



Gina Harrison
Director-
Federal Regulatory

SBC Communications Inc.
1401 I Street, N.W.
Suite 1100
Washington, D.C. 20005
Phone 202 526-8882
Fax 202 408-4805

DOCKET FILE COPY ORIGINAL ORIGINAL

RECEIVED

FEB 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 10, 1998

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

Dear Ms. Salas:

Enclosed please find an original, duplicate, and eleven copies of SBC Communications, Inc.'s ("SBC") Opposition to and Comments on Petitions for Reconsideration of the *Foreign Participation Order*, IB Docket No. 97-142. Please date-stamp and return the enclosed duplicate copy.

Please contact me with any questions. Thank you.

Sincerely,

Gina Harrison

Enclosure

No. of Copies rec'd 0211
List ABCDE

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

RECEIVED

FEB 10 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Rules and Policies on Foreign Participation
in the U.S. Telecommunications Market

IB Docket No. 97-142

**OPPOSITION TO AND COMMENTS ON
PETITIONS FOR RECONSIDERATION**

SBC Communications, Inc. ("SBC") hereby opposes MCI Telecommunications Corporation's ("MCI") Petition for Reconsideration¹ and PanAmSat Corporation's ("PanAmSat") Petition for Reconsideration² and supports BellSouth Corporation's ("BellSouth") Petition for Clarification and Reconsideration³ of the Commission's *Order* in the above-captioned proceeding.⁴

SBC opposes MCI's request because the Commission had ample justification to reject conditioning authorizations for switched resale to foreign-affiliated markets on foreign affiliate

¹ *MCI Telecommunications Corporation*, IB Docket No. 97-142, Petition for Reconsideration (Jan. 8, 1998) ("*MCI Petition*").

² *PanAmSat Corporation*, IB Docket Nos. 97-142 and 95-22, Petition for Reconsideration (Jan. 8, 1998) ("*PanAmSat Petition*").

³ *BellSouth Corporation*, IB Docket Nos. 97-142 and 95-22, Petition for Clarification and Reconsideration (Jan. 8, 1998) ("*BellSouth Petition*").

⁴ *Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, FCC 97-389 (Nov. 26, 1997) ("*Foreign Participation Order*" or "*Order*").

compliance with the *Benchmarks Order*.⁵ MCI's attempt to reargue implementing enhanced reporting requirements and adopting a new complaint procedure is unnecessary for the same reasons that the Commission initially rejected imposing a benchmark condition – there is no risk of anticompetitive behavior, and switched resellers' prices are easily monitored.

SBC also supports the FCC's decision to allow dominant foreign-affiliated carriers to file tariffs on one day's notice and to add or discontinue circuits on foreign-affiliated routes without prior approval, and therefore opposes PanAmSat. These streamlined provisions promote competition in the IMTS market, and the FCC should not be dissuaded from pro-consumer deregulation based on speculative fears of future behavior.

Further, SBC agrees with BellSouth that the entry standards for foreign carrier participation in the U.S. telecommunications market should also apply to Bell Operating Company ("BOC") entry into the U.S. long distance market.

I. THE COMMISSION SHOULD DENY MCI'S REQUEST FOR RECONSIDERATION OF ITS CONCLUSION THAT THERE IS NO NEED TO CONDITION SWITCHED RESALE TO FOREIGN-AFFILIATED MARKETS

MCI's request that the Commission reconsider, yet again, its eminently reasonable decision not to condition switched resale authorizations to serve foreign-affiliated markets should

⁵ *International Settlement Rates*, IB Docket No. 96-261, Report and Order, FCC 97-280 (Aug. 18, 1997) ("*Benchmarks Order*"), *recon. pending, appeal filed, Cable & Wireless et al. v. FCC*, No. 970-1612 (D.C. Cir. filed Sept. 26, 1997).

be denied.⁶ The FCC has taken a “hard look” at this issue, and SBC fully supports its conclusion that there is no need to condition these authorizations given the lack of serious anticompetitive concerns.⁷

First, despite MCI’s suggestion that the FCC has not given this issue a “hard look,” the FCC has more than fulfilled its obligation to give “reasoned consideration to all the material facts and issues”⁸ surrounding switched resale to foreign-affiliated markets. In three proceedings, the FCC has concluded that there is no need to condition switched resale authorizations to foreign-affiliated markets. The Commission first considered this issue years ago in the context of a GTE application to provide switched resale services, including to foreign markets where GTE had an “affiliated” entity.⁹ A few months ago, in considering Telmex/Sprint’s (“TSC”) application for Section 214 switched resale authority, the FCC elected not to condition TSC’s switched resale

