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

In the Matter of	)	
	)	
Petition of US West Communications, Inc.	)	CC Docket No. 97-172
for a Declaratory Ruling Regarding the	)	
Provision of National Directory Assistance	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS CORPORATION

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SUMMARY

US West, in its Further Submission in support of its Petition for Declaratory Ruling, repeats its previous arguments that National Directory Assistance service is not an in-region interLATA service but now adds that, if it is an interLATA service, it is an incidental interLATA service under Section 271(g)(4) of the Act. Further, US West requests that, if the Commission finds that National Directory Assistance service is an in-region interLATA service subject to the requirements of Sections 271 and 272 of the Act, the Commission utilize its forbearance authority under Section 10 of the Act and forbear from applying the separate subsidiary requirements of Section 272.

As MCI has explained in previous comments, providing callers with telephone numbers of subscribers in other LATAs is an interLATA service and is thus prohibited to the BOCs unless and until they obtain in-region interLATA authority. That US West's provision of National Directory Assistance service involves interLATA transmissions is additional proof that National Directory Assistance is an interLATA service.

Depending on the Commission's classification of National Directory Assistance service, the requested forbearance will be available, unavailable or unnecessary. For example, if the Commission determines, as MCI argues in the instant comments, that National Directory Assistance service is an interLATA service subject to Section 271 and neither previously authorized nor subject to the incidental interLATA exception in Section 271(g)(4), then the requested forbearance is not available.

If, however, the Commission determines that National Directory Assistance service is not an interLATA service at all, then the Section 271 prohibitions would not apply to the service, and the BOCs may offer National Directory Assistance on an integrated basis without

Commission approval or forbearance. Similarly, if the Commission determines that National Directory Assistance is a previously authorized telecommunications service, then the service may be offered by the BOCs on an integrated basis without Commission approval or forbearance.

In the final option, if the Commission agrees with US West and determines that National Directory Assistance is an incidental interLATA service under Section 271(g)(4) of the Act, then the requested forbearance is an option that the Commission may consider; however, as MCI argues in the instant comments, the requested forbearance should not be granted because it would present insurmountable discriminatory and anticompetitive problems.

Because National Directory Assistance is an in-region interLATA service for which Section 271(d) authorization is still necessary, forbearance from the application of Sections 251, 271 and 272 is not available. Accordingly, US West and all other BOCs should be prohibited from providing National Directory Assistance service unless, and until, they receive Section 271 authority. Finally, even if National Directory Assistance were an incidental interLATA service, the Commission should not forbear from the application of the Section 272 separate affiliate requirements to such service.

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COMMENTS

MCI Telecommunications Corporation (MCI), pursuant to a Public Notice (DA 98-532) issued by the Federal Communications Commission (the Commission), hereby files its Comments regarding the Further Submission in Support of Petition for Declaratory Ruling (Further Submission)[1] filed by US West Communications, Inc. (US West) in the above-captioned docket regarding Bell Operating Company (BOC) provision of National Directory Assistance service.

INTRODUCTION

In its Further Submission, US West repeats its previous arguments that National Directory Assistance service is not an in-region interLATA service but now adds that, if it is an interLATA service, it is an incidental interLATA service under Section 271(g)(4) of the Act. Further, US West requests that, if the Commission finds that National Directory Assistance service is an in-region interLATA service subject to the requirements of Sections 271 and 272 of

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[1] As explained in the Public Notice, the Commission is treating US West's Further Submission in CC Docket No. 97-172 as a formal petition for forbearance under Section 10 of the Communications Act of 1934, as amended (the Act). Accordingly, the instant comments refer, interchangeably, to US West's most recent filing as the "Further Submission" or the "Petition for Forbearance."

the Act, the Commission utilize its forbearance authority under Section 10 of the Act and forbear from applying the separate subsidiary requirements of Section 272.

