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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P.,	)	Case No. 96-66-TP-CSS
Complainants,	)	
v.	)	
Ameritech Ohio,	)	
Respondent	)	

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

Now comes MCI Telecommunications Corporation ("MCI"), by its attorneys, and submits its comments on the agreement dated July 12, 1996 between Time Warner AxS of Ohio, L.P. and Time Warner Communications of Ohio, L.P. ("Time Warner") and Ameritech Information Industry Services, a division of Ameritech Services, Inc., on behalf of Ameritech Ohio ("Ameritech Ohio") ("the Agreement"). With respect to the Agreement, MCI states as follows:

The Agreement was adopted by negotiation by Time Warner and Ameritech Ohio in accordance with Section 252(a)(1) of the Telecommunications Act of 1996 ("the Act"). Pursuant to Section 252(e)(1) of the Act, the Public Utilities Commission of Ohio ("Commission") shall approve or reject the Agreement with written findings as to any deficiencies, and pursuant to Section 252(e)(2) the Commission may reject the Agreement if the Agreement (or a portion thereof) discriminates against a telecommunications carrier not a party to the Agreement or if the implementation of the

Agreement (or a portion thereof) is not consistent with the public interest, convenience, or necessity.

The Commission's review of the Agreement is limited to the criteria set forth in Section 252(e)(2). Due to the limited scope of Commission review, MCI submits that the Commission should not make any findings regarding compliance with the requirements of Sections 251 or 252(d) by Ameritech Ohio for purposes of Section 271 of the Act, nor should the Commission find that the Agreement establishes precedent with regard to Sections 251 or 252(d) requirements or for agreements that may be entered into by Ameritech Ohio and MCI or other carriers. Therefore, the Agreement does not contain any terms and conditions that would be binding on any other carrier.

While the Agreement does not establish a precedent for carriers other than Time Warner, MCI as well as other carriers should be allowed, by exercising individual carrier choice, to avail themselves of any or all of the terms and conditions of the Agreement.

The Commission in its July 12, 1996 Entry Order also requested comments on whether the Agreement fulfills the criteria delineated in Sections 271(c)(1)(A) and/or Section 271(c)(2)(B) of the 1996 Act. The 1996 Act provides that the Federal Communications Commission ("FCC") will consult state commissions to determine whether Regional Bell Operating Companies ("BOCs") have fulfilled the prerequisite statutory requirements necessary for the BOCs to receive authorization to provide in-region interLATA services.

As an initial matter, it is premature and unnecessary for the Commission or the

parties to address these questions substantively. The FCC has yet to issue its rules which will be integral to answering questions regarding compliance with Section 271(c)(2)(B) requirements. A meaningful Section 271 analysis simply cannot be conducted until after the FCC issues its rules addressing issues contained in Section 251 and 252. Furthermore, as a voluntary agreement pursuant to Section 252(A) of the 1996 Act, this agreement may -- and should -- be reviewed without regard to the requirements of Section 251 and 252, which form the backbone of the requirements of Section 271(c)(2)(B). Consequently, it is simply not ripe for the Commission to be making determinations regarding 271 issues in the context of this specific agreement.

Notwithstanding the fact that these questions are not ripe for consideration, for the reasons stated below, the Ameritech/Time Warner agreement is not sufficient to satisfy the requirements of either Section 271(c)(1)(A) or Section 271(c)(2)(B). Section 271(c)(1)(A) measures the presence of facilities-based competitors offering service to residential and business customers. Time Warner does not appear to meet this standard, and at the very least more data is necessary to make that determination. Second, the agreement -- on its face and implicitly -- cannot satisfy Section 271(c)(2)(B) requirements given the serious omissions in the agreement, as detailed below. For these reasons, should the Commission decide to continue this review, the Commission simply cannot make the determination that this agreement -- or any of the provisions in the agreement -- satisfy the requirements of Section 271(c)(2)(B).