⁶ Specifically, MCI asks that authorizations for switched resale to foreign-affiliated markets be conditioned on: (1) a commitment from the foreign affiliate to reduce its settlement rate to the applicable benchmark, using the proportionate annual reductions, by the *Benchmarks Order* deadline; (2) a requirement that all foreign-affiliated switched resellers file quarterly traffic and revenue information about the originating and terminating traffic of their foreign affiliate; (3) a requirement that all foreign-affiliated resellers file copies of all contracts and arrangements with any other carrier relating to services and traffic on affiliated routes; and (4) a requirement that if any carrier presents credible evidence of efforts by a switched reseller to distort competition in the U.S. international services market, the Commission issue an order requiring the accused carrier to show cause on an expedited basis (30 days) that it has not engaged in such efforts, and if the carrier fails to make such a demonstration, the Commission will automatically impose the benchmark condition on the carrier. *MCI Petition* at 2.

⁷ *Foreign Participation Order* at ¶ 194.

⁸ *Greater Boston Television Corporation v. Federal Communications Commission*, 444 F.2d 841, 851 (D.C. Cir. 1970).

⁹ *GTE Telecom Inc., Application for Authority Pursuant to Section 214 of the Communications Act of 1934 as amended, and Section 63.01 of the Commission’s Rules and Regulations for International Resale Switched Service and Facilities-based Service to Various Countries*, ITC-95-443, Order, Authorization and Certificate, DA 96-1546 (Sept. 16, 1996).

authorization.¹⁰ Following this decision, the FCC developed a complete record regarding switched resale and issued the *Order*¹¹ concluding that there was no need to condition switched resale authorizations. The FCC has fulfilled amply its due process obligations, and there is no need to revisit this issue.

Second, MCI again incorrectly asserts that switched resale to foreign-affiliated markets gives rise to significant anticompetitive concerns. The FCC has correctly determined that a “switched reseller has substantially less incentive”¹² and far less ability to engage in a price squeeze as it can “neither force competitors to exit nor prevent subsequent entry...because a switched resale provider does not control the underlying international facilities over which it provides service.”¹³

Indeed, the threat of traffic distortion is no greater in the context of switched resale than in any other context.¹⁴ Moreover, there has been no pattern of anticompetitive behavior in this international market over the years, leaving the FCC with no reason to believe that serious anticompetitive threats suddenly exist. In reality, the vast majority of foreign-affiliated carriers

¹⁰ *Telmex/Sprint Communications, L.L.C., Application for Authority under Section 214 of the Communications Act for Global Authority to Operate as an International Switched Resale Carrier Between the United States and International Points, Including Mexico*, ITC-97-127, Order, Authorization and Certificate, DA 97-2289 (Oct. 30, 1997).

¹¹ *Foreign Participation Order* at ¶¶ 179-214. Incumbent interexchange carriers first raised this issue in the *Benchmarks* proceeding where the FCC deferred the issue to the *Foreign Participation* proceeding so that it could form a complete record. *Benchmarks Order* at ¶ 230.

¹² *Foreign Participation Order* at ¶ 195.

¹³ *Foreign Participation Order* at ¶ 199.

¹⁴ As the FCC found, the threat of traffic distortion is “not directly related to affiliation status.” *Id.* at ¶ 211.

simply do not exert enough influence over their foreign affiliates to engage in a price squeeze arrangement.¹⁵

Finally, despite MCI's claims, the FCC correctly concluded that there is no reason to condition switched resale. Any potential anticompetitive concerns are mitigated by the FCC's ability to identify whether a reseller is pricing at or below its average wholesale rate¹⁶ by requiring carriers to provide information¹⁷ and reviewing the international spot market prices for resale switched services.¹⁸ In addition, the Commission's: (1) contract filing requirements under Section 43.51;¹⁹ (2) extension of the quarterly filing requirements under Section 43.61 to resale carriers with dominant foreign affiliates;²⁰ and (3) reservation of the right to impose conditions on any individual authorization²¹ both deter anticompetitive behavior and enable the FCC to address any anticompetitive acts on a case-by-case basis.²²

¹⁵ In addition, the "No Special Concessions" requirement in 47 C.F.R. § 63.18(i) specifically prevents carriers from entering into such arrangements with dominant foreign carriers.

