs' oversight and management of the local number portability administrators.

Order at ¶ 123.

The Commission also established a procedure by which aggrieved parties may raise concerns about unfair treatment in the LLCs' own dispute resolution process, at the NANC, and

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[2]USTA and OPASTCO Petition at p. 2. *See* In the Matter of Telephone Number Portability, CC Docket No. 95-116, RM-8535, Second Report and Order, FCC 97-289, ¶¶ 114-115, 119-120 (rel. Aug. 18, 1997) (Order).

[3]*See* Order, ¶¶ 114-127. The Commission also noted that no commenting party had precisely identified any future circumstances in which the LLCs and LNPAs would fail to work together in an efficient and fair manner. *Id.* at ¶ 131.

[4]*Id.* at ¶ 117.

[5]*Id.*

ultimately, at the Commission itself.[6] Moreover, the Commission adopted the NANC's recommendation that LLCs provide oversight and management of the LNPAs only "until the Commission concludes further proceedings to examine the issue of local number portability administrator oversight and management . . . ."[7]

Against this backdrop, there is no good reason for the Commission to reconsider its decision to allow LLCs to manage and oversee the activities of the LNPAs on an interim basis. USTA and OPASTCO can raise their concerns when the Commission initiates further proceedings in a few short months to address the questions raised in their Petition. If a USTA or OPASTCO member feels that it is not being treated fairly, it can pursue one of the several remedies outlined by the Commission in its Order. In the meantime, reconsideration of this decision would serve only to disrupt the process of timely implementation of local number portability around the country, increase the chances of delay and waste the LLCs' expertise. The Commission should deny USTA's and OPASTCO's Petition, and abide by its reasoned decision to address the questions raised in the Petition in the future rulemaking proceeding.

II. OPASTCO's AND USTA's PETITION SHOULD BE DENIED AS A THINLY VEILED ATTEMPT TO OBTAIN "SOMETHING FOR NOTHING."

OPASTCO's and USTA's Petition is a thinly veiled attempt to enjoy the benefits of LLC membership without contributing their fair share of the costs involved. USTA and OPASTCO members have had, and continue to have, every opportunity to join the LLCs. Thus, the

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[6] *Id.* at ¶ 131. The Commission also recognized that state regulators provide additional protection against the possibility of partiality by the LLCs. *Id.* at ¶ 121.

[7] *Id.* at ¶ 119. The Commission noted here that it would issue a Notice of Proposed Rulemaking on this issue by June 30, 1998.

members of both organizations can enjoy the many benefits that accompany LLC membership, including statutory protection from tort, contract and other liabilities. Additionally, LLC membership is open to any local exchange carrier intending to port numbers in the relevant region, whether or not the carrier is actually certified to provide service in the region.

Notwithstanding these facts, USTA and OPASTCO argue that the capital contribution figures pose a barrier to LLC membership.[8] This statement has no basis in fact. In practice, the initial capital contribution required for membership in six of the seven LLCs is $10,000. The required initial contribution for the Southeastern LLC is $5,000. Additional capital contributions are imposed only on an as-needed basis to cover actual incurred administrative expenses (such as legal fees and insurance coverage). To date, LLCs have imposed no more than three additional requests for $5,000 or $10,000 each.[9]

Each LLC member, and thus each local exchange carrier, pays the exact same amount in capital contributions. As of October 31, 1997, no LLC has imposed aggregate capital contributions in excess of $30,000 on any one LLC member. To date, most LLCs have imposed

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[8]USTA and OPASTCO Petition at p. 5.

[9]Expenses for the Mid-Atlantic LLC are among the highest at $30,000 per member through October 31, 1997. These higher costs have been necessitated by the need to devote considerable resources to litigate Bell Atlantic-South's legal challenges to virtually every major contract and implementation action undertaken by the Mid-Atlantic LLC. Another reason for the higher Mid-Atlantic LLC expenses is that, as the first LLC, it encountered and resolved a number of issues of first impression, after which the other LLCs have patterned their activities without having to duplicate the expenses. Finally, the per-member costs for Mid-Atlantic LLC members are higher than in most other regions because of the comparatively small membership in that region.

aggregate capital contributions of considerably less than $30,000. Given what LLCs have accomplished during this period,[10] these assessments are eminently reasonable.

USTA's and OPASTCO's declaration that the reasonable contributions that cover the costs of the benefits of LLC membership are a "barrier to membership" is ludicrous. Any carrier may request full-fledged individual LLC membership. Additionally, carriers are free to join with other carriers, or with an association of carriers, to apply for LLC membership as a group. In fact, many LLCs are in the midst of drafting operating agreements to accommodate association or group membership.[11]

MCI is unaware that any carrier has ever complained of a barrier to membership, nor has any carrier ever requested a joint membership arrangement. Additionally, it is noteworthy that USTA has been an active participant in the efforts of the NANC Dispute Resolution Committee to finalize a process whereby parties that feel they have been harmed by the actions of an LLC can seek redress.

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[10]The LLCs have organized, developed and issued requests for proposals, selected vendors in a comprehensive process that examined neutrality, competence and price of prospective vendors, negotiated long-term contracts with those vendors involving $18-20 million in compensation per region, administered the contracts and the vendor's performance and managed the ongoing risk associated with LLC management.

[11]For example, the Northeast LLC began discussion of this topic on May 5, 1997, and expects to complete changes to its operating agreement at its November 25 and December 15, 1997, meetings to permit association membership. Similarly, the Mid-Atlantic LLC began discussion on this topic on May 16, 1997, and continues to review potential operating agreement options for association membership. Significantly, no LLC operating agreement prohibits association membership. Moreover, during the April 1997 meetings of the NANC, all LLCs agreed in principle to begin addressing the association membership issue in their respective operating agreements.

USTA's and OPASTCO's attempt to reverse the Commission's thoughtful adoption of the NANC's recommendation that the LLCs provide interim oversight of LNPAs is disingenuous. The Petition is nothing more than a last minute attempt to sabotage a process that has worked smoothly to successfully begin the timely deployment of long-term local number portability across the nation.

WHEREFORE, for the foregoing reasons, MCI respectfully requests that the Commission deny OPASTCO's and USTA's Petition.

Respectfully submitted,

MCI TELECOMMUNICATIONS
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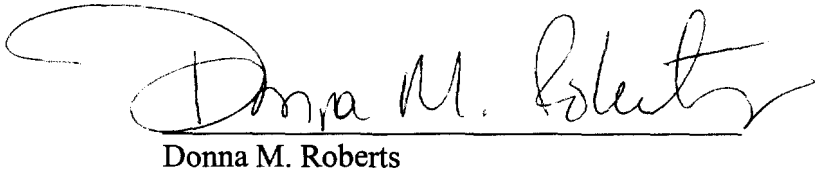

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CERTIFICATE OF SERVICE

I, John E. Ferguson III, do hereby certify that copies of the foregoing Comments of MCI in the Matter of Telephone Number Portability were sent, on this 26th day of November, 1997, via first-class mail, postage pre-paid, to the following:

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