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December 17, 1997

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE PRESENTATION

Via Hand Delivery

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

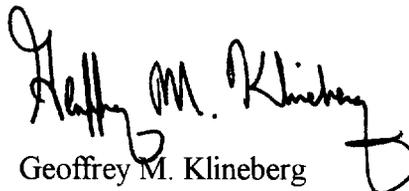
RE: Petitions Seeking Preemption of Certain Provisions of the Arkansas  
Telecommunications Regulatory Reform Act of 1997, CC Docket No. 97-100

Dear Ms. Salas:

The enclosed letter concerning the above-referenced proceeding was hand delivered today to Alex Starr of the Common Carrier Bureau's Policy and Program Planning Division. In accordance with the Commission's rules governing ex parte presentations, I am providing two (2) copies of the enclosed letter. If you have any questions concerning this matter, please contact me at (202) 326-7928.

Thank you for your consideration.

Sincerely,

  
Geoffrey M. Klineberg

Enclosure

cc: Alex Starr  
Melissa Newman  
Jonathan Askin  
Jonady Hom

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**Via Hand Delivery**

Alex Starr, Esq.  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, N.W.  
Room 544  
Washington, D.C. 20554

RE: Petitions Seeking Preemption of Certain Provisions of the Arkansas  
Telecommunications Regulatory Reform Act of 1997, CC Docket No. 97-100

Dear Mr. Starr:

On behalf of Southwestern Bell Telephone Company ("SWBT"), I would like to take this opportunity briefly to respond to a few of the assertions made by MCI in its ex parte submissions dated October 29 and 30, 1997. SWBT has already answered MCI's arguments in the comments and reply comments submitted in this proceeding, and there is little (if anything) new in what MCI presents in its ex parte letters. There are, however, a few points that we believe worth emphasizing.

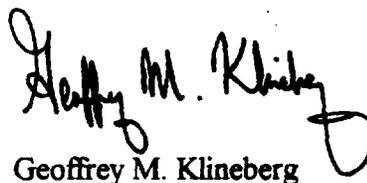
First, it is important for the Commission to understand that MCI has shown no interest whatsoever in providing local service in Arkansas. MCI formally requested interconnection with SWBT on March 28, 1996, and then again on April 14, 1997, letting the time period for negotiation and arbitration lapse on both occasions. It is therefore not surprising that MCI's interpretation of the Arkansas Act should be so completely devoid of any reference to the way the Act's provisions have actually been interpreted and applied. MCI effectively concedes throughout its ex parte submission that its arguments are, at best, theoretical. See, e.g., October 29 Letter at 4 ("§9(d) may pose a considerable hurdle . . . [and] [i]f the Arkansas commission recognizes this hurdle in future arbitrations, it will be unable to act to carry out its responsibilities under the Federal Act, and this Commission will have to preempt its jurisdiction . . ."); *id.* at 6 ("[s]ection 9(f) thus appears to create a conflict between the scope of the state commission's duties under the Arkansas Act and the scope of its duties under the Federal Act . . ."); *id.* ("[i]f the state commission during the course of arbitrating section 252 agreements does not feel limited by the Arkansas Act and does fulfill the duties imposed by federal law, there will be no need for the FCC to act").

Alex Starr, Esq.  
December 17, 1997  
Page 2

Second, to illustrate the first point, it is sufficient to examine MCI's response to the Commission's question concerning the limitations on the resale of promotional offerings contained in section 9(d) of the Arkansas Act. MCI's hypothetical, according to which the incumbent LEC is always able to undersell the competitive LEC because it can simply label the lower price a "promotion" and thereby avoid the wholesale discount, has nothing whatsoever to do with either the law or practice in Arkansas. On its face, section 9(d) of the Arkansas Act is entirely consistent with federal law; it begins — like so many other provisions of the Arkansas Act — with the phrase, "[e]xcept to the extent required by the Federal Act and this Act." Since the Federal Act, as interpreted by the Commission, "requires" promotional prices lasting longer than 90 days to be subject to resale at the wholesale discount, this is what section 9(d) also requires. Had MCI bothered to negotiate a resale agreement with SWBT or even reviewed the results of the arbitration between AT&T and SWBT, it would have known that SWBT has interpreted section 9(d)'s limitations on the resale of "[p]romotional prices, service packages, trial offerings, or temporary discounts" in a manner wholly consistent with the Commission's interpretation of section 251(c)(4) in the Local Competition Order.

Finally, as SWBT has repeatedly emphasized in its written comments, Congress authorized the Commission to preempt the enforcement of a state or local law, regulation, or legal requirement only where such a law actually has the effect of prohibiting an entity from providing a telecommunications service. 47 U.S.C. § 253(a). Congress never intended preemption to apply to a hypothetical conflict. MCI repeats its gross mischaracterization of the statute by suggesting that this Commission has the duty under section 253 to determine whether a challenged statute "may now or in the future have the effect of deterring entry by potential competitors." October 29 Letter at 2. Such a reading of section 253 is not only disingenuous; it betrays a complete disdain for any evidence concerning how the Act has actually been functioning in Arkansas. MCI's ex parte submissions only underscore further how inappropriate it would be on this record for the Commission to grant the preemption petitions.

Sincerely,



Geoffrey M. Klineberg

cc: Melissa Newman  
Jonathan Askin  
Jonady Hom