As MCI has explained in previous comments, providing callers with telephone numbers of subscribers in other LATAs is an interLATA service and is thus prohibited to the BOCs unless and until they obtain in-region interLATA authority under Section 271(d)(3) or unless they can demonstrate that such service falls within one of the exceptions to the Section 271(d)(3) authorization requirements. That US West's provision of National Directory Assistance service involves interLATA transmissions is additional proof that National Directory Assistance is an interLATA service. Moreover, as MCI has also explained in previous comments, National Directory Assistance is not exempted from the Section 271(d)(3) authorization requirements, and the Commission therefore is not authorized to forbear from the application of the separate affiliate requirements of Section 272 to such services.

I. BACKGROUND

On April 10, 1997, MCI filed a Complaint (the Ameritech Complaint, File No. E-97-19) against the Ameritech Operating Companies (referred to collectively as Ameritech) alleging violations of the Act. In the Ameritech Complaint, MCI claimed, among other charges, that an Ameritech affiliate, Illinois Bell, provides National Directory Assistance in violation of Sections 201(b), 251, 252, 271 and 272 of the Act. By dialing 411, consumers in the region served by Illinois Bell can obtain National Directory Assistance, receiving numbers of subscribers either inside or outside Ameritech's region. In addition, MCI alleged that Ameritech's National Directory Assistance constitutes an improper use of the 411 dialing code, in violation of the

Commission's First Report and Order in its docket captioned Use of N11 Codes and Other Abbreviated Dialing Arrangements, CC Docket No. 92-105, FCC 97-51, (released February 19, 1997) (N11 Order).

Believing that its interests might be jeopardized by any decision in the Ameritech Complaint, on June 3, 1997, US West filed a Motion to Intervene as a Party Defendant (Motion to Intervene) in MCI's Complaint against Ameritech. In its Motion to Intervene, US West described the technical differences between its National Directory Assistance service and Ameritech's National Directory Assistance service, explaining that its National Directory Assistance service frequently involves interLATA calls.[2] Further, US West argued that because Ameritech stated in its Answer that the Ameritech National Directory Assistance service does not involve interLATA calls, a decision about National Directory Assistance based on Ameritech's particular technological configuration could be detrimental to US West's position. Following the Commission staff's decision that the Commission's rules do not contemplate such a Motion to Intervene, US West withdrew its Motion on June 9, 1997.

Following the withdrawal of its Motion to Intervene, US West filed its original Petition for Declaratory Ruling Regarding the Provision of National Directory Assistance (the Petition, CC Docket No. 97-172) on July 17, 1997. In its Petition, US West requested the Commission to rule that a BOC's provision of National Directory Assistance does not violate the Act or the

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[2] See US West Motion to Intervene as a Party Defendant at 2, in which US West stated that "[f]requently, when US West provides directory assistance (including National Directory Assistance), neither the operator service center nor the directory assistance data base are located in the same LATA as the customer seeking the telephone number . . . . [I]f [an] Albuquerque caller requests a number in Miami, Florida, the number will come from an operator and database located in Colorado Springs, Colorado, Waterloo, Iowa, or Duluth, Minnesota."

Commission's rules. Subsequently, the Commission issued a Public Notice (DA 97-1634) requesting comments from interested parties regarding US West's Petition.

Following the filing of the Petition, but before it was put on public notice, MCI filed a Complaint (File No. E-97-40) against US West on July 28, 1997, alleging, among other charges, that US West's provision of National Directory Assistance violates Sections 201(b), 251, 252, 271 and 272 of the Act. Further, MCI alleged in its Complaint that US West's provision of National Directory Assistance violates the Commission's N11 Order. The formal comment schedule established by the Commission for US West's original Petition closed with the filing of Reply Comments on September 17, 1997.[3] At the time of this filing, the Commission has not released any decision with respect to the Petition.

II. THE US WEST PETITION FOR FORBEARANCE

By dialing 1+411, consumers in US West's region can obtain National Directory Assistance from US West operators, who can provide numbers of subscribers in other LATAs, either inside or outside US West's region.[4] In US West's particular provision of National Directory Assistance, the service is offered from centralized locations.[5] Thus, US West's

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[3] Since the reply comment deadline, several interested parties have filed various *ex parte* pleadings related to the US West Petition for Declaratory Ruling. Pursuant to the Commission's request in Public Notice DA 97-1634, CC Docket No. 97-172 and the above-referenced MCI complaints filed against Ameritech and US West are being treated as "permit but disclose" proceedings. Accordingly, MCI is filing the instant comments in the formal complaint proceedings as supplemental information to establish a full and complete record.

