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April 7, 1998

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

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

Re: Computer III Further Remand Proceeding
CC Docket No. 95-20

Dear Ms. Salas:

In its Comments filed in this proceeding on March 27, 1998, MCI Telecommunications Corporation (MCI) cited various pleadings, including its previous Comments in CC Docket No. 95-20, and other documents. Due to the bulk of the materials cited, it was not feasible to attach them to MCI's recent Comments (1998 Comments). MCI accordingly stated in its Comments on page 20 that, for the convenience of the Commission, it would be submitting the cited material separately. In order for the Commission to have a complete record upon which to base its ultimate decision in this matter, especially in light of the statement in the Further Notice of Proposed Rulemaking that the parties should resubmit any points submitted previously that they wish to be considered, MCI accordingly is resubmitting the following list of enclosed materials in duplicate:

- A. Reply of MCI Telecommunications Corporation in Support of the ITAA Petitions for Reconsideration, Bell Operating Companies' Joint Petition for Waiver of Computer II Rules (March 15, 1995), discussed at pages 18-20 of MCI's 1998 Comments;
- B. Letter from Robert J. Butler to William F. Caton, Secretary, FCC, dated December 13, 1994, with attachments, cited at pages 35 and 53 of MCI's 1998 Comments;
- C. Affidavit of Peter P. Guggina, dated April 3, 1995, attached as Exhibit B to the Comments of MCI Telecommunications Corporation, CC Docket No. 95-20 (April 7, 1995), discussed at pages 49-50 of MCI's 1998 Comments;
- D. "ONA: A Promise Not Realized -- Reprise," Hatfield Associates, Inc., April 6, 1995, filed in CC Docket No.

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95-20, discussed at pages 49-51 of MCI's 1998 Comments;

- E. Ex parte letter from Frank W. Krogh, MCI, to William F. Caton, FCC, CC Docket No. 95-20 (April 25, 1996), with attached affidavits of Peter P. Guggina, David P. Jordan, Anthony J. Toubassi, and James Joerger, discussed at pages 51 and 61 of MCI's 1998 Comments;
- F. Pages 32-39 of the Comments of MCI Telecommunications Corporation, CC Docket No. 95-20 (April 7, 1995) and Exhibit C thereto, cited at page 53 of MCI's 1998 Comments;
- G. Pages 41-48 of the Comments of MCI Telecommunications Corporation, CC Docket No. 95-20 (April 7, 1995) and Exhibit D thereto, cited at page 60 of MCI's 1998 Comments.

In addition, MCI also resubmits as Tab H the enclosed copies of "An Audit of the Affiliate Interests of the Pacific Telesis Group," prepared by the staff of the California PUC and presented to the NARUC Committee on Finance and Technology on July 26, 1994. According to the Executive Summary of this report, the results of this audit demonstrate that

Regulatory agencies' heavy reliance on non-structure safeguards, such as cost allocation systems and project tracking systems may be misplaced. These systems and procedures appear to be inadequate to ensure that cross-subsidizations will not occur.

Id. at ii. The Executive Summary also cites "network infrastructure modifications, with ratepayers' funding, that were mainly to accommodate the development of [Pacific Bell's] competitive enhanced services." Id. at iii.

Letter to Magalie Roman Salas
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Please include a copy of all of the above-listed enclosed material in the public record of this proceeding.

Yours truly,


Frank W. Krogh

Enclosures

cc: Richard K. Welch
Joe Welch
Andrea M. Kearney
Carol Matthey

A

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

In the Matter of the Bell Operating)
Companies' Joint Petition for Waiver)
of Computer II Rules)

REPLY OF MCI TELECOMMUNICATIONS CORPORATION
IN SUPPORT OF THE ITAA PETITION FOR RECONSIDERATION

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Its Attorneys

Dated: March 15, 1995

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SUMMARY

MCI replies to the BOCs' Joint Opposition to ITAA's Petition for Reconsideration of the BOC Waiver Order. As ITAA argues in its Petition, the Common Carrier Bureau's interpretation, in the BOC Waiver Order, of California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III) is seriously flawed. California III was the second reversal by the Ninth Circuit of the Commission's elimination of the structural separation requirements governing the BOCs' provision of enhanced services. The Bureau reads California III, however, as endorsing the unseparated provision of BOC enhanced services pursuant to approved CEI plans, while reversing only the complete elimination of structural separation pursuant to approved ONA plans. In effect, the BOC Waiver Order and the BOCs, in their Joint Opposition, treat California III almost as if nothing had happened, leaving almost all BOC unseparated enhanced services virtually untouched.

