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

In the Matter of	)	
	)	
MCI COMMUNICATIONS CORPORATION	)	
	)	RM-9108
Petition for Rule Making re Billing and Collection	)	
Services Provided by Local Exchange Carriers for	)	
Non-Subscribed Interexchange Services	)	

REQUEST FOR EXPEDITED ACTION ON MCI RULEMAKING PETITION

Pilgrim Telephone requests that the Commission initiate a proceeding to prevent the further disruption of LEC billing and collection for non-subscribed services. Over a year ago, MCI and other interexchange carriers, including Pilgrim Telephone, told the Commission that many LECs were threatening to refuse to provide billing and collection services on reasonable terms to IXCs offering non-subscribed services. The LECs' goal was – and is – to force smaller IXCs out of the market and secure an unfair competitive advantage as they prepare to enter the interexchange market. The LECs responded to MCI's petition by claiming that they were providing billing and collection services and that Commission action was therefore unnecessary. But the facts now belie the LEC claims made a year ago. While MCI's rulemaking petition has languished, GTE has cut off billing and collection services for Pilgrim Telephone and other providers of non-subscribed interexchange services, and BellSouth has informed Pilgrim Telephone that it is considering exiting the billing and collection business. In light of this new evidence, there is an urgent need for the Commission to take action to require the LECs to fulfill their public interest obligations and continue providing billing and collection.*

* As appropriate or necessary, Pilgrim Telephone requests authority to file this pleading under Section 1.405 of the Commission's rules.

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List A B C D E

I. THE MCI RULEMAKING PETITION AND THE LEC RESPONSE.

Pilgrim Telephone, Inc. is an interstate interexchange carrier providing common carrier services, including presubscribed 1+ calling, 0+ and 800-number collect calling, calling card calling, 10-10XXX access, and teleconferencing services. Pilgrim Telephone also provides enhanced/information services, including specialized teleconferencing, voice mail, voice store and forward, and 900 services.

On May 19, 1997, the Commission received a Petition for Rulemaking from MCI requesting that the Commission begin a proceeding to consider rules governing the provision of billing and collection services provided by local exchange carriers to interexchange carriers that offer interexchange services to end-users on a non-subscribed basis. These services, referred to colloquially as methods for "casual calling," include 10-10XXX, collect calling services, 900 services, calls billed to verified third parties, and other services. Pilgrim Telephone and other interexchange carriers unanimously supported MCI's petition.

MCI, Pilgrim Telephone, and other commenters demonstrated that the LECs were attempting to gain an unfair competitive advantage by driving new interexchange carriers out of business. These commenters further showed how casual calling services serve the public interest and promote greater access to long-distance services. The petition and supporting comments explained why the Commission could as a matter of existing law, and should as a matter of policy, require LECs to cease their anticompetitive conduct and furnish billing and collection services on a nondiscriminatory basis.

The LECs responded to MCI's petition with a barrage of comments claiming no harm, no foul. They said that no problem existed and therefore no solution was needed. The LECs coolly claimed that they were providing all other carriers with billing and collection for non-subscribed

services. For example, Ameritech claimed that it had "no current intention of discontinuing the provision of billing and collection services [for non-subscribed interexchange services] or of imposing discriminatory conditions on its services."[1] BellSouth told the Commission that it "wants to make clear that it is not planning to discontinue its billing services and has not threatened to terminate its contracts."[2] GTE argued at that time that there was no need for a rulemaking because "GTE continues to provide [billing and collection] service."[3] SBC stated that it had "no pending plans to cease offering billing and collection services for IXCs' casual calling services."[4] SNET said that "MCI has failed to provide factual information that any LEC has discontinued or plans to discontinue their casual billing arrangements with IXCs."[5] Indeed, SNET urged the Commission not to act because "[n]o new evidence has been presented by MCI that would justify revisiting these issues."[6] But now, some of these same carriers who claimed that they would provide billing and collection services, including GTE, have stopped providing billing and collection services for Pilgrim Telephone. Likewise, other carriers, including BellSouth, have suggested that they want to exit the billing and collection business.

II. THE LEC CUT-OFF OF BILLING AND COLLECTION SERVICES.

Gripped by merger fever and a seemingly insatiable desire to rebuild the monopoly local phone system that the government spent decades splitting apart, GTE and other LECs have cut

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[1] Opposition of Ameritech at 1.

[2] BellSouth Comments at 1.

[3] GTE Reply Comments at 1.

[4] Reply Comments of SBC Communications Inc. at 5.

[5] Comments of Southern New England Telephone Company at 5.

[6] Reply Comments of the Southern New England Telephone Company at 2.

off billing and collection services for Pilgrim Telephone. These LECs have now conclusively demonstrated that they are unwilling to offer the nondiscriminatory access to billing and collection functions that are necessary to a properly functioning, competitive market for telecommunications services.