[4] See US West Further Submission at 5-6.

[5] Id.

National Directory Assistance service frequently involves interLATA calls. As US West stated in its original Petition, "a caller seeking a number, whether local or national, will frequently get that number from an operator in a different LATA."[6] US West provides the transport to connect calling customers across LATA boundaries.

In its Petition for Forbearance, US West makes several alternative arguments -- as it did in its Petition for Declaratory Ruling-- for categorizing the provision of National Directory Assistance service as something other than an in-region interLATA service subject to Sections 271 and 272 of the Act. To begin with, US West presents its only new argument for categorizing National Directory Assistance as something other than an in-region interLATA service subject to the authorization provisions of Section 271(d)(3), namely, that its National Directory Assistance service is an incidental interLATA service -- as defined in Section 271(g)(4) of the Act -- that it is permitted to offer under Section 271(b)(3).[7] US West also repeats its previous argument that it is permitted to provide its National Directory Assistance service as an exchange access service in the same way it is allowed to provide local directory assistance, a local exchange service.[8]

Second, as it did in its original Petition for Declaratory Ruling, US West makes a statutory argument that the definitions in the Communications Act, as amended, do not allow for National Directory Assistance service to be characterized as an in-region interLATA service

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[6] See US West Petition for Declaratory Ruling at 3.

[7] See US West Further Submission at 9-11.

[8] See id. at 9-12.

subject to the authorization provisions of Section 271(d)(3).[9] Further, US West repeats its previous argument that even if National Directory Assistance service were an interLATA service under Section 271 of the Act, it is permitted to provide National Directory Assistance under Section 271(f) of the Act because its provision of National Directory Assistance service is an activity previously authorized by the MFJ as an "official" service.[10]

Finally, US West argues that even if its provision of National Directory Assistance is found to be subject to Section 271 of the Act, the Commission should at least forbear from application of the separate subsidiary requirements of Section 272,[11] thereby implicitly conceding that forbearance from the application of Section 271 is not permitted under Section 10 of the Act. Moreover, US West argues that any restriction on US West's ability to provide National Directory Assistance service, including any requirement that US West provide such service through a separate affiliate, would raise serious First Amendment concerns.[12]

III. DISCUSSION

Depending on the Commission's classification of National Directory Assistance service, the requested forbearance will be available, unavailable or unnecessary. For example, if the Commission determines, as MCI argues in the instant comments, that National Directory

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[9] Id. at 11-12; see also US West Petition for Declaratory Ruling at 6-9.

[10] See US West Further Submission at 13-15; see also US West Petition for Declaratory Ruling at 13-14.

[11] See US West Further Submission at 15-30.

[12] Id. at 30-33.

Assistance service is an interLATA service subject to Section 271 and neither previously authorized nor subject to the incidental interLATA exception in Section 271(g)(4), then the requested forbearance is not available.

If, however, the Commission determines that National Directory Assistance service is not an interLATA service at all, then the Section 271 prohibitions would not apply to the service, and the BOCs may offer National Directory Assistance on an integrated basis without Commission approval or forbearance. Similarly, if the Commission determines that National Directory Assistance is a previously authorized telecommunications service, then the service may be offered by the BOCs on an integrated basis without Commission approval or forbearance.

In the final option, if the Commission agrees with US West and determines that National Directory Assistance is an incidental interLATA service under Section 271(g)(4) of the Act, then the requested forbearance is an option that the Commission may consider; however, as MCI argues in the instant comments, the requested forbearance should not be granted because it would present insurmountable discriminatory and anticompetitive problems.

Because National Directory Assistance is an in-region interLATA service, US West or any other BOC would only be permitted to provide such an interLATA service under one of three circumstances: (1) the BOC has received Section 271 in-region interLATA authority from the Commission under Section 271(d)(3);[13] (2) the service in question is an incidental interLATA service as defined by Section 271(g);[14] or (3) the BOC was previously authorized under the MFJ

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[13] See 47 U.S.C. § 271(b)(1).