¹⁶ "[T]he Commission, antitrust authorities, and, potentially, the underlying facilities-based carrier, will be able to detect if a switched reseller attempts to price below the level of the wholesale rate at which it takes service." *Foreign Participation Order* at ¶ 204.

¹⁷ *Id.* at ¶ 205.

¹⁸ *Id.* Indeed, spot market bids and offers are available on the Internet at <<http://www.band-x.com>>.

¹⁹ 47 C.F.R. § 43.51.

²⁰ *Foreign Participation Order* at ¶ 211.

²¹ *Id.* at ¶¶ 212, 214.

²² *Id.*

Equally, there is no need for the Commission to adopt MCI's suggestion that an accused carrier respond, on an expedited basis (30 days), to a claim that it has distorted competition, and that the FCC impose automatically the benchmark condition on any carrier that does not answer. Section 208 already serves as an effective complaint mechanism,²³ under which carriers must respond to any complaint within "a reasonable time,"²⁴ and the Commission must "investigate" complaints²⁵ and take all appropriate remedial action.²⁶ Thus, because the Commission has already correctly determined that there are no significant anticompetitive concerns regarding switched resale to foreign-affiliated markets, there is no need for the FCC to reconsider its position or adopt MCI's proposed conditions.

II. THE COMMISSION SHOULD CONTINUE TO ALLOW DOMINANT FOREIGN-AFFILIATED CARRIERS TO FILE TARIFFS ON ONE DAY'S NOTICE AND ADD OR DISCONTINUE A CIRCUIT ON A FOREIGN-AFFILIATED ROUTE WITHOUT PRIOR APPROVAL

The FCC should retain its decision to allow dominant foreign-affiliated carriers to file tariffs on one day's notice without cost support, and to accept these tariffs as presumptively lawful, and to add or discontinue circuits on foreign-affiliated routes without prior approval, despite PanAmSat's objections.²⁷ The new one-day tariff filing provision will foster competition by enabling *all* carriers, both dominant and nondominant, to respond to supply-side and demand-

²³ 47 U.S.C. § 208(a).

²⁴ *Id.*

²⁵ *Id.*

²⁶ 47 U.S.C. § 205.

²⁷ *See PanAmSat Petition.*

side price and service changes almost immediately.²⁸ Further, the tariff filing requirement alone will sufficiently deter any price squeeze arrangement,²⁹ therefore, presumptive lawfulness of these tariffs is warranted. Also, in the event of any unlawful behavior, parties can invoke the Section 208 complaint process, and the FCC can take any necessary remedial action after the tariff is filed.³⁰ Eliminating the one-day tariff provision will benefit PamAmSat only, and the Commission should not be swayed to remove this important procompetitive provision.

Also, the Commission should not rethink its decision to eliminate the prior-approval requirement for the addition or discontinuation of circuits by dominant foreign-affiliated carriers on their affiliated routes. Similar to the new one-day tariff provision, allowing carriers to add or discontinue circuits without pre-approval fosters competition by enabling carriers to offer new and additional services rapidly, thus benefiting consumers.

Furthermore, the FCC's new 47 C.F.R. § 63.10(c)(5) quarterly circuit status reporting requirement for dominant foreign-affiliated carriers,³¹ coupled with the FCC's ability to address complaints, investigate carriers, and take corrective action, will both deter these carriers from engaging in any unlawful behavior and enable the FCC to monitor effectively these carriers' behavior.³² In sum, these measures will secure a competitive IMTS market, and removing these provisions will only harm consumers and provide existing carriers such as PanAmSat an unwarranted competitive advantage.

²⁸ *Foreign Participation Order* at ¶ 244.

²⁹ *Id.*

³⁰ *Id.* at ¶ 245.

³¹ *Id.* at ¶ 283.

³² *Id.* at ¶ 249.

III. THE COMMISSION SHOULD APPLY TO BOC MARKET ENTRY THE SAME PUBLIC INTEREST STANDARD AS IT DOES TO FOREIGN CARRIER MARKET ENTRY

BellSouth, in its petition, seeks clarification that the same public interest standard that applies to foreign carrier entry applies to Bell Operating Company (“BOC”) entry into the U.S. long distance market and that the same presumptions based on open markets regarding the public interest benefits of entry apply.³³ SBC wholly supports BellSouth’s requested clarification. BOCs are entitled to the same relief granted to AT&T, Sprint, and hundreds of other U.S. carriers, and now available to carriers affiliated with WTO member countries.

