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November 5, 2004

BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Oral *Ex Parte* Presentation, WC Docket No. 04-313, CC Docket No. 01-338

Dear Ms. Dortch:

Today, Richard S. Whitt, Curtis L. Groves, and Alan Buzacott, MCI, and Ruth Milkman, Lawler, Metzger & Milkman, counsel to MCI, met with Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, regarding the above-captioned proceeding. During that meeting, MCI discussed various issues relating to the remand by the U.S. Court of Appeals for the D.C. Circuit of the Commission's rules on unbundled network elements, as reflected in MCI's previous written submissions in this docket and the attached presentation.

In accordance with the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Ruth Milkman

Ruth Milkman

Attachment

cc: Matthew Brill

Triennial Remand: Access to UNEs

WC Docket No. 04-313; CC Docket No. 01-338

November 2004

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Nationwide Impairment Without UNEs

Mass Market Switching, High-Capacity Facilities

- Enterprise
  - ILECs dominate local access networks.
    - »Reflective of barriers to entry for competing providers of high-capacity loop and transport.
- Mass Market
  - VoIP and intermodal options are not current substitutes for mass market POTS.
  - Loop provisioning process poses economic and operational barriers.
    - »Hot cut process continues to prevent CLECs from serving mass market via UNE-L.

MCI

Few Competitive Alternatives Exist for High Capacity Loops and Transport

- The Commission should find that requesting carriers are impaired nationwide without access to DS-1 or DS-3 loops or transport.
  - No evidence that any CLEC is self-deploying DS-1 or DS-3 loop or transport circuits.
- If the Commission does not find nationwide impairment for transport, it should apply the MCI test.
  - No impairment where there are four or more fiber-based collocators on both end points of a route.
- BellSouth's 5000-line proposal is not a reliable indicator of impairment.

MCI

Special Access Not a Substitute for UNEs

- Availability of special access does not preclude a finding of impairment.
  - Some CLECs (such as MCI) have used special access to serve some locations and some customers, but there are many areas MCI cannot serve via special access.
- Post 271 entry, CLECs both compete with BOCs and depend on them for a key input, for which BOCs can raise rates at will.
  - Potential for ominous price squeeze.
- *USTA II* Court recognized potential for ILEC abuse and administrability concerns.

MCI

FCC Should Eliminate Qualifying Service Restriction and Service Eligibility Criteria

- Court rejected Commission's "qualifying service restriction."
  - No other basis for imposing a "use" restriction on loop-transport combinations.
- The impairment inquiry should govern unbundling, and loop-transport combinations should be available whenever the individual elements are available.

MCI

VoIP Not Substitute for Mass Market POTS

Availability Does Not Demonstrate No Impairment

- Subscribers to Vonage and similar VoIP services must first subscribe to broadband services.
  - Only 21% of households subscribe to broadband.
  - Price of broadband plus VoIP prohibitive for many.
  - Only a few hundred thousand current VoIP customers.
- VoIP is a software-based service, not facilities-based competition.
  - Risk that BOCs and cable will use control of facilities to disadvantage "edge" providers.

MCI

State Records Show Virtually No CLECs Serve Residential Customers via UNE-L

- Close analysis of data proffered in state proceedings shows that there are only a handful of wire centers in which there are three or more competitive providers offering service to residential customers via UNE-L.
- The record regarding actual deployment supports a finding of nationwide impairment with respect to switching.

MCI

Any Non-Impairment Finding for Switching Requires Reasonable Transition

- To minimize consumer disruption, a reasonable transition must accompany a finding of non-impairment in any market.
  - Time needed to address operational barriers and customer-affecting issues.
  - Time needed to allow staged conversion of base.
- BOCs' independent Section 271 obligations require switching at just and reasonable rates.
  - Commission should require BOCs to file tariffs for 271 elements accompanied by cost support.
  - Refusal to combine 271 elements or to commingle 271 elements with UNEs violates Section 201(b).

MCI