That extreme reading of California III cannot withstand analysis. In deciding once again to eliminate structural separation in the Remand Order, the Commission relied on CEI as part of its overall cost-benefit analysis; there was no independent analysis of the unseparated provision of BOC enhanced services pursuant to CEI plans separate from its analysis of the unseparated provision of BOC enhanced services pursuant to ONA plans.

The Commission's unitary cost-benefit analysis in the Remand Order was reviewed as a whole in California III. The Court did

not, as the Bureau and the BOCs imagine, break out the unseparated provision of BOC enhanced services pursuant to CEI plans and bless that degree of structural relief, while reversing only the final step in the complete elimination of structural separation. In fact, the Court explicitly held that "without ONA," CEI is "not adequate to prevent access discrimination." 39 F.3d at 930. Accordingly, the Commission's entire cost-benefit analysis in the Remand Order was reversed, including the structural relief provided under CEI plans. Id.

Since all of the structural relief provided in the Remand Order was vacated, the Computer II structural separation rules fully apply in the absence of a waiver. For the reasons explained in MCI's Opposition to the BOCs' Joint Contingent Petition for Interim Waiver, the BOCs have not made the specific showing necessary for a waiver of the Computer II rules, and the BOC Waiver Order did not properly apply the standards governing Computer II waivers in granting such relief. The BOC Waiver Order must therefore be reversed.

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

In the Matter of)
)
Bell Operating Companies')
Joint Petition for Waiver of)
Computer II Rules)

TO: THE COMMON CARRIER BUREAU

**REPLY OF MCI TELECOMMUNICATIONS CORPORATION
IN SUPPORT OF THE ITAA PETITION FOR RECONSIDERATION**

Pursuant to the Public Notice released on February 23, 1995,^{1/} MCI Telecommunications Corporation (MCI) hereby replies to the Bell Operating Companies' Joint Opposition to Petition for Reconsideration (BOC Opp.), filed on March 6, 1995. The subject of the Public Notice was the Petition for Reconsideration of the BOC Waiver Order^{2/} filed by the Information Technology Association of America (ITAA).

The BOC Opp., which was the only opposition to ITAA's Petition for Reconsideration, argues that the BOC Waiver Order correctly interpreted California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III) as having generally upheld, rather than vacated, the provision of BOC enhanced services on an unseparated basis and that, in any event, the BOC Waiver Order was also based on the alternative assumption that California III returned the

^{1/} DA 95-346 (released Feb. 23, 1995).

^{2/} Memorandum Opinion and Order, Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, DA 95-36 (CCB Jan. 11, 1995).

industry to the Computer II structural separation regime.^{3/}

In fact, California III struck down all of the structural relief provided in the Remand Order,^{4/} thus returning the industry to the Computer II regime, but the BOC Waiver Order did not properly apply the strict standards governing Computer II waivers. The BOC Waiver Order should therefore be reconsidered and reversed.

Background

In California III, the Court once again determined, as it had in California I,^{5/} that the Commission still has not provided a rational basis for the substitution of nonstructural regulations for the structural separation rules governing the BOCs' provision of enhanced services. In particular, the court, in vacating in part the Remand Order, held that

the FCC has ... failed to provide support or explanation for some of its material conclusions regarding prevention of access discrimination. Thus, once again, we conclude that the FCC's cost benefit analysis is flawed and set aside the Order on Remand as arbitrary and capricious under the APA.

39 F.3d at 930. The court explained that the Commission's original vision of Open Network Architecture (ONA), set forth in

^{3/} See Amendment of Section 64.702 of the Commission's Rules and Regulations, Final Decision, 77 F.C.C.2d 384, 475 (1980) (subsequent history omitted); Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies, 95 F.C.C.2d 1117, 1120 (1984) (same).

^{4/} Report and Order, Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991).

^{5/} California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

Computer III, "still has not been achieved."^{6/} Since the Commission, in Computer III, had found that the Comparably Efficient Interconnection (CEI) rules, along with other antidiscrimination regulations, was not adequate to prevent access discrimination "without fully implemented ONA,"^{2/} "[t]he FCC has not explained adequately how its diluted version of ONA" -- even in tandem with the other antidiscrimination regulations -- "will prevent this behavior."^{8/}

Following California III, the BOCs, in their Joint Contingency Petition for Interim Waiver of the Computer II Rules (Joint BOC Pet.), sought to continue providing their enhanced services on an unseparated basis "pending any further Commission proceedings" on remand.^{2/} MCI and other parties, including ITAA, opposed the Joint BOC Waiver Petition. In its Opposition to Joint Contingent Petition for Interim Waiver of the Computer II Rules (MCI Opp.), MCI explained that the BOCs had not come close to meeting the strict standards for a Computer II waiver.

