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September 28, 1998

VIA HAND DELIVERY

Ms. Magalie Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
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Washington, D.C. 20554

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SEP 28 1998
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *In the Matter of Local Exchange Carriers' Rates, Terms,
and Conditions for Expanded Interconnection Through
Virtual Collocation for Special Access and Switched
Transport, CC Docket No. 94-97*

Dear Ms. Salas:

Enclosed for filing in the above-captioned matter are an original and eight copies of Southwestern Bell's Reply Comments.

Please date stamp the extra copy and return it to the individual delivering this package. Thank you for your assistance in this matter.

Sincerely,


Rebecca A. Beynon

Enclosures

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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Local Exchange Carriers' Rates,
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and Switched Transport

CC Docket No. 94-97

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**REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

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September 28, 1998

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**REPLY COMMENTS OF
SOUTHWESTERN BELL TELEPHONE COMPANY**

Southwestern Bell Telephone Company ("SWBT") submits these reply comments in opposition to the comments filed by MCI Telecommunications Corporation ("MCI"). MCI does not even purport to address the narrow topic on which the Commission requested comment. Instead, in a six-page pleading, MCI invites the Commission to abandon entirely the approach it adopted in 1994 for setting the rates for virtual collocation services, an approach that has guided the Commission, LECs, and other interested parties at every step of this tariff investigation proceeding.

MCI's complete disregard for the Commission's agenda is reason enough for the Commission to decline to consider its comments. In addition, MCI's proposal directly conflicts with the final order, issued in 1994, framing the issues that this entire proceeding is directed at resolving. MCI offers no remotely satisfactory reason for the Commission, four years into this investigation, to throw out all that has been done to date and start over from the beginning with a completely different set of guiding principles. Finally, and in any event, the model that MCI

proposes is inappropriate for determining the rates that LECs should charge for their virtual collocation offerings.

BACKGROUND

The Common Carrier Bureau's recent *Confidentiality Treatment Order*, released on July 13, 1998,¹ is the latest in a series of rulings in which the Commission and the Bureau have sought to implement a policy that permits the competitors of local exchange carriers to interconnect with the local exchange networks through virtual collocation. Since 1994, the Commission has been conducting a tariff investigation to ensure that the virtual collocation rates set forth in the LECs' 1994 tariffs comply with the guidelines that its *Virtual Collocation Order*² established. The Commission is now in the final stages of this tariff investigation proceeding.

In support of its virtual collocation tariffs, SWBT has submitted to the Commission a great deal of competitively sensitive cost information. In a number of transmittals and pleadings, SWBT asked the Commission to treat this information confidentially under Exemption 4 of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(b)(4), and the Commission's parallel

¹Order, *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport; Southwestern Bell Telephone Company, Requests for Inspection of Records; Southwestern Bell Telephone Company, Cost Support Filed under Request for Confidential Treatment; Cincinnati Bell Telephone Company, Requests for Inspection of Records, Applications for Review; Cincinnati Bell Telephone Company, Cost Support Filed under Request for Confidential Treatment; The Ameritech Operating Companies, Cost Support Filed under Request for Confidential Treatment*, CC Docket No. 94-97, 1998 FCC Lexis 3428 (Com. Car. Bur. July 13, 1998) ("*Confidentiality Treatment Order*").

²Memorandum Opinion and Order, *In the Matter of Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, 5185-91 [¶¶ 112-137] (1994) ("*Virtual Collocation Order*").

regulations governing treatment of private business information, 47 C.F.R. §§ 0.457(d), 0.459.³

The Commission has previously addressed confidentiality requests relating to data SWBT submitted in its 1994 tariff filing and in a December 1995 revision of certain of its virtual collocation rates, ruling that these data are exempt from public disclosure under FOIA and will be available only to interested parties subject to the terms of a protective order. *Confidentiality Treatment Order*, ¶¶ 6-8.

The *Confidentiality Treatment Order* resolved all the remaining confidentiality requests that have been filed by SWBT, as well as those filed by Cincinnati Bell Telephone Company (“CBT”), and the Ameritech Operating Companies (“Ameritech”). As it had in its earlier orders, the Commission ruled that SWBT’s information should be treated confidentially, and it made that information available only to interested parties under the terms of the existing protective order. *Id.* ¶¶ 11-12. The Commission also determined that the information submitted by CBT and Ameritech was exempt from its mandatory public disclosure requirements, and it adopted similar protective orders governing the release of these data. *Id.* ¶¶ 22, 26.

To expedite review of the confidential data that SWBT, CBT, and Ameritech had submitted, the Commission established a supplemental comment period. *Id.* ¶¶ 12, 23, 26. It invited interested parties to “submit comments on the confidential data at issue in this Order, pursuant to the terms of this Order and attached protective orders.” *Id.* ¶ 28. The comment schedule also applied to SWBT’s “confidential data that [were] the subject of the [earlier-issued] protective order.” *Ibid.* MCI was the only party to submit supplemental comments.

