

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

LOCAL COMPETITION SURVEY

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CCB-IAD File No. 98-102
CC Docket No. 91-141

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI TELECOMMUNICATIONS
CORPORATION

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MCI Telecommunications Corporation (MCI), hereby submits its reply comments filed in response to the Commission's Public Notice in the above-captioned proceeding.¹

INTRODUCTION and SUMMARY

Generally, MCI maintains its support of the Federal Communication Commission's (Commission) proposal to collect timely and reliable information in order to determine the pace and extent of the development of local competition. This survey information is critical for monitoring the developing local exchange market and for use and analysis in other proceedings such as the evaluation of Section 271 applications filed by the Regional Bell Operating Companies (RBOCs). Further, as AT&T stated in its comments,² the Commission cannot look at the status of the competitive local market without adding another level of analysis - tracking barriers to entry.

MCI reasserts that it is most appropriate for incumbent local exchange carriers (ILECs) to report much of the data in the survey. Given the ILECs' sophistication with operational

¹ Local Competition Survey, CCB-IAD File No. 98-102, CC Docket No. 98-102 (released May 8, 1998) (Public Notice).

² Comments of AT&T Corporation, CC Docket No. 91-141, at 12 (filed June 8, 1998) (AT&T Comments).

functions, they have invested and built the systems and processes needed to report the survey data and have demonstrated the ability to report such information.³ Conversely, requiring competitive local exchange carriers (CLECs) to carry the same reporting obligations as ILECs would seem patently unfair. New entrants should not be burdened with additional regulatory obligations and additional costs necessary to establish processes and systems to complete the survey, as they are forced to incur exorbitant expenses while entering the local market.

I. JURISDICTION

Contrary to BellSouth's position,⁴ the Commission possesses clear authority to conduct this local competition survey for the purpose of determining the state of local competition pursuant to its authority in Section 4(i) of the Act.⁵ Section 4(i) permits the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in execution of its functions."⁶ Indeed, in a similar proceeding, the Commission exercised its authority under section 4(i) by requiring cable operators to respond to a price survey which helped determine whether operators were subject to effective competition in local markets.⁷ Further, this information will allow the Commission to

³ See Responses to CCB Survey of the State of Local Competition, OMB Control No. 3060-0816. Survey in which 9 large ILECs voluntarily submitted much of the survey data requested here.

⁴ Comments of BellSouth Corporation, CC Docket No. 91-141, at 2 (filed June 8, 1998) (BellSouth Comments).

⁵ See 47 U.S.C. 4(i).

⁶ *Id.*

⁷ See In the Matter of Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992: Statistical Report on Average Rates for Basic Service, Cable Programming and Equipment, Order, MM Docket No. 92-266, DA 97-1252, at ¶¶ 2-10 (released June 16, 1997).

determine whether carriers are making unbundled network elements (UNEs) available to requesting carriers, as required by the Commission and Sections 251 and 271 of the Act.

II. SURVEY FILINGS BY ILECS AND OTHER CLECS

MCI concurs with Allegiance Telecom's conclusion that, since ILECs control nearly all local exchange service, ILECs are in a better position to report on a higher level of detail than CLECs.⁸ ILECs are the dominant entities in the local marketplace, with control of the essential facilities the CLECs need in order to compete. The dominant position of the ILECs is reflective in specific requirements of the Act on the ILECs to open the local markets.⁹ The data collected in this survey will help the Commission determine the ILECs' compliance with these obligations. ILECs are also in a better reporting position because they already collect a great deal of information for their own internal use.

Many of the ILECs commented specifically on the burdens and costs of collecting and reporting local competition data. The ILECs have failed to demonstrate that the proposed survey creates burdens that outweigh the benefits of collecting local competition data. Given that the ILECs admitted that they already file reports for state commissions,¹⁰ MCI does not believe that the Commission's proposed survey would impose any additional burdens. MCI does not object, however, to the Commission collecting relevant data from some of the state commission reports,

⁸ See Comments of Allegiance Telecom, Inc., CC Docket No. 91-141, at 2 (filed June 8, 1998) (Allegiance Comments).

⁹ For example, ILECs are required to provide nondiscriminatory access to network elements on an unbundled basis, to offer services for resale at wholesale rates, and to provide for physical collocation of equipment necessary for interconnection or access to unbundled network elements at their premises. 47 U.S.C. §§251(c)(3), 251(c)(4), and 251(c)(6).

¹⁰ BellSouth Comments at 6.

provided that the information is certified by the states as accurate.¹¹ MCI believes that while it is important to alleviate any unreasonable reporting burdens, the benefits of such a requirement far exceeds the burden placed on the ILECs.