In the BOC Waiver Order, the Common Carrier Bureau granted a waiver in order to permit the BOCs to continue providing enhanced services on an unseparated basis. The Bureau's rationale was that California III had remanded only "that part of the [Remand Order] lifting all structural separation requirements" pursuant

^{6/} California III, 39 F.3d at 929.

^{2/} Id.

^{8/} Id.

^{2/} Joint BOC Pet. at 2.

to approved ONA plans and had endorsed the unseparated provision of BOC enhanced services pursuant to approved CEI plans.^{10/} Thus, according to the Bureau, rather than invalidating entirely the elimination of structural separation, thereby reinstating the Computer II rules, California III merely "reinstates the Computer III service-by-service CEI plan regime."^{11/} The Bureau also stated that, to the extent its reading of California III is incorrect, and all structural relief was invalidated by that decision, it would grant a waiver of the Computer II rules, for the same reasons.^{12/}

**The BOC Waiver Order and the
BOCs Grossly Misread California III**

Essentially, the Bureau, in the BOC Waiver Order, and the BOCs, in the BOC Opp., read California III as if nothing had happened. According to the Bureau and the BOCs, even in the absence of any waiver, the BOCs can keep right on providing unseparated enhanced services for which they have approved CEI plans, and for those services not now blessed by such a plan, they can be provided on an unseparated basis once a CEI plan is approved. The main purpose of the BOC Waiver Order is simply to allow the BOCs to continue providing those enhanced services not covered by an approved CEI plan while such approval is

^{10/} BOC Waiver Order at ¶¶ 10-11 (emphasis added).

^{11/} Id. at ¶ 20.

^{12/} Id. at ¶ 29.

pending.^{13/}

The BOCs echo the Bureau's interpretation in suggesting that California III endorsed the "CEI Plan regime"^{14/} as an interim solution that preexisted the Remand Order and exempted that regime from its reversal. The Bureau's and BOCs' wishful interpretation of their loss in California III, however, cannot withstand scrutiny.

The starting point for any realistic analysis of this issue is California I, which entirely vacated the Computer III Orders, including CEI and ONA.^{15/} The Commission recognized that fact in the Remand Notice, which stated that "[t]he Ninth Circuit's vacation of the Commission's Computer III decision generally returned the industry to a Computer II regime."^{16/} Accordingly, the Commission had to grant an interim waiver "to allow the BOCs to continue offering enhanced services on an integrated basis pursuant to approved ... (CEI) plans." Id.^{17/} Thus, leaving aside the interim waiver, CEI as well as ONA was nullified in

^{13/} See id. at ¶¶ 29 & n.70, 30.

^{14/} BOC Opp. at 3.

^{15/} Amendment of Sections 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 F.C.C.2d 958 (1986), recon., 2 FCC Rcd 3035 (1987); Phase II, 2 FCC Rcd 3072 (1987) (collectively, Computer III Orders), vacated and remanded sub nom., California v. FCC, 905 F.2d 1217 (9th Cir. 1990).

^{16/} Notice of Proposed Rulemaking and Order, Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 174, 187 n.4 (1990) (Remand Notice).

^{17/} See also Remand Order, 6 FCC Rcd at 7574, ¶5.

California I as a justification for unseparated BOC enhanced services.

A close reading of the Remand Order, in conjunction with California III, disposes of two notions reflected in the BOC Waiver Order and the BOC Opp. that underlie the Bureau's and BOCs' misreading of California III. First, the BOC Waiver Order suggests that the lifting of structural separation -- i.e., the provision of unseparated BOC enhanced services -- is accomplished only through the complete lifting of structural separation pursuant to an approved ONA plan. For example, the BOC Waiver Order describes California III as striking down that portion of the Remand Order "lifting structural separation requirements completely,"^{18/} or "lifting all structural separation requirements,"^{19/} as if that were interchangeable with "the decision to lift structural separation."^{20/}

In fact, however, structural separation is "lifted" as to a given enhanced service under CEI as well. In the Remand Order, the Commission discussed its experience with unseparated BOC services under the CEI plans that had been approved prior to California I and continued under the waiver and characterized that situation as the "removal of structural separation

^{18/} BOC Waiver Order at ¶ 19 (emphasis added).