³Other parties, including Cincinnati Bell Telephone Company and the Ameritech Operating Companies, have made similar requests.

ARGUMENT

MCI does not even pretend to respond to the issue on which the Commission requested supplemental comments. Instead of addressing the confidential data identified in the *Confidentiality Treatment Order*, MCI asks the Commission to discard the basic methodology for calculating virtual collocation rates that the agency adopted in its *Virtual Collocation Order*, in favor of a wholly new, “forward-looking” model for setting virtual collocation rates. MCI’s proposal is directly at odds with the pricing approach taken in the *Virtual Collocation Order*, and its comments are an illegitimate attempt to reopen matters decided long ago. In any case, MCI’s proposal is inappropriate for determining the rates that LECs should charge for their virtual collocation offerings.

1. MCI Completely Ignores the Purpose of this Supplemental Comment Period and Its Comments Should Be Dismissed as an Improper Attack on the *Virtual Collocation Order*

In its *Confidentiality Treatment Order*, the Commission gave parties the opportunity to submit supplemental comments on the confidential information that SWBT, CBT, and Ameritech had provided. The Commission believed that these supplemental comments would expedite the second phase of its 1994 tariff investigation, in which it is examining the LECs’ justification of their rate structures and the direct cost components of their virtual collocation rates, as well as the terms and conditions of their virtual collocation tariffs.

MCI has utterly ignored the Commission’s direction to limit comments to the confidential information identified in the agency’s *Confidentiality Treatment Order*. Indeed, MCI admits that it did not even review the cost support data at issue in this proceeding. *MCI Comments* at 2. The

Commission need go no further — MCI's complete disregard for the FCC's agenda is reason enough for the Commission to dismiss its comments.

In any event, MCI's supplemental comments amount to an untimely and inappropriate attack on the *Virtual Collocation Order*. MCI invites the Commission to toss out, in its entirety, the basic methodology for calculating virtual collocation rates that the agency adopted long ago and that it has used as a framework throughout this investigation. As a substitute, MCI offers a "forward-looking cost-based model," the intricacies of which it explains in half a page. Although it is difficult to decipher its cursory assertions, MCI apparently believes that the Commission should abandon the pricing guidelines established in 1994 in favor of some sort of "forward-looking" methodology similar to the one that the agency set forth in the *Local Competition Order*.⁴

MCI's submission is procedurally improper. In the *Virtual Collocation Order*, which imposed on local exchange carriers the obligation to provide expanded interconnection for interstate services through virtual collocation arrangements, the Commission adopted a comprehensive pricing framework to guide local exchange carriers in setting virtual collocation rates. 9 FCC Rcd at 5156 [¶ 3]. The Commission declined to prescribe a detailed rate structure for virtual collocation offerings, ruling that such a structure would be "overly inflexible." *Id.* at 5186 [¶ 114]. Instead, the Commission required LECs to establish for these services rate structures that "reflect[ed] cost-causation principles" and were "unbundled," and to establish a cross-connect element that applied uniformly to both physical and virtual collocation. *Id.* at 5186 [¶ 116]. It directed carriers to derive these cost-justified rates "from the direct costs of providing

⁴First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15813 [¶ 620] (1996) ("*Local Competition Order*").

expanded interconnection service plus a reasonable amount of overhead costs.” *Id.* at 5187 [¶ 121].

LECs were instructed to derive their direct costs from the “cost of providing similar types of new offerings,” consistent with the policy that the FCC had adopted in its price-cap proceedings for the pricing of new services. *Id.* at 5187 [¶ 122]. “The purchase price of the equipment used to provide these services [would], of course, be an important factor in computing the LECs’ cost-based rates for these services.” *Id.* at 5188 [¶ 123]. For optical line terminating multiplexers and similar equipment, the Commission required carriers to base their direct costs on “the lowest purchase price reasonably available to them to serve an interconnector.” *Id.* at 5188 [¶ 124]. The Commission delegated to the Common Carrier Bureau the authority to promulgate more detailed requirements regarding the specifics of the information LECs would be required to provide. *Id.* at 5186 [¶ 117].

The Commission also prescribed guidelines for LECs’ overhead costs. Carriers were to set their overhead costs at the levels they did in providing “comparable services,” unless they could justify a deviation from this uniform level. *Id.* at 5189 [¶ 128].

The Commission has spent the past four years investigating the LECs’ 1994 virtual collocation tariffs to ensure that their direct and overhead costs comply with the requirements set forth in the *Virtual Collocation Order*. In the first phase of this tariff investigation, which it completed in May 1995, it established maximum permissible “overhead loading levels,” which are the amounts by which LECs increase the direct costs of their virtual collocation services to recover overhead costs. Report and Order, *Local Exchange Carriers’ Rates, Terms, and Conditions for*

Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, 10 FCC Rcd 6375, 6376 & n.4 [¶¶ 1-2] (1995) (“*Phase I Report & Order*”).