[14] See 47 U.S.C. § 271(b)(3).

to provide the service in question.[15] As MCI explains below, National Directory Assistance is neither an incidental interLATA service nor a previously authorized service. National Directory Assistance service is an in-region interLATA service that cannot be offered by US West or any other BOC unless and until it obtains in-region interLATA authority from the Commission.

A. US West's National Directory Assistance is an In-region InterLATA Telecommunications Service

US West argues in its Petition for Forbearance,[16] as it did in its original Petition,[17] that National Directory Assistance is not an in-region interLATA service subject to 271. MCI addressed the same argument in its previous comments and reply comments to US West's original Petition for Declaratory Ruling.[18]

In its Further Submission, US West asserts that the definitions in the Communications Act, as amended, do not allow for National Directory Assistance service to be characterized as an interLATA service prohibited to the BOCs under Section 271 of the Act.[19] In short, US West states that its provision of National Directory Assistance service is not an interLATA service because neither "interLATA transmissions" nor "telecommunications" are involved in the

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[15] See 47 U.S.C. § 271(f).

[16] See US West Further Submission at 11-13.

[17] See US West Petition for Declaratory Ruling at 5, 7 and 10-12.

[18] See MCI Comments to US West's Petition for Declaratory Ruling at 11-12; see also MCI Reply Comments at 2-7; see also MCI Initial Brief in MCI v. US West (File No. E-97-40) at 18-21.

[19] See US West Further Submission at 11-12.

provision of National Directory Assistance service, and, therefore, it concludes that National Directory Assistance service is not prohibited by any portion of the Act, including Section 271.

As MCI explained in its earlier pleadings, however, National Directory Assistance service is clearly an in-region service and is provided, at least by US West, by means of interLATA transmissions that occur as a result of the centralized provision of such services. In addition, Ameritech, in its earlier pleadings with respect to National Directory Assistance service, admitted that its operators perform interLATA searches to retrieve National Directory Assistance listings.[20] Undoubtedly, these two offerings of National Directory Assistance are in-region, interLATA services under Section 271 of the Act.

More significantly, however, any National Directory Assistance service, regardless of the interLATA components contained in the different BOC offerings, is properly characterized as "interLATA service" under the Act. As MCI explained in its previous pleadings, the provision of interLATA services encompasses more than simply the carrying of interLATA transmissions; otherwise there would have been no need for the explicit authorization of BOC joint marketing and sale of local and interLATA services in Section 272(g)(3) of the Act to overcome the prohibition of such activities in Section 272(a)(2), which requires that certain types of "interLATA . . . services" be provided through a separate affiliate from the BOC's local

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[20] See Ameritech's July 14, 1997 letter in response to the Commission's request for more information regarding Ameritech's 1-800-AMERITECH and National Directory Assistance offerings. A copy of the letter is appended hereto as Exhibit A. In the attachment to its letter, labeled "National Directory Assistance Call Flow," at Step 7, Ameritech explains that its National Directory Assistance operators perform interLATA searches in providing the service.

services.[21] Moreover, Section 222(b) of the Act further illustrates the point that the provision of interLATA services goes beyond the mere carrying of interLATA transmissions. Section 222(b) states that "[a] telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts." 47 U.S.C. § 222(b). The express prohibition of marketing in Section 222(b) suggests that such activity would otherwise have been allowed as part and parcel of "providing . . . telecommunications service." These specific references in the statute carving out exceptions for marketing from the general rules otherwise covering the "provid[ing]" of "interLATA . . . services"[22] demonstrate that the provision of interLATA service includes much more than simply carrying a transmission across LATA boundaries.

US West argues that the Act's definition of "interLATA services" requires that a "user" select his or her termination point.[23] This argument makes no sense, since users make calls all the time without knowing or caring where the recipient of the call is located. For example, consumers place 800 calls without knowing or caring about the location of the 800 service subscriber, but that does not exempt 800 service from Section 271's prohibitions. Similarly, National Directory Assistance service involves calls placed to a National Directory Assistance

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[21] See MCI Comments to US West's Petition for Declaratory Ruling at 11-12; see also MCI Reply Comments at 2-7; see also MCI Initial Brief in MCI v. US West (File No. E-97-40) at 18-21.