For years, the nation's LECs provided billing and collection services for Pilgrim Telephone on terms that were reasonable and mutually profitable. But in April of this year, GTE notified Pilgrim Telephone that it would not renew its billing and collection contract. Despite numerous pleas by Pilgrim Telephone to continue the relationship, GTE has refused to negotiate or even to discuss a new contract. In July, GTE ceased billing and collection for Pilgrim Telephone. Since then, Pilgrim Telephone has been unable to bill end-user customers in GTE's many service areas for non-subscribed calls. Accordingly, Pilgrim no longer serves collect callers wanting to reach friends or family who obtain local telephone service from GTE. Likewise, Pilgrim no longer provides any communications services that would need to be billed to GTE's local phone customers through GTE, including any casual calling services, any calls billed to line-based calling cards, and any 1+ calls.

GTE, not surprisingly, justifies its decision on the grounds that Pilgrim Telephone incurred several complaints from consumers.[7] However, GTE's conduct demonstrates that its stated reason is simply a pretext for driving a competitor out of business. GTE is refusing to even bill for collect calls carried by Pilgrim Telephone that terminate in GTE's service area. But

[7] GTE bases its refusal to provide service to Pilgrim Telephone on the ground that five complaints were made against Pilgrim in January 1998 and two complaints were made in February 1998. But in January 1998 GTE rendered 14,156 bills for Pilgrim and in February 1998 GTE rendered 12,034 bills for Pilgrim, so the ratio of complaints to bills rendered is tiny. Pilgrim Telephone questions both the legitimacy of these seven customer complaints and the commercial reasonableness of ending a contractual relationship because of such a small number of complaints.

GTE was unable to provide Pilgrim with any consumer complaints arising from collect calls or with any other justification for its refusal to provide billing for collect calls. As a monopoly, why should it bother? GTE is attempting to drive casual calling carriers out of business. This is the raw exercise of monopoly muscle – to no legitimate end.[8]

This is not just a dispute between Pilgrim Telephone and a single incumbent LEC. BellSouth has presented Pilgrim with a proposed amendment to their bill processing service agreement that permits BellSouth to terminate the contract if BellSouth exits the billing and collection business. BellSouth is clearly suggesting by this amendment that it is planning to cease providing billing and collection services to interexchange carriers. This from the company that told the Commission in this proceeding that it "wants to make clear that it is not planning to discontinue its billing services."[9]

III. THE FCC MUST ACT TO STOP ANTICOMPETITIVE CONDUCT.

The FCC must act to stop the nation's largest local exchange carriers from crushing competition and gouging the consumer. The FCC's apparent belief that LECs are providing billing and collection services, or that there are competitively available alternatives, has been proven wrong by the conduct of GTE and others.

LECs are attempting – while the Commission sits idly by – to secure an unfair competitive advantage as they prepare to enter the IXC market. Non-subscribed services, such as 10-10XXX calling, provide a market entry opportunity for new carriers. This increases competition in the interexchange market, something that, if their Section 271 applications and

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[8] Oddly enough, the LECs acknowledge that by ceasing to provide billing and collections for non-subscribed services, they can drive competitors out of a line of business. See, e.g., Opposition of Ameritech at 6.

[9] BellSouth Comments at 1.

public statements are to be believed, the LECs do not believe exists. Even more importantly, today's small interexchange provider of casual access services could be tomorrow's one-stop bundler of long-distance and local services or facilities-based competitive local exchange carrier. Acting on MCI's petition will squarely advance the competitive goals of the 1996 Telecommunications Act by increasing the number of telephone companies.

Local exchange carrier control over billing and collection services provides LECs an insurmountable marketplace advantage and a great tool for snuffing out nascent competition. No new carrier could hope to compete with a LEC for collect calling, calling card calling, CLASS services, *-code services, enhanced directory assistance, N11 calling, telemessaging, teleconferencing, time, weather, pay-per-call services, or other enhanced/information services. Why? Because the LEC already sends a bill for local exchange service and consumers prefer to receive and pay a single bill each month for all calling services. Indeed, the LECs' own marketing materials mailed to consumers with the LECs' bills tout the advantages of receiving a single bill for all services.

In contrast, it is impractical, if not impossible, for a casual access provider to bill for these services on its own. Matching BNA to customer records requires expensive software, and preparing and mailing an invoice drives up the cost of billing. As described by MCI in its petition, it is not economical for the non-subscribed service provider to furnish bills to its smaller customers, i.e., those placing only one or several calls a month, because of the high fixed costs of rendering a bill.[10] Only LECs can provide effective and low-cost billing and collection.[11]

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[10] In its petition, MCI estimates that the cost of sending an invoice to a non-subscribed services customer averages $3.47 per invoice. At that cost, MCI states that less than half of such invoices would be profitable. MCI Petition for Rulemaking at 7.

[11] Even mighty AT&T has been unsuccessful at building an alternative billing system, despite a rumored investment of several hundred million dollars.