^{19/} Id. at ¶ 11 (emphasis added).

^{20/} Id.

requirements."^{21/} In other words, a CEI plan is also a "removal of structural separation," and provision of BOC enhanced services under a CEI plan constitutes the unseparated provision of BOC enhanced services.

The second notion animating the Bureau's and BOCs' misreading of California III is that the Remand Order set forth two separate analyses justifying the "CEI Plan regime" and the complete elimination of structural separation under ONA and that California III upheld one and vacated the other. In fact, CEI was lumped in with all of the other nonstructural safeguards in the cost-benefit analysis justifying structural relief in the Remand Order. There was not an independent cost-benefit analysis for interim CEI plans, separate from the cost-benefit analysis for ONA. 6 FCC Rcd at 7576, 7600, 7622, ¶ 11, ¶ 64 & n.106, ¶ 106. CEI, to the extent it was mentioned at all, was discussed as an element of ONA. 6 FCC Rcd at 7600, 7623, ¶ 64 & n.106, n.211 ("our CEI/ONA requirements"). In the conclusion of the cost-benefit analysis, the Commission determined that provision of BOC enhanced services on an unseparated basis was preferable to structural separation.^{22/}

It was only after the rationale for the unitary cost-benefit conclusion had been spelled out that the Commission determined that until the conditions for the complete removal of structural

^{21/} 6 FCC Rcd at 7575, ¶ 7. See also id. at 7619, 7622, ¶¶ 102, 106 (contrasting unseparated provision of enhanced services under CEI plans with structural separation).

^{22/} 6 FCC Rcd at 7623-24, ¶ 108.

separation could be met, the BOCs could only provide enhanced services under CEI plans and waivers.^{23/} There was no separate justification for unseparated services under CEI plans.^{24/} Thus, CEI, having been vacated in California I, was resurrected in the Remand Order as an integral element of the antidiscrimination safeguards justifying structural relief.

In reviewing the Remand Order, the Court acknowledged the differences between the unseparated provision of enhanced services under CEI and under ONA, but did not exempt the former from its reversal. The BOCs, at page 3, quote a portion of California III that discusses the CEI plans in a positive tone, but the quoted language was simply part of the Court's background discussion of the Computer III orders. 39 F.3d at 927. The meaninglessness of the quoted discussion for purposes of determining the scope of the reversal in California III is demonstrated by the very next paragraph of California III, which quotes a similarly positive discussion of CEI and ONA in

^{23/} Id. at 7624, ¶ 108.

^{24/} In footnote 212, the Commission states that "[i]n the interim period between the effective date of this Order and removal of structural separation, the BOCs may file CEI plans and CEI waivers." 6 FCC Rcd at 7624 n.212. The "removal of structural separation" mentioned in that sentence obviously refers to the complete removal of structural separation, since CEI plans also allow the unseparated provision of enhanced services. That reading of the sentence is confirmed by the next sentence in footnote 212, stating: "The BOCs are also permitted to provide enhanced services on an integrated basis pursuant to the Computer II waivers granted by the Commission...." Id. If the provision of enhanced services under a Computer II waiver constitutes the unseparated provision of enhanced services, provision of such service under a CEI plan also constitutes the unseparated provision of enhanced services.

California I. Id. at 928 (quoting California I., 905 F.2d at 1233). That positive assessment of CEI and ONA in California I., however, could not save them from the effect of the reversal of Computer III in that case. 905 F.2d at 1238-39, 1246.

Thus, irrespective of the reasonableness of CEI and ONA standing alone, the entire cost-benefit analysis on which the Commission relied in eliminating structural separation in Computer III was reversed in California I. Id. As the Court stated in California I., an administrative cost-benefit analysis has to be judicially reviewed in toto; if any elements of the cost-benefit analysis are not rational or are not supported by the record, "we must find the Commission's decision arbitrary and capricious. We cannot guess at how the FCC would have [re]balanced" the remaining factors. 905 F.2d at 1238 n.29.