[22] 47 U.S.C. § 272(a)(2).

[23] See US West Further Submission at 12.

operator to request a number in another LATA; that is all the caller needs to specify for National Directory Assistance to qualify as an interLATA service.

Since the provision of "interLATA services" under the Act, however, is much broader than US West recognizes, and encompasses other activities necessary for the carrying of a call across LATA boundaries -- such as the marketing and sale of such services -- US West's continued attempts to ignore or twist the MFJ precedents on the grounds that the MFJ's interexchange service prohibition was broader than the Act's definition of "interLATA services" fall flat. Thus, US West has not demonstrated why the MFJ precedents do not offer useful guidance in interpreting Section 271's interLATA services restriction, which, like the MFJ's interexchange service ban, covers much more than the carriage of transmissions across LATA boundaries.

Under the MFJ, activities that comprise the business of providing long distance service -- e.g., interLATA 800 directory assistance -- were considered interLATA telecommunications services, whether or not they involved interLATA transmissions,[24] and the same should hold true in applying the restrictions in Section 271 on the provision of interLATA services. In the instance of National Directory Assistance, because interexchange carriers (IXCs) provide long distance directory assistance and BOCs must provide the information that permits IXCs to provide long distance directory assistance, BOCs would be competing with IXCs for the provision of long distance directory assistance. Thus, any provision of the telephone numbers of

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[24] See U.S. v. Western Elec. Co., 627 F. Supp. at 1100, 1102, appeal dismissed, 797 F.2d 1082 (D.C. Cir. 1986) (stating that BOCs cannot engage "activities that comprise the business of providing interexchange services" -- that is, "the performance of functions that are normally and necessarily performed by those who are engaged in that business").

subscribers in other LATAs constitutes an interLATA service under Section 271 of the Act.

That a caller using a BOC's National Directory Assistance service *typically* uses such information to place interLATA calls is merely additional proof that the service is interLATA in nature. US West was correct in its original petition arguing that directory assistance is adjunct-to-basic based on the typical use of a number obtained from directory assistance -- namely, to place a call.[25] That, in a particular instance, a caller might not make a call to a number obtained from directory assistance makes no difference in categorizing directory assistance as adjunct to basic. Similarly, the actual use that a caller makes of a particular number obtained from National Directory Assistance should make no difference to its regulatory treatment. It is a simple matter to categorize a particular request for directory information as a local or interLATA directory call, based on the location of the caller and the number requested. US West and the other BOCs have no trouble dividing their directory assistance services into local and national directory assistance on that basis.[26]

Moreover, as if to reinforce MCI's point that National Directory Assistance service is an interLATA service because the numbers obtained therefrom are used to place interLATA calls, BellSouth currently offers call completion in Kentucky through National Directory Assistance service.[27] These calls placed through the call completion service are certainly interLATA.

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[25] See US West Petition for Declaratory Ruling at 10-12.

[26] See id. at 3 (describing the technical aspects of its National Directory Assistance service).

[27] See MCI Reply Comments to US West's Petition for Declaratory Ruling at 6 n. 13 (BellSouth's National Directory Assistance service offering in Kentucky contains automated announcements saying "at a charge of 30 cents you can be automatically connected to this

B. BOC Provision of National Directory Assistance is not an Activity Previously Authorized under the MFJ

US West argues, in the alternative, that if National Directory Assistance is an interLATA service, it is a previously authorized activity under the MFJ and thus permissible under Section 271(f).[28] US West made the same unpersuasive argument in its earlier filings,[29] which MCI previously addressed.[30]

The MFJ authorization to which US West refers is limited in its scope. Contrary to US West's arguments, the authorization in question permits it to provide only "exchange telecommunications and exchange access functions,"[31] including directory assistance service,[32] on a centralized -- and thus interLATA -- basis. Thus, the centralized provision of directory assistance authorized under the MFJ was directory assistance related to the BOCs' "exchange telecommunications" functions, or local directory assistance service. Accordingly, the provision of numbers of subscribers in other LATAs has not been previously authorized and is not within the exceptions allowed under Section 271(f) of the Act.