Moreover, only LECs can provide the consumer with what he or she wants: a single bill. To the consumer, a unified bill is as much a part of access service as the dial tone. LEC billing eliminates consumer confusion and therefore is in the public interest.

The LECs argued strenuously in this proceeding – and will undoubtedly trot this tired argument out again – that billing and collection are not a common carrier service and not an essential facility. In Pilgrim Telephone's comments in support of MCI's petition, Pilgrim explained why LEC billing and collection fits comfortably within the well-established essential facilities doctrine, and accordingly should be made available on a nondiscriminatory basis. But leaving aside the merit of Pilgrim Telephone's legal analysis, the LEC arguments against essential facilities treatment obscure a basic fact: LEC billing and collection services were created, built, and maintained by the monopoly ratepayers. The only reason the LECs are sending bills to almost everyone with a phone is because they have been monopolies. The economies of scale and collection capabilities of the LECs are a legacy provided by local phone customers who for decades had no choice but to obtain telephone service from the incumbent local exchange carrier.[12]

The LECs are using the "single-bill" advantage to promote their own calling card services and casual access telemessaging services. Even before certain LECs refused to provide any billing and collection for Pilgrim Telephone, the company had encountered LECs that refused to provide billing and collection for particular classes of communication services that

[12] For this reason, it is outlandish for the LECs to claim, as Ameritech does, that "the relationship with the customer is something that every business must take responsibility for establishing on its own as part of doing business." Reply of Ameritech at 5. Developing a billing relationship with a customer is considerably easier when you are the monopoly service provider of a necessary and subsidized product.

these LECs also sold. The best example: collect calling.[13] It simply cannot be the Commission's policy – or the intent of Congress in enacting the 1996 Telecommunications Act – that LECs are encouraged to act anticompetitively and maintain an unequal playing field.

This anticompetitive conduct is transpiring in the shadow of a spate of proposed mergers among local exchange carriers, including the proposed combination of GTE and Bell Atlantic and the proposed combination of SBC and Ameritech. These mergers will make matters worse for those emerging interexchange carriers dependent upon revenues from casual calling. Instead of devoting resources to opening their networks to other carriers, GTE and other LECs apparently care only about joining in what may soon be two or three nationwide monopoly local phone networks. The Commission should act now on MCI's petition in order to remind these merging carriers that the future is not about doing business as usual, but about providing access to the services created through rate-of-return recovery from customers.[14]

The appropriate relief is a rule requiring nondiscriminatory access to LEC billing and collection services under reasonable rates and terms. Where a LEC provides billing and collection to itself for anything other than 1+ POTS services – in other words, any premium

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[13] The LECs also refuse to provide billing and collections for certain information services, such as adult chat groups. While this decision is often described in moral terms, it is sheer hypocrisy. GTE, for example, has waded into international dial-a-porn up to its waist. GTE has long profited from a scheme to route dial-a-porn calls to a Dominican Republic carrier it owns, and which shares its profits with a dial-a-porn operator.

[14] As presented in the MCI petition and the comments in support of that petition, there are other very good reasons for the Commission to commence a proceeding to address the LECs' refusal to provide billing and collection to their nascent competition. First, casual calling services promote greater access to long-distance services. As amply demonstrated by MCI and other commenters, the reduced availability of non-subscribed services is disproportionately impacting the poor, who use these services more often than the middle class or the rich. Second, non-subscribed services improve network reliability. By allowing the use of the services of any interexchange carrier, 10-10XXX access affords a caller an opportunity to make calls in the event that his or her presubscribed carrier is experiencing network failure or poor transmission quality.

service – the LEC must provide, under nondiscriminatory terms and conditions, billing and collection for casual access providers. This rule is minimally intrusive and would not place an unwarranted burden on the LECs – after all, until the 1996 Telecommunications Act waved the interexchange carrot under their noses, the LECs profitably undertook to provide billing and collection for other carriers. The first step toward more competition and an end to LEC stonewalling is a notice of proposed rulemaking in response to MCI's languishing petition.[15]

CONCLUSION

For the foregoing reasons, Pilgrim Telephone respectfully requests that the Commission initiate a proceeding to create rules governing the provision by local exchange carriers of billing and collection services to providers of non-subscribed interexchange services.

Respectfully submitted,

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[15] In the comments and reply comments initially filed in response to MCI's petition, there was no debate over the power of the Commission to regulate LEC billing and collections under its Title I jurisdiction. Even the LECs are willing to concede the Commission's authority. See, e.g., Opposition of Ameritech at 2.

CERTIFICATE OF SERVICE

I hereby certify that I have on this 24th day of September, 1998 served all parties to this action with a copy of the foregoing Request For Expedited Action On MCI Rulemaking Petition by placing a true and correct copy of the same in the United States mail, postage prepaid, addressed to the parties listed.

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