MCI also recognizes that some carriers have other Commission reporting obligations, such as the ARMIS reports.¹² The fact that carriers have to file ARMIS reports is not relevant, however, to whether there should be a survey of local competition nor should the Commission consider combining these reports. Each of the Commission's reporting requirements is intended for a distinct purpose.¹³ The information sought in this survey is critical to understanding the development of a competitive local market with each data element crafted to gain valuable insight into the status of local competition. No other report currently collected by the Commission can serve as a substitute for this information because it will not provide the comprehensive overview which the Commission is now seeking.

Additionally, MCI strongly disagrees that small, rural, and mid-sized ILECs should be exempt from the local competition survey.¹⁴ The information regarding the status of local competition is important for all sectors of the market including rural and urban areas where different issues may arise. The Commission, therefore, should not foreclose its ability to collect

¹¹ Of course, the data collected by a particular state commission alone cannot provide the complete picture of the local market.

¹² See Comments of US West Communications, Inc., CC Docket No. 91-141, at 5 (filed June 8, 1998) (US West Comments).

¹³ For example, the ARMIS reports measure ILECs' costs, spending, revenues and other information. This data is presented in a manner which allows the Commission to analyze the ILECs financial information.

¹⁴ Comments of United States Telephone Association CC Docket No. 91-141, at 2 (filed June 8, 1998) (USTA Comments).

data from all ILECs in order to gather a complete understanding of the status of the local market in every market segment throughout the country.

Finally, MCI objects to the ALTS proposal whereby a revenue threshold would be used to determine which CLECs should report survey data.¹⁵ Revenue may not be the most accurate or appropriate measure of competition for the purposes of this survey, and, thus, is an inadequate way to distinguish which carriers should provide reports.¹⁶ MCI, however, would support a reporting requirement for carriers with more than 50,000 access lines within a state, not 50,000 nationally.¹⁷ A threshold based on access lines may be a more accurate measure of competition than revenue for purposes of this survey.

III. COMMISSION PROPOSED SURVEY DATA

A. ILECs Must Provide Data on UNEs and Resale

ILECs should be required to report the number of UNEs (including individual elements and recombinations) and resold lines purchased by CLECs at the aggregate CLEC level. Although several parties argued that CLECs should also provide this data,¹⁸ requiring CLECs to report the types and volumes of services and facilities obtained from the ILECs would be costly

¹⁵ See Comments of the Association for Local Telecommunications Services, CC Docket No. 91-141, at 5 (filed June 8, 1998) (ALTS Comments). ALTS suggests that only CLECs with operating expenses of over \$10 million should have to report. *Id.*

¹⁶ For example, a carrier may have significant revenue and not have a relatively large customer base.

¹⁷ See Comments of the Rural ILECs, CC Docket No. 91-141, at 2 (filed June 8, 1998) (Rural ILECs Comments). The Rural ILECs actually propose a reporting exemption for any small ILEC serving less than 50,000 access lines. *Id.*

¹⁸ See AT&T Comments pp. 9-10; Comments of SBC Communications, Inc., CC Docket No. 91-141, at 4 (filed June 8, 1998) (SBC Comments); Comments of Southern New England Telephone Company, CC Docket No. 91-141, at 4, (filed June 8, 1998) (SNET Comments).

and burdensome for the CLECs. The ILECs however already have the systems and processes in place to report this data. In order to verify certain ILEC data, CLECs could be asked to provide very specific and limited information.¹⁹ MCI believes that because of its extreme importance, ILECs should be required to report information about UNEs and resale in order to monitor local competition because these methods of entry will be used by most CLECs to enter the local market.

B. Wire Centers and Collocation

MCI agrees with the proposal that ILECs should also report on the number of requests for physical or virtual collocation which were denied and the reasons for those denials.²⁰ This kind of information will help the Commission assess whether CLECs actually have the opportunity to compete.

IV. ADDITIONAL SURVEY DATA PROPOSED BY PARTIES

MCI strongly agrees that the Commission collect data that reflects the development and deployment of advanced and broadband telecommunications services.²¹ The need for such tracking is made clear by the exclusionary policies the BOCs' are proposing in their 706 petitions.²² Access to the ILECs' local loops, including local loops capable of providing xDSL

¹⁹ MCI also does not object to the proposal that CLECs report the number of end users it serves using its own facilities because this is information that only the CLECs possess. *See* Comments of Teleport Communications Group, Inc., CC Docket No. 91-141, at 4, (filed June 8, 1998) (TCG Comments). However, MCI strongly opposes any reporting requirement that is based on disclosure of the number of UNEs because of the proprietary nature of that information.