As MCI explained in its earlier pleadings,[33] under the MFJ, local directory assistance,

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party").

[28] See US West Further Submission at 13-15.

[29] See US Petition for Declaratory Ruling at 13-14.

[30] See MCI Comments to US West's Petition for Declaratory Ruling at 8-10.

[31] See United States v. Western Electric Co., 569 F. Supp. 1057, 1100 (D.D.C. 1983).

[32] Id. at 1098.

[33] See MCI Comments to US West's Petition for Declaratory Ruling at 8-10; see also MCI Reply Comments at 7-9.

dialed by 411, was considered a permissible "official service" that the BOCs could provide to their customers on a centralized, interLATA basis without a waiver.[34] In the case of directory assistance, however, the centralized provision of such services that was allowed did not enlarge the scope of the service that could be rendered; only the numbers of subscribers in the same LATA as the caller could be provided in response to a request for directory assistance, since only local directory assistance is within the "exchange telecommunications and exchange access functions" authorized by the Court. Moreover, the Commission has explicitly stated that "Official Services" refer to "interLATA networks that are used to manage the operation of ***local exchange services***" (emphasis added).[35]

In fact, US West itself was denied a broader MFJ waiver for in-bound directory assistance calls from other LATAs because IXCs can provide "interLATA directory assistance by using directory information provided by US West pursuant to its access tariffs."[36] Moreover, when another BOC, Bell Atlantic, attempted to expand the scope of offerings falling under the Official Services designation, it was also rebuffed. The MFJ court held that Bell Atlantic's provision of directory assistance services to customers of independent LECs was not an Official Service and thus required a waiver.[37] These decisions compel two conclusions: First, under the MFJ, US

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[34] See 569 F. Supp. at 1097, n. 175.

[35] See Non-Accounting Safeguards Order at n. 666.

[36] See United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. October 30, 1984), slip op. at 4.

[37] United States v. Western Elec. Co., Civ. Action No. 82-0192 (D.D.C. February 6, 1984); See also United States v. Western Elec. Co., 569 F. Supp. at 1097 (D.D.C. 1983); See also id. at 1102 (holding that "[i]t is abundantly clear . . . that this particular directory assistance is an interexchange, interLATA service which is appropriately assigned to AT&T.").

West and other BOCs would have needed a waiver to provide directory assistance to a caller where an IXC could have provided that service, such as a request for the number of a subscriber in another LATA, irrespective of whether the operator providing the number is in the same LATA as the caller. Therefore, under MFJ precedent, no provision of National Directory Assistance, including US West's National Directory Assistance service, would be classified as an "exchange telecommunications" Official Service exempt from the interLATA prohibition. Second, the BOCs were authorized to provide only local directory assistance on an interLATA basis, not National Directory Assistance.

It should also be noted that the rationale for allowing the BOCs to retain and utilize interLATA Official Services facilities does not apply to the provision of a National Directory Assistance service. The MFJ court was concerned with efficiency losses associated with reconfiguring directory assistance systems that served a major portion of a state or at most an entire state,[38] but not a directory assistance network that can retrieve telephone numbers nationally. Further, as noted above, "official services" refer to "interLATA networks that are used to manage the operation of ***local exchange services***" (emphasis added).[39] US West's National Directory Assistance service does not relate to its operation of local exchange services; rather, National Directory Assistance enables subscribers to make interLATA calls and thus is "adjunct to" that basic interLATA service, not to local exchange service. Therefore, US West's National Directory Assistance service, and any other BOC National Directory Assistance service

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[38] 569 F. Supp. at 1098.

[39] See Non-Accounting Safeguards Order at n. 666.

provided prior to in-region interLATA authority, is offered without prior authorization under the MFJ and thus in violation of Section 271 of the Act.

C. National Directory Assistance is not an Incidental InterLATA Service

US West also argues in the alternative in its Further Submission that if National Directory Assistance service is an interLATA service, it should be classified like BellSouth's reverse directory service as an incidental interLATA service under Section 271(g)(4) and thus exempt from the Section 271(d)(3) authorization requirements.[40] Such a comparison is simply wrong. The Commission's determination in the BOC Forbearance Order that the BellSouth reverse directory service fell "squarely within section 271(g)(4) of the Act"[41] referred to BellSouth's electronic reverse directory assistance, which is a purely electronic system by which BellSouth callers can retrieve stored electronic information without the intervention of a BellSouth operator. US West's National Directory Assistance service, however, goes beyond the mere electronic retrieval of stored information because it involves live operator intervention.

