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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
McLEODUSA TELECOMMUNICATIONS)
SERVICES, INC.)
)
Petition for Preemption of Nebraska Public)
Service Commission Decision Permitting)
Withdrawal of Centrex Plus Service by)
US West Communications, Inc.)

CC Docket No. 98-84

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI") hereby submits its reply to the comments filed regarding the above-captioned petition filed by McLeodUSA Telecommunications Services ("McLeod").¹ The record amply demonstrates that the sanctioning by the Nebraska Public Service Commission ("PSC") of US West's withdrawal of Centrex Plus service contravenes section 253(a) of the Telecommunications Act of 1996 (the "Act"). Accordingly, the Commission should preempt the Nebraska PSC's sanctioning of the withdrawal, thereby restoring competition and pulling the plug on US West's anticompetitive maneuvering.

I. SECTION 253 OBLIGATES THE COMMISSION TO REMOVE ANY STATE OR LOCAL LEGAL MANDATE THAT PROHIBITS OR HAS THE EFFECT OF PROHIBITING AN ENTITY FROM PROVIDING ANY INTERSTATE OR INTRASTATE TELECOMMUNICATIONS SERVICE

As MCI and other parties have explained in their comments, the Nebraska PSC's approval of US West's service withdrawal contravenes section 253(a) because it prohibits entities like McLeodUSA, and other competitors and potential competitors, from offering a

¹ Petition of McLeodUSA Telecommunications Services, Inc. for Preemption, CC Docket No. 98-84, filed May 29, 1998 (Petition).

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telecommunications service, which in this instance is Centrex Plus.² The Nebraska PSC misconstrued its duty to investigate the competitive impact of US West's service withdrawal. Rather than examine the anticompetitive implications of a service withdrawal, the Nebraska PSC utilized its review power to grant permission to US West's anticompetitive action, withdrawal of a "legally-protected pathway for competitive local exchange carriers ("CLECs") to provide local services."³

In its Opposition, US West makes an argument that the withdrawal should be allowed because it was decided for business reasons that "the product was not successful in the new competitive market."⁴ This hollow justification belies US West's anticompetitive motives. Indeed, US West has apparently argued previously that it withdrew the service because Centrex provides competitors with the ability to provide a relatively inexpensive and flexible service offering to the public.⁵ While the Nebraska PSC's approval of US West's Centrex service withdrawal might not be an express prohibition on the provision of telecommunications services in the Nebraska market, there is no doubt that it has produced the same result.⁶ However hard US West tries to rationalize its "business decision," it simply cannot conceal the truth; due solely to the withdrawal, the telecommunications carriers other than US West are now deprived of any

² See, e.g., MCI Comments at 2.

³ See WorldCom Comments at 2.

⁴ See Opposition of US West at 4.

⁵ See WorldCom Comments at 4.

⁶ See MCI Comments at 2.

opportunity to provide telecommunications services for customers in the Nebraska region.⁷

The Nebraska PSC contends in its opposing comments that matters regarding the withdrawal of services are best left to state commissions under the Local Competition Order.⁸ Although the Commission left to the state commissions the initial determination of whether the withdrawal of a service has anticompetitive effects,⁹ nowhere in the Local Competition Order did the Commission grant state commissions the right to neglect to assess whether the withdrawal of a service has the effect of prohibiting competitive entry. Nor has the Commission ever given state commissions carte blanche to permit the withdrawal of a service where such withdrawal would result in anticompetitive effects. Rather, the Commission has made clear its expectation that state regulators would scrutinize the full anticompetitive implications of any such withdrawal.¹⁰

Although the Commission has elected to leave the initial determination on service withdrawal issues to state commissions, the Commission has recognized that section 253 “obligates . . . [it] to remove any state or local legal mandate that ‘prohibit[s] or has the effect of prohibiting’ a firm from providing any interstate or intrastate telecommunications service.”¹¹

⁷ Id.

⁸ See Comments of Nebraska Public Service Commission at 3.

⁹ See Local Competition Order ¶ 968.

¹⁰ Id.

¹¹ Petitions for Declaratory Ruling and/or Preemption of Certain Provision of the Texas Public Utility Regulatory Act of 1995, (Memorandum Opinion and Order), 13 FCC Rcd. 3460, ¶ 22 (1997) (“Texas Preemption Order”); see also Comments of the Telecommunications Resellers Association (“TRA”) at 4-5.

Moreover, the Commission has stated that Section 253 “commands . . . [it] to sweep away not only those state or local requirements that explicitly and directly bar an entity from providing any telecommunications service, but also those state or local requirements that have the practical effect of prohibiting an entity from providing service.”¹²

The Nebraska PSC’s attempt to justify its sanctioning of the withdrawal -- by contending that McLeod did not show that the grandfathering of existing customers was discriminatory or illegal -- is an unconvincing explanation.¹³ As the Association for Local Telecommunications Services (“ALTS”) and other parties indicate in their comments, the Nebraska PSC has failed to fully comprehend the anticompetitive implications of grandfathering US West’s Centrex Plus service, which US West would make available to existing customers for almost nine years after the service is discontinued to new customers.¹⁴ The dissent in the *Nebraska Order* demonstrated a better understanding of the anticompetitive nature of US West’s withdrawal of Centrex service when it found that “Centrex Plus is not truly withdrawn” because US West is “allowing some customers to expand Centrex Plus service, while denying the same Centrex Plus service to other interested customers,” that is, resellers.¹⁵ Notably, eleven other state commissions within US West’s territory were quick to recognize that US West’s efforts to grandfather Centrex Service

¹² Id. As described by Congress, Section 253 was “intended to remove all barriers to entry in the provision of telecommunications services.” Conference Report, Rep. No. 104-458, 104th Cong., 2d Sess. 126 (1996).

¹³ See Comments of Nebraska Public Service Commission at 2.

¹⁴ See, e.g., ALTS Comments at 4.

¹⁵ See MCI Comments at 4.

was anticompetitive, unreasonable and discriminatory in violation of state and federal law.¹⁶

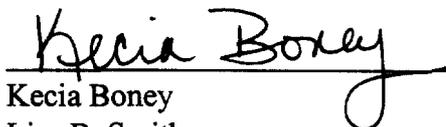
Congress could not have envisioned a situation where ILECs are allowed to escape the procompetitive provisions of the Act by employing this kind of tactic. The Commission should preempt the Nebraska PSC's sanctioning of US West's withdrawal of Centrex service to stop such anticompetitive attempts once and for all.

CONCLUSION

For the foregoing reasons, the Commission should preempt the Nebraska PSC's order sanctioning US West's Centrex withdrawal.

Respectfully submitted,

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Dated: July 27, 1998

¹⁶ See MCI Comments at 5-6; see also Comments of Frontier Telemanagement, Inc. and Advanced Telecommunications, Inc. at 2.

CERTIFICATE OF SERVICE

I Lonzena Rogers, hereby certify that on this 27th day of July 1998, I have served

I, Lonzena Rogers, hereby certify that on this 27th day of July 1998, I served by first-class United States Mail, postage prepaid, a true copy of the foregoing Reply Comments, upon the following:

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