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

07/11/98

JUL 11 1998

In the Matter of)
)
Southwestern Bell Telephone Company, Pacific) CC Docket No. 98-91
Bell and Nevada Bell Petition for Relief from)
Regulation Pursuant to Section 706 of the)
Telecommunications Act of 1996 and)
47 U.S.C. § 160 for ADSL Infrastructure and)
Service)

REPLY COMMENTS MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation (MCI) hereby submits its comments in response to comments filed in the above-captioned proceeding.¹ The record amply demonstrates that the SBC LECs' and the other incumbent local exchange carriers' (ILECs) petitions are inconsistent with the public interest and should be denied. There is no doubt that the facilitation of competitive entry by multiple providers is the most efficient means to effect widespread competition in the local market for all services.

I. ILECS SHOULD BE REQUIRED TO PROVIDE COMPETITORS WITH AFFORDABLE ACCESS TO XDSL EQUIPMENT PURSUANT TO SECTION 251

Contrary to GTE's claim,² enforcement of the ILECs' duty to unbundle loops equipped with xDSL electronics would not deter incentives for ILEC investment in advanced services. The record before the Commission clearly demonstrates that, without access to xDSL electronics, CLECs would be effectively foreclosed from providing ubiquitous xDSL services. Moreover,

¹ Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service, CC Docket No. 98-91 (filed June 9, 1998) (SBC LECs' petition or "petition").

² Comments of GTE, CC Docket No. 98-91 (GTE Comments) at 3-4.

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CLECs must continue to have access, pursuant to section 251(c), to unbundled loops and equipment. ILECs are fully aware that there are no viable alternatives to their xDSL offerings. As the Commercial Internet eXchange Association (CIX) stated, without the express enforcement of their duty to unbundle xDSL equipment, the ILECs stand ready to monopolize data access in the same manner as they now control the traditional local service business.³ GTE and SBC do not dispute that CLECs are entitled to unbundled loops capable of providing xDSL services.⁴ However, as MCI demonstrated in its opposition, despite these express requirements by the Commission, the SBC LECs have not willingly granted access to xDSL-conditioned unbundled local loops.⁵ Absent open, affordable access to ILEC unbundled xDSL-capable loops and equipment, the ILECs will control the price and types of xDSL services that will be deployed to consumers.

Yet, access to unbundled xDSL-conditioned loops alone is insufficient to ensure competition in the provision of advanced capabilities. Just as CLECs may choose to collocate equipment to concentrate voice traffic at the central office, CLECs must also have the ability to choose to collocate their own xDSL-related equipment, such as modems and splitters required to separate the data and voice traffic, at an ILEC's central office to provide xDSL services.⁶ It is

³ Comments of the Commercial Internet eXchange Association (CIX) at 7.

⁴ SBC LECs Petition at 17; GTE Comments at 4.

⁵ See Opposition of MCI Telecommunications Corporation, CC Docket No. 98-91 at 8-10. MCI has also met with staunch opposition by other ILECs in response to MCI's requests for xDSL-conditioned loops and is in the process of negotiating with them to obtain such loops.

⁶ Of course, MCI believes that collocation should not be required. CLECs should have the option to collocate xDSL-related equipment at an ILEC's central office, especially in circumstances where collocation is the efficient and only viable for a CLEC to provide xDSL-related services and capabilities.

therefore critical that the collocation of xDSL equipment be made available on reasonable, nondiscriminatory terms and conditions pursuant to section 251.⁷

Even if the SBC LECs and other ILECs were committed to providing ADSL-capable loops and collocation,⁸ it will not always be sufficient to simply make unbundled xDSL-conditioned loops and collocation available. CLECs need nondiscriminatory access to the xDSL-related equipment at cost-based, “forward-looking” costs and the ability to resell the ILEC's xDSL services. As with traditional local service, CLECs will not be able to deploy equipment in every central office simultaneously. In central offices served with digital loop carrier technology (DLC), for example, CLECs currently are not able to obtain access, as an unbundled network element, to that portion of the loop from the subscriber's premises to a DLC hub and to allow interconnection with each requesting CLEC at DLC hubs.

Furthermore, requiring ILECs to unbundle xDSL equipment is consistent with the requirements of section 251. Contrary to GTE's argument, ADSL service is not exchange access service. As CIX maintained, the SBC LECs' ownership of the local loop and central office equipment provides it with “exclusive control over the essential telecommunications inputs necessary for ADSL service via the telephone network.”⁹ Without a requirement to unbundle and resell xDSL equipment, the ILECs would be able to extend their monopoly over the

⁷ Nondiscriminatory, affordable access to ILEC central offices is critical due to the scarcity of space. For example, while MCI, was denied collocation space in Anaheim, California, SBC later rolled out xDSL services from Anaheim.

⁸ SBC LECs petition at 17-21.

⁹ CIX Comments at 13-14.

provision of all local services.¹⁰

II. THE COMMISSION LACKS THE LEGAL AUTHORITY TO GRANT FORBEARANCE UNDER SECTION 706

As MCI and other parties have repeatedly explained in their comments in prior proceedings, section 706 of the Act is not an independent grant of forbearance authority.¹¹ Yet, SBC insists that section 706 gives the Commission sweeping authority to forbear from enforcing the section 251 obligations as they apply to SBC's ADSL equipment and services.¹² As MCI demonstrated in its oppositions and reply comments in previous proceedings, SBC's claim is flatly inconsistent with the Act.¹³ Granting the requested forbearance under section 706 would only eviscerate the procompetitive provisions of the Act.

As Hyperion Telecommunications pointed out, SBC makes the same flawed arguments for regulatory forbearance as the other petitioning BOCs. Despite the ILECs' arguments to the contrary, section 706 does not vest the Commission with any new authority, but rather, empowers it to use a panoply of tools to encourage the deployment of advanced capabilities. Regulatory forbearance is just one of the enumerated tools that the Commission can utilize to encourage the deployment of such capabilities. Any and all forbearance authority exercised by the Commission under section 706 must comply with the strict limitations on forbearance

¹⁰ Even if ADSL was considered an exchange access service, as CIX pointed out, the Commission has already determined that the exchange access market is not competitive. See Second Report and Order, CC Docket Nos. 96-149, 96-61, 12 FCC Rcd 15756, 15813 (1997). Regulatory forbearance would therefore not be warranted.

¹¹ See, e.g., Joint Comments of AT&T Corp. and Teleport Communications Group Inc., at 3-4; CompTel Comments at 2-3; See also MCI Reply Comments to RBOCs petitions at 15-16

¹² See SBC Petition at 5-6

¹³ See e.g., MCI's RBOC Reply Comments at 15-16

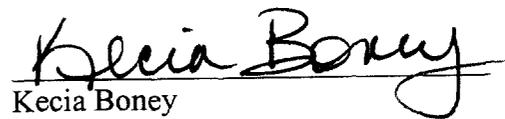
contained in section 10 of the Act. Under section 10(d), the Commission does not have authority “to forbear from applying the requirements of sections 251(c) or 271 . . . until it determines that those requirements have been fully implemented.” 47 U.S.C. § 160(d). Accordingly, granting the requested regulatory forbearance under 706 would permit the ILECs to make an end run around the prohibitions in section 10(d) on such forbearance, thereby eviscerating the procompetitive provisions of the Act.

CONCLUSION

For the foregoing reasons, MCI urges the Commission to expeditiously deny the SBC LECs’ petition.

Respectfully submitted,

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