The Commission’s conclusion that BOCs should be subject to a different, yet undefined, public interest standard for market entry than carriers affiliated with WTO member countries cannot withstand scrutiny. As BellSouth correctly points out, the Commission illogically permits foreign carrier entry based on broad market-opening commitments that are less extensive and less enforceable than the market-opening measures imposed on BOCs by the Telecommunications Act of 1996.³⁴ In doing so, the Commission disregards the fact that BOC market entry is likely to yield the same consumer benefits as market entry by foreign firms that control local facilities.³⁵

³³ *BellSouth Petition at 2.*

³⁴ *BellSouth Petition at 4.*

³⁵ The Commission alleges that BOC entry into the market for in-region interLATA service poses “different risks of competitive harm” than foreign carrier entry into the U.S. international services market. *Foreign Participation Order* at ¶ 58. Yet, the Commission fails to describe any such competitive risks or explain the 1996 Act’s inability to thwart anticompetitive behavior.

The Commission suggests that different public interest standards should apply to BOCs and foreign carriers because BOCs may be “significant” market participants in the provision of in-region long-distance services. This argument lacks merit. *First*, the Commission already determined that the BOCs are unlikely to be “dominant.” Thus, regardless of the BOCs’ ability to gather a “significant” share of in-region customers, there is no threat to competition that would warrant a different public interest standard than that applied to foreign-affiliated carriers. *Second*, there is no reason to believe that foreign carriers will be less significant market participants on their affiliated routes than the BOCs will be on their in-region routes. Indeed, the BOCs likely will face more in-region long distance competition than will exist on international routes to countries traditionally controlled by dominant foreign carriers. As such, the different public interest standards unfairly discriminate against domestic carriers.

The Commission also alleges that distinct public interest tests should apply because the “BOCs are subject to a detailed statutory regime that governs their entry into in-region interLATA service under Section 271 of the Act.”³⁶ As an initial matter, this claim fails now that a Federal District Court in Wichita Falls voided Sections 271-276 of the Act.³⁷ Regardless of *Wichita Falls*, however, BellSouth is entirely correct that BOC entry would meet the public interest tests of *each* statute.³⁸

³⁶ *Foreign Participation Order* at ¶ 58.

³⁷ *SBC Communications, Inc., et al. v. Federal Communications Commission*, Civ. Action No. 7; 97-CV-163-X (N.D. Tex. Dec. 31, 1997).

³⁸ Admittedly, Section 271 of the 1996 Act requires market entry to serve the “public interest, convenience, and necessity” whereas Section 214 requires market entry to serve the “public convenience and necessity.” It is unlikely that the additional word “interest” warrants application of a different standard for market entry. Indeed, the Commission would be hard pressed to provide an example of market entry that serves the “public convenience and necessity” but not the “public interest, convenience, and necessity.”

* * *

For the foregoing reasons, the Commission should reject MCI's attempt to reargue the decision not to apply *any* benchmark conditions, or impose enhanced reporting and complaint mechanisms, on switched resale authorizations. Also, SBC encourages the FCC to retain its new one-day's notice tariff provision and allow carriers to add or discontinue circuits without prior approval, despite PanAmSat's objections. In addition, SBC supports BellSouth's petition for clarification and reconsideration and urges the Commission to apply to BOC market entry into the U.S. long distance market the same public interest standard and presumptions adopted in the *Foreign Participation Order* for market entry by carriers affiliated with WTO member countries.

Respectfully submitted,

SBC COMMUNICATIONS INC.

By: Stanley Moore/CRF

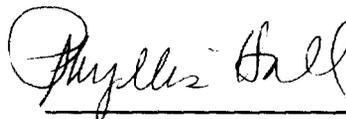
James D. Ellis
Robert M. Lynch
175 E. Houston, Room 1254
San Antonio, TX 78205

Stanley J. Moore
5850 W. Las Positas Blvd
Pleasanton, CA 94588
(510) 468-5259
Its Attorneys

February 10, 1998

Certificate of Service

The undersigned hereby certifies that the preceding document was delivered by United States first class mail (except as otherwise indicated), postage prepaid, to the persons listed below.



February 10, 1998

Sanford C. Reback
Scott A. Shefferman
Larry A. Blosser
MCI Telecommunications Corporation
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
Attorneys for MCI

Henry Goldberg
Joseph A. Godles
W. Kenneth Ferree
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, N.W.
Washington, D.C. 20036
Attorneys for PanAmSat

William B. Barfield
David G. Richards
Jonathan B. Banks
BellSouth Corporation
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610
Attorneys for BellSouth