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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY 13 1998

In the Matter of)
)
Implementation of the)
Telecommunications Act of 1996:)
)
Telecommunications Carriers' Use)
of Customer Proprietary Network)
Information and Other)
Customer Information)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-115

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Introduction

MCI Telecommunications Corporation (MCI), by its undersigned counsel, hereby replies to the initial comments concerning the filings submitted in this docket by the Cellular Telecommunications Industry Association (CTIA) and GTE Service Corporation (GTE)¹ requesting that certain aspects of the Second Report and Order in this docket (Order)² be temporarily stayed or deferred pending reconsideration. Since the initial comments break little new ground beyond what was already in the CTIA and GTE requests, this reply will be brief. Primarily, MCI wishes to take this opportunity to emphasize its opposition to GTE's and other local exchange carriers' (LECs') rationales for the relief they are seeking.

¹ Pleading Cycle Established for Comments on Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Information Request for Deferral and Clarification, CC Docket No. 96-115, DA 98-836 (released May 1, 1998).

² Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27 (released Feb. 26, 1998).

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In its initial comments, MCI took no position on CTIA's and GTE's rationales for their requested relief insofar as such reasoning was confined to certain aspects of the Order as applied to cellular carriers and other commercial mobile radio services (CMRS) providers. GTE, however, requested relief that was based on a broader rationale in three respects. First, it wants all carriers to be able to use CPNI to market CPE used in connection with Asymmetric Digital Subscriber Line (ADSL) and other advanced services. Second, GTE requests that any carrier providing a customer a service package that includes at least two of the three categories of service discussed in the Order -- local, interLATA and CMRS -- be allowed to use CPNI derived from such services to market services in the third category. Finally, both CTIA and GTE request that the "win-back" prohibition set forth in the Order be stayed or deferred, but in the case of GTE, such temporary relief is sought for all carriers, not just CMRS providers.

A. GTE's and Other ILECs' Rationales for Non-CMRS Relief Should be Rejected

In its initial comments, MCI opposed GTE's grounds for such additional, non-CMRS related relief. MCI argued that to allow all carriers to use CPNI, without customer approval, to market any CPE or to market additional service categories would be anticompetitive and would, in fact, disrupt customer expectations. MCI also explained that to allow incumbent LECs (ILECs) to use the carrier proprietary information about

customers that they learn by virtue of their monopoly status for "win-back" marketing is also an abuse of monopoly power, as well as a violation of Section 222(b). Such uses of CPNI and other customer information would allow the ILECs to exploit their monopoly-derived customer base advantage for anticompetitive purposes, which is precisely what Section 222 and the Order were intended to prevent.

Although MCI expressed no opinion on the rationale for the CMRS-related relief sought by CTIA and GTE, it did state that if any temporary or interim relief is granted, it should be as to the entire Order and benefit all carriers. MCI argued that CTIA and GTE had not shown that the new CPNI rules would be so uniquely burdensome for CMRS providers to implement that only they should obtain temporary relief.

In expressing such a preference for broad-based relief, however, MCI was not in any way endorsing GTE's rationale for relief broader than the CMRS context. GTE was targeting the same rules in the Order as CTIA, but requesting that they not be applied to any carriers. Its request for relief was based partly on the burden of those rules on carriers and partly on the supposed unreasonableness of the rules as applied to all carriers. As MCI explained in its comments, GTE's challenges go too far and, if granted in full, would seriously undermine the competitive and customer control purposes of Section 222 and the Order. MCI's request that any temporary relief from the Order encompass the entire Order and apply to all carriers was based

purely on the widespread burdens of compliance and administrative fairness, not on the basis of any defects in the Order.³ MCI's request for such relief thus in no way should be taken as support for GTE's and other ILECs' requests for relief from certain rules as to all carriers.⁴

B. Win-Back Marketing by ILECs Cannot be Justified as a Check on Slamming

MCI also takes exception to the comments of some of the ILECs to the effect that the rule against win-back marketing should be stayed because such marketing by ILECs is in the public interest, since it helps to uncover "slamming" i.e., unauthorized primary interexchange carrier (PIC) changes.⁵ That argument is fraudulent and should not be the basis for any relief. As explained in MCI's initial comments, ILEC win-back marketing is an abuse of the ILECs' monopoly power because it utilizes information that the ILECs learn by virtue of their monopoly roles as the underlying facilities-based local network service providers to local service resellers and as the providers of access services to interexchange carriers (IXCs). Such use of carrier proprietary information violates Section 222(b).⁶

³ MCI will also be filing for reconsideration of portions of the Order, but its request for across-the-board temporary relief was not based on any of those issues.

⁴ See, e.g., US West Comments at 11.

⁵ See, e.g., SBC Comments at 23.

⁶ See also, AT&T Comments at 7 n.5.