Both the BOC Forbearance Order and Section 271(g)(4) contemplate the ***electronic*** retrieval of information stored in a central computer. The scope of services permitted under the 271(g)(4) exception should not be expanded to include services that utilize intervening operators. Indeed, Section 271(h) states that "[t]he provisions of subsection (g) are intended to be narrowly

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[40] See US West Further Submission at 16.

[41] See In the Matters of Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220, (BOC Forbearance Order) (rel. Feb. 6, 1998) at ¶ 68.

construed." 47 U.S.C. § 271(h). Moreover, the Non-Accounting Safeguards Order[42] clearly comtemplated that incidental interLATA services within the meaning of Section 271(g)(4) are electronic database retrieval services, which are typically information services.[43]

Finally, Section 271(h) requires that the Commission "ensure that the provision of services authorized under subsection (g) by a [BOC] or its affiliate will not adversely affect. . . competition in any telecommunications market." As MCI explains below in Section III.D. of the instant comments, permitting US West to provide National Directory Assistance pursuant to the Section 271(g)(4) incidental interLATA exception on an integrated basis presents significant potential for unreasonable and discriminatory practices on the part of US West.

D. If National Directory Assistance were an Incidental InterLATA Service, the Commission Still Should Not Grant the Requested Forbearance

In addition to its arguments that it ought to be permitted to provide National Directory Assistance service, US West also requests, for the first time, that if National Directory Assistance is an incidental interLATA service under Section 271(g)(4) but not previously authorized and thus subject to the separation requirements of Section 272 of the Act, the Commission should forbear from applying the separate subsidiary requirements of Section 272, thus allowing National Directory Assistance to be provided on an integrated basis with its local exchange

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[42] See In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended, First Report and Order and Further Notice of Proposed Rulemaking, at para. 107, CC Docket No. 96-149, FCC 96-489, rel. December 24, 1996, ("Non-Accounting Safeguards Order"); on recon. 12 FCC Rcd. 2297 (1997); on further recon., Second Order on Reconsideration, FCC 97-222, rel. June 24, 1997.

[43] See id. at ¶ 121.

service. Of course, MCI believes that the Commission need never reach this issue, since US West and the other BOCs should not be permitted to provide National Directory Assistance service under any conditions, prior to receipt of in-region interLATA authority under Section 271(d)(3). If, however, the Commission finds that the BOCs may provide National Directory Assistance service in the absence of such authorization because it is an incidental interLATA service, the Commission should not forbear from applying the separate affiliate requirements of Section 272.[44]

US West's provision of National Directory Assistance service presents several anticompetitive problems, all of which would be exacerbated if the Commission permits US West to provide such service on an integrated basis.

1. National Directory Assistance Service is an Anticompetitive BOC Offering

Contrary to US West's statement that directory assistance has been noncompetitive,[45] nonlocal directory assistance, by its very nature and definition as an interLATA service, is a fully competitive service. US West and the other BOCs are simply attempting to enter the competitive nonlocal directory assistance market prior to receiving the appropriate in-region interLATA

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[44] The Commission does not have authority to grant a request for forbearance from the Section 272 separate affiliate requirements as to interLATA services for which authorization is still necessary under Section 271(d)(3), since Section 271(d)(3)(B) requires a showing of compliance with Section 272 as a prerequisite for receipt of Section 271 authority. See BOC Forbearance Order at ¶ 22. As the Commission explained in the BOC Forbearance Order, "prior to their full implementation [the Commission] lack[s] authority to forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)." Id.