The second phase of this tariff investigation remains pending. Pursuant to an order issued by the Common Carrier Bureau in September 1995, LECs have been required to provide additional data to show that their rate structures and the direct cost components of their virtual collocation rates comply with the framework established in the *Virtual Collocation Order*. See Order Designating Issues for Investigation, *Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport*, 10 FCC Rcd 11116 (1995) (“*Phase II Designation Order*”).

MCI now asks the Commission to undo all this work and to direct LECs to set virtual collocation prices based on a wholly new model. Accepting MCI's proposal would require the Commission to overturn not only its *Virtual Collocation Order*, but also the final order that it issued in the first phase of this tariff investigation, in which it resolved issues relating to the maximum permissible levels for overhead costs. *Phase I Report & Order*, 10 FCC Rcd 6375. Without even acknowledging the existence of the *Phase I Report & Order*, MCI simply asserts that overhead costs should be estimated “by incorporating a 10.4% markup.” *MCI Comments* at 3.

The time for submitting suggestions of this nature was in 1994, when the Commission, after reviewing comments from interested parties — including MCI — crafted the guidelines for setting virtual collocation rates. Fundamental principles of administrative law would require the Commission to conduct a fresh rulemaking proceeding before prescribing a completely different framework for setting these rates. MCI has shown no need whatever for embarking on such a venture, nor could it. Local exchange carriers have submitted volumes of detailed cost

information to show that their rates comply with the guidelines the Commission prescribed in 1994, the Commission's staff has spent four years examining these data, and the review is in its final stages.

In short, instead of responding to the topic on which the Commission requested supplemental comments, MCI advances a proposal that directly conflicts with the rules that the Commission established in the *Virtual Collocation Order* and that it applied in both the *Phase I Report & Order* and the *Phase II Designation Order*. MCI does not explain why the Commission should abandon its established approach. Indeed, it does not even mention any of the orders connected with this tariff investigation. The Commission should decline to consider these comments, which improperly attempt to reopen issues that the Commission resolved long ago.

2. The Model that MCI Proposes Is Not Appropriate for Determining Virtual Collocation Rates

On its merits, the model MCI advances is not suitable for determining virtual collocation prices. In five sentences, MCI puts forth a murky description of a "forward-looking costs" model to replace the framework for setting virtual collocation rates that the Commission painstakingly developed in its *Virtual Collocation Order* and that it has applied throughout this tariff investigation proceeding. *MCI Comments* at 3. The Commission should adopt this model, MCI alleges, because the agency has "previously recognized" that prices for interconnection facilities should be set at "forward-looking cost[s]." *Id.* at 2-3 (citing *Local Competition Order*, 11 FCC Rcd at 15813 [¶ 620]).

MCI is grasping at straws. In the first place, it provides in its comments nothing that comes even close to justifying the numbers it offers up. It explains the assumptions underlying its "model" in less than a page and then simply sets forth three comparative charts, without further

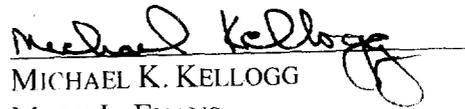
analysis or discussion. Even if the Commission had any reason to consider MCI's proposal — which it does not — it certainly could not simply seize upon figures that, for all we know, may have been pulled out of a hat.

More fundamentally, however, MCI's proposal runs counter to the basic policy that the Commission has consistently followed for setting prices for interstate services. The Commission has long set rates for interstate services under a price-cap system; the framework set forth in the *Virtual Collocation Order* is an application of this policy, see 9 FCC Rcd at 5187 [¶ 122]. That the Commission may have chosen in its *Local Competition Order* to adopt a "forward-looking" methodology for setting prices for *local* services by no means requires it to use that methodology in setting *interstate* rates. Indeed, the Eighth Circuit drew precisely this conclusion and upheld (against challenges by MCI, among others) the Commission's approach to setting interstate access charges in the recent access reform litigation. *Southwestern Bell Tel. Co. v. FCC*, No. 97-2618, 1998 U.S. App. Lexis 20479, at **42-55 (8th Cir. Aug. 19, 1998). Evidently dissatisfied with this result, MCI is now trying to use any possible forum for continuing to advance its misguided arguments.

CONCLUSION

For the reasons stated above, SWBT respectfully urges the Commission to decline to consider MCI's comments.

Respectfully submitted,



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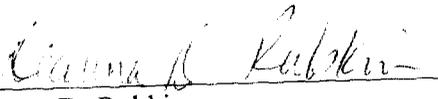
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September 28, 1998

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the Reply Comments of Southwestern Bell Telephone Company to be served on the party listed below by first-class mail on this 28th day of September, 1998.


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