²⁰ TCG Comments pp. 4-5; Allegiance Comments at 5.

²¹ ALTS Comments at 6.

²² *See In re Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Dkt No. 98-11; *In Re Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Dkt No. 98-26; *In Re Petition of Ameritech Corporation to Remove Barriers to*

and other advanced services, has been mandated by the Commission. The ILECs' compliance with the Commission's unbundling requirements is an important measure of whether competition is emerging for the provision of traditional local service and advanced services. The Commission should require the ILECs to report detailed information regarding the unbundling of loops capable of providing advanced services, including, but not limited to, the number of xDSL lines being sold by ILECs to end users and CLECs,²³ how many of the ILECs' local loops are serviced with digital loop carrier technology, the number of local loops that have bridge taps and loading coils, the percentage of local loops that are further than 18,000 feet from a central office, and the number of central offices equipped with xDSL-related equipment. This information is critical in helping the Commission comprehend the opportunities CLECs have to compete with the ILECs in providing traditional and advanced local service. The ILECs should not be permitted to circumvent, through their 706 petitions, the Act and the Commission's requirement that they open their local market to competition -- for all local services.

MCI opposes the inclusion of OSS measurement data in this survey.²⁴ Although OSS information and related performance data is imperative for competition, it should not be reported in this survey. It is currently addressed in the Commission's OSS NPRM proceeding.²⁵

Ameritech proposes that the survey should measure market power and provide enough

Investment in Advanced Telecommunications Capability, CC Dkt No. 98-32.

²³ See Comments of the Telecommunications Resellers Association, CC Docket No. 91-141, at 7, (filed June 8, 1998) (TRA Comments).

²⁴ Allegiance Comments pp. 6-7.

²⁵ See In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM-9101, Comments of MCI (filed June 1, 1998).

underlying information necessary to do an analysis of market power.²⁶ While this analysis may be correct, and may have relevance to the status of local competition, the Commission must be mindful of the fact that it cannot simply look at market power to make determinations regarding the nondominance status of a carrier or regulatory forbearance of regulations.²⁷ There are other important criteria that must be considered in such assessments.

MCI is not opposed to providing gross revenue data,²⁸ but this information is available throughout the various state commission reports. Conversely, MCI strongly objects to providing any proprietary data such as profits.²⁹ This information is irrelevant to the purpose of the survey because it does nothing to demonstrate the level of competition.

Moreover, MCI does not support the submission of order activity data³⁰ for purposes of this survey because this information will not demonstrate the level of actual competition in the market. Instead, it amounts to a mere forecast of competition which may or may not come to

²⁶ Comments of Ameritech, CC Docket No. 91-141, pp. 4-7, (filed June 8, 1998) (Ameritech Comments).

²⁷ See *e.g.* In the Matter of Competition in the Interstate Interexchange Marketplace, CC Docket No. 90-132 (September 16, 1991). The Commission used several criteria to determine areas of regulatory forbearance concerning some of AT&T's IXC services, which include: market share and concentration, supply capacity, demand elasticity, supply elasticity, resource disparity and financial strength, and competition in rural areas.

Additionally, Section 10 of the Act permits the FCC to forbear from any regulation of the Act if it determines that: enforcement is not necessary to ensure that the charges, practices, classifications, or regulations by a carrier are just and reasonable and are not unreasonably discriminatory; continued enforcement is not necessary for the protection of consumers; and such enforcement is consistent with the public interest. See 47 U.S.C. §160(d).

²⁸ Ameritech Comments at 9.

²⁹ *Id.*

³⁰ Ameritech Comments pp. 9-10.

fruition. In addition it represents marketing and sales information that will reveal a CLEC's strategy for market entry and is thus proprietary in nature. Similarly, the survey should not include information about CLEC network architecture or how CLEC networks interconnect with other carriers.³¹ This information also is proprietary and is not about the presence of competition.

MCI supports the inclusion of detailed instructions and definitions to ensure that all carriers will supply comparable data and leave little room for conflicting interpretations of the data elements surveyed.³² MCI opposes, however, any explicit instructions detailing the calculation methodologies used to complete this survey in this proceeding without appropriate industry input. Accordingly, MCI supports the establishment of an industry forum as an efficient way of developing definitions and instructions for the survey.³³

V. LEVEL OF REPORTING

As MCI stated in our initial comments, and as supported by many parties, the reporting should be done on a state by state basis.³⁴ If needed, the Commission can explore further detailed reporting at a later time. Bell Atlantic's proposal that CLECs should also list the zip codes where they provide residential service and business services is outrageous; an obligation Bell Atlantic only suggests for CLECs.³⁵ There is no justification for such an onerous level of reporting by CLECs. Moreover, this would obviously reveal proprietary business information.