[45] See US West Further Submission at 3.

authority under Section 271. US West's statement that "National Directory Assistance Introduces a Competitive Alternative" at page 5 of its Further Submission is all the more ridiculous. The BOC provision of National Directory Assistance introduces an illegal and discriminatory alternative that no other carrier can offer either through the simplicity and ubiquity of the "411" dialing pattern or with the accuracy of the directory assistance database derived from US West's monopoly position. US West's argument that it can provide National Directory Assistance at a lower cost than AT&T is no more compelling than if it stated that it is currently providing in-region long distance because it can exert its monopoly power in its region to offer consumers a lower-cost alternative to the IXCs. Moreover, the per call prices for IXC long distance directory assistance are quite varied. For example, MCI's long distance directory assistance charges range from 40 cents per call for high volume users to $1.10 per call for casual directory assistance users.

In fact, US West's reference to AT&T's National Directory Assistance through the "00" dialing pattern merely shows the competitive advantage US West and the other BOCs enjoy in providing National Directory Assistance service via the "411" dialing code.[46] Because the IXCs are not given access to the "411" dialing code in providing National Directory Assistance, the BOCs are able to take full advantage of their control over that familiar dialing pattern.

These anticompetitive advantages inherent in US West's use and control of the "411" access code -- and the anticompetitive advantages detailed below -- would be greatly aggravated if US West were permitted to provide National Directory Assistance service on an integrated

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[46] See US West Further Submission at 7.

basis.

2. The Requested Forbearance Does Not Pass the Safeguard Checklist in Section 10

Assuming *arguendo* the Commission could utilize its powers under Section 10 of the Act to consider the requested forbearance from the separate affiliate requirements of Section 272, US West's forbearance request would not pass the threshold competitive determinations to be made by the Commission under Section 10. Under Section 10(b) of the Act, before making any determination to apply regulatory forbearance, the Commission must consider "whether forbearance will promote competitive market conditions -- including the extent it will enhance competition among providers of telecommunications services."[47] In addition, forbearance is to be granted by the Commission only where it determines that the following three requirements will be satisfied: (1) enforcement of such regulation is not needed to ensure just, reasonable and nondiscriminatory practices with respect to telecommunications carriers or the service in question; (2) enforcement of such regulation is not required for consumer protection; and (3) forbearance from applying such regulation is consistent with the public interest. 47 U.S.C. § 160(a)(1)-(3).

As MCI explained above, permitting US West to provide National Directory Assistance service on an integrated basis would not promote competition among providers of telecommunications services; rather, it would stifle competition and permit US West to extend its monopoly local bottleneck power into the interLATA market. Accordingly, the preliminary

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[47] See S. Rpt. 104-23, 104th Cong. 1st Sess. 50-51 (1995); see also 47 U.S.C. § 160(b).

hurdle presented by Section 10(b) of the Act cannot be cleared in the case of US West's provision of National Directory Assistance service on an integrated basis.

Moreover, the three criteria from Section 10(a) of the Act cannot be met with respect to the regulatory forbearance requested by US West. Section 10(a)(1) of the Act requires the Commission, before granting forbearance from any regulatory restriction, to make an affirmative determination that the enforcement of such regulation is not needed to ensure just, reasonable and nondiscriminatory practices with respect to telecommunications carriers or the service in question.[48] 47 U.S.C. § 160(a)(1). US West is incorrect in stating in its Further Submission that application of the Section 272 separate affiliate requirements is "not necessary to ensure just, reasonable, and nondiscriminatory practices, classifications, and regulations" with respect to other carriers.[49] An example of the unreasonable and discriminatory practices that would continue if US West were granted forbearance from the Section 272 separate affiliate requirements can be seen in US West's claim that it will make available the "411" or "1-411" access code to any CLEC "purchasing switching from US West or reselling US West's local exchange service."[50] It is unclear exactly what US West means by that statement. The statement appears to imply that US West will route the traffic for National Directory Assistance and "411"

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[48] In addition, Section 10(a)(2) requires the Commission to decide whether enforcement of such regulation is required for consumer protection. Further, Section 10(a)(3) requires the Commission to make an affirmative finding that forbearance from applying such regulation is consistent with the public interest. It is MCI's position that, because Section 10(a)(1) cannot be satisfied, US West's forbearance request is fatally flawed, and the Commission would not need to address the other questions under Section 10(a) in order to deny the requested forbearance.

[49] US West Further Submission at 23-24.

[50] Id.