The same principles apply to the Court's review in California III of the unitary cost-benefit analysis in the Remand Order. In fact, FCC counsel, in defending the Remand Order before the Ninth Circuit, characterized CEI as the "primary safeguard" and the "core protection against access discrimination," and relegated ONA to secondary status as "simply a part ... of a larger package of antidiscrimination safeguards."^{25/} Thus, contrary to the BOCs' suggestion that the "CEI Plan regime" was not really before the Court in California III, that "regime" was directly at issue in that case, along with

^{25/} Brief for Respondents at 56, 59, 63, People of the State of California et al. v. FCC, Nos. 92-70083 and consolidated cases (9th Cir. July 14, 1993) (FCC California III Br.).

ONA. In light of the FCC's briefing of the case, any discussion by the Court of the antidiscrimination elements of the cost-benefit analysis justifying structural relief had to focus on CEI at least as much as ONA.

To the extent that FCC counsel tried to break out ONA from CEI and the other elements of the overall cost-benefit analysis, the Commission was rebuffed by the Court:

The FCC contends that ONA is merely one component of its overall regulatory scheme designed to prevent access discrimination. The FCC points to the other safeguards against access discrimination ... including CEI.... The FCC contends that even without fully implemented ONA, these safeguards will prevent access discrimination. The problem with this argument is that the FCC ruled to the contrary in Computer III and has not explained, in its Order on Remand or elsewhere ... why the conclusion it reached in Computer III regarding ONA has changed.

39 F.3d at 929 (emphasis added). In other words, CEI without ONA cannot prevent access discrimination sufficiently to justify the unseparated provision of enhanced services, a finding that applies to CEI plans as much as to ONA.

This reading of the opinion is also confirmed by the Court's reliance on the MemoryCall order as evidence of the inadequacy of the antidiscrimination safeguards.^{26/}

The FCC responds that the MemoryCall case does not show that its safeguards are ineffective because, among other reasons, ONA had not yet been implemented at that time. The problem with this argument is that ONA, at least as defined in Computer III, still has not been achieved. The MemoryCall case shows that the BOCs have the

^{26/} See In the Matter of the Commission's Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of MemoryCall Service, Docket No. 4000-U (Ga. PSC June 4, 1991).

incentive to discriminate and the ability to exploit their monopoly control over the local networks to frustrate regulators' attempts to prevent anticompetitive behavior. The FCC has not explained adequately how its diluted version of ONA will prevent this behavior.

39.F.3d at 929. At the time of the discriminatory conduct complained of in MemoryCall, that service was being provided pursuant to an approved CEI plan, which had previously prohibited the very conduct found to have occurred there.^{27/} That BellSouth's MemoryCall service was being provided pursuant to a CEI plan was brought to the Court's attention by counsel for both the FCC and petitioners MCI and the Newspaper Association of America.^{28/} Thus, the Court found that the BOCs had "the ability to exploit their monopoly control over the local networks to frustrate regulators' attempts to prevent anticompetitive behavior" under "the CEI Plan regime," prior to the full implementation of ONA.

The Court further squelched the FCC's attempted defense of CEI in holding that under CEI and the other safeguards, competitors "might be excluded from the market entirely," 39 F.3d at 929, "and, without ONA," CEI and the other safeguards "are not adequate to prevent access discrimination." Id. at 930. As in California I, the Court in California III reversed the entire

^{27/} BellSouth Plan for Comparably Efficient Interconnection for Voice Messaging Services, 3 FCC Rcd 7284 (CCB 1988).

^{28/} See FCC California III Br. at 59-61; Joint Reply Brief of Petitioners MCI Telecommunications Corporation, in Case No. 92-70186, and Newspaper Association of America, in Case No. 92-70261 at 12-17, People of the State of California, et al. v. FCC, Nos. 92-70083 and consolidated cases (9th Cir. Sept. 8, 1993).

structural relief cost-benefit analysis in toto.

In California I, we held that because the FCC had not supported its conclusions regarding prevention of cross-subsidization, the FCC's overall cost benefit analysis was flawed and its order was arbitrary and capricious under the APA. 905 F.2d at 1238. Here, the FCC has similarly failed to provide support or explanation for some of its material conclusions regarding prevention of access discrimination. Thus, once again, we conclude that the FCC's cost benefit analysis is flawed and set aside the Order on Remand as arbitrary and capricious under the APA.

39 F.3d at 930.

The broad scope of the Court's reversal is confirmed by the Conclusion of California III:

On our review of the Order on Remand, we conclude that the FCC's nonstructural safeguards against cross-subsidization adequately respond to our concerns in California I, but that the FCC has failed to explain or justify its change in policy regarding nonstructural safeguards against access discrimination. For this reason, the FCC's cost benefit analysis is flawed and that portion of its order is arbitrary and capricious. We uphold those portions of the Order on Remand that implement CPNI rules and that preempt state regulations.

