

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

In the Matter of)	
)	
Rules and Policies on Foreign)	IB Docket No. 97-142
Participation in the U.S.)	
Telecommunications Market)	
)	
Market Entry and Regulation of)	IB Docket No. 95-22
Foreign-Affiliated Entities)	

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**REPLY OF CABLE AND WIRELESS PLC
AND CABLE & WIRELESS, INC.**

Cable and Wireless plc ("C&W") and Cable & Wireless, Inc. ("CWI") (collectively, the "C&W Companies") hereby reply to the "Comments in Support of MCI Petition for Reconsideration and Opposition to Petitions of BellSouth, KDD and SBC" ("Comments of AT&T") filed on February 10, 1998 by AT&T Corp. ("AT&T") in the proceeding captioned above. As shown below, AT&T -- like MCI -- fails to provide any valid reason why the Commission should reconsider its decision not to condition the switched resale authorizations of foreign-affiliated carriers on the foreign affiliate's compliance with the applicable benchmark settlement rate, as set forth in its *Report and Order and Order on Reconsideration* (FCC 97-398) ("*Report and Order*").

AT&T presents two arguments to support its position that switched resale carriers with foreign affiliations have the incentive and the ability to engage in anticompetitive behavior. First, AT&T contends that a switched reseller that engages in a predatory price squeeze on an affiliated route will ultimately benefit from its anticompetitive behavior, because the foreign affiliate's control over the settlement rate on the route will prompt the

facilities-based carrier providing service to the reseller to "share monopoly rents" with the reseller and its foreign affiliate.¹ This argument rests on unproven and unreasonable assumptions. AT&T's position assumes that there will be only one facilities-based carrier left in the market -- the facilities-based carrier providing service to the reseller -- as a result of the reseller's pricing behavior. But as the Commission recognized in the *Report and Order*, the fact that existing facilities are sunk investments will discourage facilities-based carriers from abandoning the market.² AT&T's argument also assumes without proof that the underlying facilities-based carrier would collude with the reseller and its foreign affiliate. Since such behavior would violate U.S. antitrust laws as well as Commission rules and requirements, it is not reasonable to expect that facilities-based carriers would engage in such action. As the Supreme Court recognized in *Matsushita Electric*, predatory pricing schemes are rarely tried, and even more rarely successful, particularly when more than one party seeks monopoly power.³

The second argument raised by AT&T is that a switched reseller will be tempted to price below its cost in the short term on the affiliated route, even if these price reductions are not sustainable in the long run, because such action will generate additional traffic and associated settlement revenues for the foreign affiliate.⁴ This argument has already been

¹ Comments of AT&T at 3.

² *Report and Order* at ¶ 199.

³ *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 589-90 (1986) ("A conspiracy [to charge below-market prices in order to stifle competition] is incalculably more difficult to execute than an analogous plan undertaken by a single predator").

⁴ Comments of AT&T at 3-4.

considered and rejected by the FCC. As the Commission recognized in the *Report and Order*, the behavior described by AT&T is not anticompetitive. Low calling prices, in the absence of subsequent price increases, do not harm consumers; rather, they simply reflect price competition in the market.⁵

AT&T repeats MCI's argument that the Commission cannot readily detect anticompetitive behavior on the part of switched resellers since it cannot reliably determine wholesale costs.⁶ As the C&W Companies discussed in their Comments on MCI's Petition, this argument strains credulity. It is inconceivable that carriers such as AT&T and MCI lack reasonably accurate information about wholesale costs. As evidenced by the emergence of spot markets such as RateXchange⁷ for wholesale minutes, telecommunications has become a commodities-based product, with price being readily ascertainable by most customers. Furthermore, should the Commission suspect a foreign-affiliated reseller of engaging in anticompetitive behavior, the Commission can easily obtain information on the carrier's costs by requiring the reseller and its underlying facilities-based carrier to file the relevant contracts.

Finally, AT&T reiterates MCI's claim that additional safeguards are required, and suggests that the Commission impose, in addition to the safeguards proposed by MCI, the "bright line" pricing test adopted in the *Telmex/Sprint Order*.⁸ The C&W Companies

⁵ See *Report and Order* at ¶ 201.

⁶ Comments of AT&T at 5.

⁷ See RateXchange web site at <<http://www.ratexchange.com>>.

⁸ Comments of AT&T at 6, citing *Telmex/Sprint Communications, L.L.C., Order, Authorization and Certification* in File No. ITC-97-127, DA 97-2289, ¶ 62 (rel. Oct. 30, 1997).

demonstrated at length in their Comments that MCI's proposed safeguards are unnecessary and inappropriate.⁹ With respect to the "bright line" pricing test of the *Telmex/Sprint Order*, the FCC considered and rejected a proposal to make this test applicable to all foreign-affiliated resellers in the *Report and Order*.¹⁰ As such, AT&T's suggestion of additional safeguards deserves no further consideration from the Commission.

In sum, the arguments raised by AT&T to support its view that the Commission should impose the benchmark condition on the switched resale authorizations of foreign-affiliated carriers are speculative or merely repeat what has been previously considered and rejected by the Commission. Since MCI's Petition is similarly lacking in merit, as

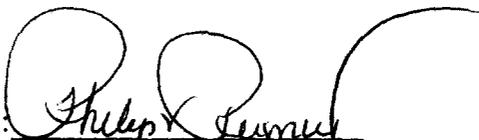
⁹ For example, the C&W Companies noted that the FCC has no jurisdiction to require a foreign carrier to disclose highly confidential information on its traffic and revenues, as suggested by MCI. Furthermore, there can be no assurance that the affiliated U.S. carrier will have access to the information or the ability to compel the foreign affiliate to produce it, since the U.S. carrier will not necessarily control the foreign affiliate. *See* Comments of the C&W Companies at 6.

¹⁰ *Report and Order* at ¶ 206.

demonstrated by the C&W Companies' previously filed comments, the Commission should deny MCI's Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Reply of Cable and Wireless plc and Cable & Wireless, Inc., were served upon the parties listed below by United States mail, postage prepaid, this 20th day of February, 1998.

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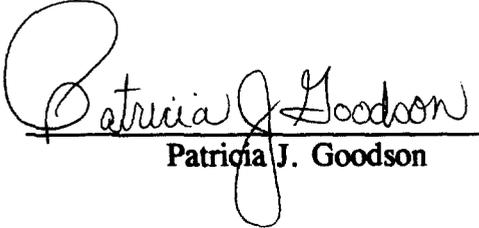
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