³¹ See SNET Comments at 4.

³² Ameritech Comments at 13.

³³ *Id.* at 14.

³⁴ SBC Comments at 3; TCG Comments at 6; and US WEST Comments at 8.

³⁵ Bell Atlantic Comments at 2.

VI. CONFIDENTIALITY

With respect to confidential treatment of data provided in the proposed local competition survey, the Commission should not require CLECs to report data exposing trade secrets, commercial information, or financial information.³⁵ The Commission's rules permit withholding from public inspection any survey data which would not customarily be released to the public.³⁶ Therefore, upon a showing of good faith,³⁷ sensitive marketing and financial information should receive proprietary protection from public release to safeguard the competitive interests of CLECs.³⁸ The release of sensitive CLEC information for public inspection would expose marketing strategies and, in turn, damage a CLEC's ability to effectively compete. MCI believes that the Commission should be less sensitive to confidential treatment for survey data specifically pertaining to the ILECs because incumbent carriers already dominate the local exchange market. Hence, public inspection of data pertaining to ILECs would not necessarily harm an ILEC's opportunity to compete in the local market.

VII. FREQUENCY of FILING

As MCI argued in its comments, the Commission should require the ILECs to file the

³⁵ See 47 C.F.R. §0.457(d).

³⁶ See *Id.*

³⁷ See 47 C.F.R. §0.458(b).

³⁸ As KMC and MediaOne accurately note, competitively sensitive information provided by CLECs must remain confidential. See Comments of KMC Telecom, Inc., CC Docket No. 91-141, at 2-3, (filed June 8, 1998) (KMC Comments) and Comments of MediaOne Group, Inc., CC Docket No. 91-141 at 1, (filed June 8, 1998) (MediaOne Comments).

MCI asserts that CLEC reporting of such things as minutes of use, customer zip codes, gross revenue, revenue generated from service lines, number of customers, call volume, business plans, and any other marketing or financial related information that discloses trade secrets or sensitive data is not normally released to the public.

survey on a quarterly basis.³⁹ Implicit in Ameritech's advocacy of a quarterly reporting requirement is confirmation that the ILECs have the capability to file quarterly reports.⁴⁰ CLECs however, do not have such capability. Because ILECs are subject to the market-opening requirements of the Act, it is entirely appropriate that ILECs be required to file data on a quarterly basis. Further, the ILECs already retain most of the information sought by the proposed survey, and have seemingly already established systems to comply with the current local competition survey. MCI does believe that it would behoove CLECs to submit certain data for the survey and, if CLECs choose to participate in the local competition survey, such data could be filed semi-annually.

VIII. SUNSET

Many parties are in agreement with MCI that it is entirely too premature to set a sunset date for the reporting requirements.⁴¹ MCI strongly objects to the Commission's proposal to discontinue the reporting requirements after the first quarter of 2001.⁴² Given the ILECs' staunch resistance to opening their markets to competition, the regulatory uncertainty surrounding the FCC's and various state commission rules, there is no way to predict when the local market will be fully competitive.

IX. ELECTRONIC FILING

MCI does not oppose SBC's proposal that the survey be formatted in Microsoft Excel⁴³

³⁹ *Id.* at ¶ 24.

⁴⁰ Ameritech Comments at 13.

⁴¹ *See e.g.*, ALTS Comments at 12.

⁴² Public Notice at ¶ 25.

⁴³ SBC Comments at 7.

and will work with the Commission to establish the most efficient means to implement electronic filing of survey data.

CONCLUSION

MCI commends the Commission's efforts to collect information sufficient to achieve an adequate understanding of the status of local and access competition. In so doing, the Commission should be mindful of the ILECs' dominant status and ready access to the information requested. Hence, the Commission should apportion the reporting obligations accordingly, without the imposition of costly and burdensome reporting obligations on new entrants.

Respectfully Submitted,

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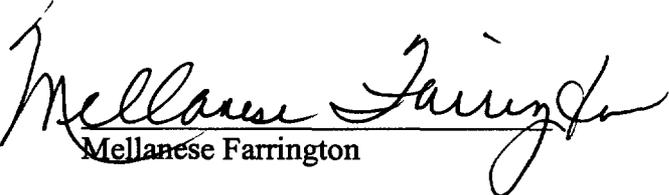
CERTIFICATE OF SERVICE

I, Mellanese Farrington, hereby certify that on this 22nd day of June 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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