This abusive and anticompetitive violation of Section 222(b) cannot be justified as a check on slamming. Rather, win-back marketing is another element, along with the ILECs' "PIC-freeze" strategies, in their campaign to "freeze" local and interexchange competition. As MCI explained in its Petition for Rulemaking requesting the Commission to regulate the ILECs' PIC-freeze practices, the Southern New England Telephone Company (SNET) and Ameritech have used PIC-freezes and other anticompetitive practices to reject between 10 and 20 percent of all PIC change orders submitted by MCI. In checking on the rejected orders, MCI found that almost all of them had been verified by independent third party verification. Thus, SNET and Ameritech were wrong in almost every case in assuming that these orders had resulted from slamming.⁷ There is no reason to believe that the ILECs' reports of slamming uncovered as a result of win-back marketing are any more reliable.

Indeed, Ameritech has just been found liable by the Michigan Public Service Commission for improperly attempting to "win back" customers wanting to switch to MCI in the course of three-way confirmation calls involving such customers, MCI and Ameritech representatives. Rather than simply asking the customer to confirm the switch to MCI during such calls, as required by the Michigan PSC, Ameritech used the opportunity to pressure

⁷ See Petition for Rulemaking at 3-4 n.2, Policies and Rules Pertaining to Local Exchange Carrier "Freezes" on Consumer Choices of Primary Local Exchange or Interexchange Carriers, RM-9085, CCB/CPD 97-19 (filed March 18, 1997).

customers not to switch and sometimes put the other two parties on hold for unreasonable lengths of time.⁸ Clearly, in light of these sorts of abuses, the ILECs should not be allowed to appoint themselves as enforcers of the Commission's rules.

Moreover, the Commission has an ongoing proceeding to address slamming,⁹ and legislation is now pending in Congress to deal with the issue. It would make no sense to try to deal with slamming by permitting the ILECs to violate the clear, unconditional protections of Section 222(b), rather than addressing the issue in the Commission's proceeding designed for that purpose, in response to Congress' mandate. As SNET has demonstrated over the past few years -- acting in its unintended role as the "sentinel" ILEC, providing an early warning of future BOC behavior -- the incentives for ILECs to engage in anticompetitive conduct are overpowering when they are permitted to provide interexchange services. Now that the BOCs are applying for in-region interLATA authority under Section 271, it will be even more important for the Commission to be especially vigilant in preventing the BOCs and other ILECs from engaging in anticompetitive conduct in the guise of policing the IXCs' marketing practices. If slamming requires policing, it should be done by a third party administrator, not the ILECs, particularly

⁸ See MCI News Release, "MCI Applauds Michigan PSC Ruling Finding Ameritech Practices Improper," May 12, 1998, attached as Exhibit A.

⁹ See Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996, CC Docket No. 94-129.

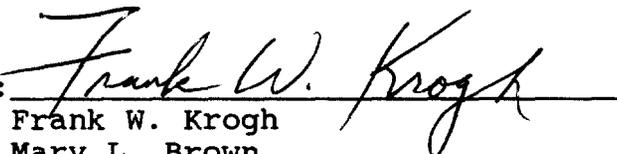
in light of Ameritech's Michigan violations.

Conclusion

Accordingly, any temporary stay or deferral of the Order should encompass the entire Order and cover all carriers, simply on the basis of administrative fairness, but GTE's and other ILECs' rationales for relief should be rejected except to the extent that such rationales apply to CMRS providers.

Respectfully Submitted,

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Dated: May 13, 1998

EXHIBIT A



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FOR IMMEDIATE RELEASE

MCI APPLAUDS MICHIGAN PSC RULING FINDING AMERITECH PRACTICES IMPROPER

Background: The Michigan Public Service Commission (PSC) yesterday ruled in favor of an MCI action charging Ameritech with violations of PSC orders for refusing to fulfill confirmed customer requests to switch telephone carriers. The Commission also found that Ameritech acted improperly during "three-way" confirmation calls -- which included the customer, MCI and Ameritech representatives -- by pressuring customers to remain with Ameritech and even hanging up or putting the parties on hold for unreasonable periods.

(Please attribute the following statement to Joan Campion, MCI regional executive for public policy.)

Lansing, MI, May 12, 1998 -- "MCI is pleased that the Michigan Public Service Commission sided with consumers by finding that Ameritech violated a PSC order by refusing to fulfill customers' requests to switch their local toll service from Ameritech to MCI -- even though those customers had expressly stated their desire to change phone carriers.

"We also believe the Commission made the right decision by deciding that Ameritech acted improperly when its representatives purposely made the confirmation process difficult for customers wishing to switch to MCI. Those representatives repeatedly tried to unfairly retain customers during calls that were meant solely to confirm a customer's desire to change carriers.

"While the ruling crystalizes the PSC's position that such anticompetitive acts will not be tolerated, MCI was disappointed that the Commission stopped short of awarding damages for the losses we suffered as a result of Ameritech's unlawful behavior. We believe the failure to impose any such punishment sends the signal that Ameritech can violate the law without paying a price."

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CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing Reply Comments of MCI Telecommunications Corporation was served this 13th day of May, 1998 by hand delivery or first class mail, postage prepaid, upon each of the following parties:

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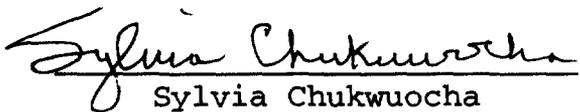
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