39 F.3d at 933. Since CEI was not part of the CPNI rules or the preemption issues, the CEI plan regime was clearly swept up in the vacating of the "FCC's cost benefit analysis" of the "non-structural safeguards against access discrimination." The BOC/Bureau fantasy of a pre-existing CEI Plan regime that somehow came into existence -- other than on a waiver basis -- prior to the Remand Order and somehow remained untouched by the reversal of the structural relief cost-benefit analysis in California III must be abandoned. Any and all structural relief provided in the Remand Order has been vacated, thereby reinstating the Computer

II structural separation rules.

**The BOC Waiver Order Did Not
Properly Apply the Computer II Waiver Standards**

Since California III reinstated the Computer II rules, the BOCs must provide their enhanced services on a fully structurally separated basis unless they meet the standards for a waiver of the structural separation requirements. As MCI explained in its Opposition to the BOC waiver petition, they failed to make such a showing,^{29/} and the BOC Waiver Order failed to apply the Computer II waiver standards properly in granting such relief.

In the BOC Waiver Order, the Bureau summarily rejected the Commission's own prior standards for Computer II waivers, as recited in MCI's opposition.^{30/} It failed to explain, however, why it rejected those standards, other than that it had also ignored those standards in granting the previous interim waiver to the BOCs in the wake of California I.^{31/} The Bureau repeated the BOCs' conclusory assertions that "the potential for dislocation of existing customers and industry confusion is sufficient to justify a waiver,"^{32/} but the BOCs never supported those assertions to the extent required by the precedents cited in MCI's Opposition.

The Bureau also stated that the BOCs "are now subject to

^{29/} MCI Opp. at 6-14.

^{30/} BOC Waiver Order at ¶ 26 n. 68.

^{31/} Bell Operating Companies' Joint Petition for Waiver of Computer II Rules, 5 FCC Rcd 4714 (1990).

^{32/} BOC Waiver Order at ¶ 26 n.68.

both CEI and ONA requirements, as well as other safeguards to protect against anticompetitive conduct,"^{33/} which, of course, were held inadequate for that purpose in California III. Moreover, the Bureau never put the BOCs to the test required by the Custom Calling Denial Order,^{34/} namely that the BOCs demonstrate that similar services are not available from other enhanced service providers (ESPs) and could not be made available from ESPs even if they were provided with reasonably priced, nondiscriminatory access to BOC network features.^{35/} In short, the BOCs have not met the standards for a Computer II waiver, and the BOC Waiver Order, in granting such relief, failed to apply the proper standards. See MCI Opp. at 6-14, attached as Appendix A.

^{33/} Id.

^{34/} AT&T Co., 88 FCC 2d 1 (1981).

^{35/} Id. at 26, 31.

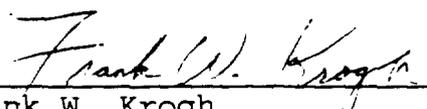
Conclusion

Having failed to apply the strict standards governing Computer II waivers, the BOC Waiver Order should be reversed and the BOCs required to meet those standards before any such waiver is considered.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

By:



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1801 Pennsylvania Ave., N.W.
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Dated: March 15, 1995

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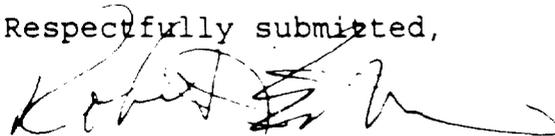
Re: Computer III Remand Proceeding

Dear Mr. Caton:

On December 12, 1994, the undersigned and Martha Lockwood and Stephen LaPierre of the Association of Telemessaging Services International ("ATSI") met with Kathleen Levitz, Rose Crelin, and Kevin Werbach of the Common Carrier Bureau to discuss the above-referenced proceeding. The ATSI personnel described various problems its members had encountered in securing ONA services from the Bell Companies as well as attempts at "unhooking" and "slamming" of customers of independent telemessaging service companies as chronicled in the attachments to this letter. In view of these concerns, ATSI urged reinstatement of structural separation requirements.

Should any question arise concerning this matter, please contact the undersigned.

Respectfully submitted,



Robert J. Butler

RJB/nab

Attachments