SECTION 271(c)(1)(A) IS NOT YET SATISFIED

Section 271(c)(1) provides that a BOC meets the requirements of (c)(1) if it meets the requirements of subparagraph (A) or subparagraph (B) of (c)(1) for each state for which the authorization is sought. Pursuant to subparagraph (A), a BOC can file a petition if "it has entered into one or more binding agreements that have been approved under section 252 [with]. . .one or more unaffiliated competing providers of telephone exchange service. . .to residential and business subscribers." Section 271(c)(1)(A). Such services can be provided either "exclusively" or "predominantly" over the competing provider's facilities.

Thus, to appropriately analyze the Agreement within the context of Section 271(c)(1)(A), several preliminary determinations must be made before the Commission's inquiry can be answered. Namely, is Time Warner a facilities based-carrier that is providing residential and business service exclusively or predominantly over its own facilities within the meaning of the 1996 Act? MCI does not have the information necessary to make an informed judgment as to whether these criteria have been fulfilled. MCI is not aware of the extent to which Time Warner owns facilities in the state of Ohio or whether those facilities would enable Time Warner to provide service to business and residential customers. In addition, to the best of MCI's knowledge and belief, Time Warner has not filed with the Commission for approval a tariff that offers telephone exchange services. If Time Warner does not have an approved tariff that offers such service, it can neither offer nor actually provide

telephone exchange service. Under these circumstances, it is not possible that the Section 271(c)(1)(A) requirements have been met.

In any event, even if Time Warner did have an approved tariff in place that offered both residential and business service, the inquiry does not end there. Section 271(c)(1)(A) requires more than the mere existence of a competitor with approved tariffs. Facilities-based competition to both residential and business customers must exist in fact, not merely in theory. For competition to exist in fact, Ameritech must face meaningful competition in significant markets before the requirements of Section 271(c)(1)(A) can be met. It would frustrate congressional intent to allow Ameritech to provide intrastate long distance service throughout Ohio if it were faced with only insignificant competition in one small portion of the state.[1]

In order to address this issue properly, the Commission must -- at a minimum -- gather information regarding the nature and scope of competitive alternatives in Ohio before any Section 271(c)(1)(A) analysis can be performed. Before that investigation is completed, the Commission can make no determination regarding compliance with Section 271(c)(1)(A).[2]

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[1] Section 271(d)(3)(A)(i) requires Ameritech to have "fully implemented" the competitive checklist. Those are the competitive checklist items found at Section 271(c)(2)(B).

[2] To that end, MCI notes that the Commission has recently initiated an investigation into Section 271 issues generically. That inquiry may be the best vehicle for addressing these issues, rather than attempting to address these issues piecemeal with any particular agreement that is filed.

THERE CAN BE NO SUBSTANTIVE SECTION 271(c)(2)(B) REVIEW, BUT ON ITS FACE, THE AGREEMENT DOES NOT ADDRESS SEVERAL OF THOSE REQUIREMENTS

The Agreement -- in and of itself -- cannot be said to satisfy the requirements of Section 271(c)(2)(B). For example, the Agreement fails completely to address the resale requirement of Section 271(c)(2)(B)(xiv). In addition, the Agreement does not address unbundled local switching, as required in Section 271(c)(2)(B)(vi). In light of these examples alone, the Commission must find that the Agreement -- in and of itself -- fails to satisfy the requirements of Section 271(c)(2)(B).

Even if the Commission were to attempt a section-by-section review of the Agreement to determine whether any pieces of it satisfied Section 271(c)(2)(B), that review would be frustrated. Any review of the rates contained in the Agreement pursuant to Section 271(c)(1)(B) necessitates consideration of the rules contained in Sections 251 and 252 of the 1996 Act. On the terms of the Agreement that deal with rates, aside from the fact that the FCC has yet to issue its regulations regarding Section 251 and 252, there is no means by which the Commission can judge this Agreement against the requirements of Section 251 and 252. For example, in MCI's view, the pricing rules in Section 252(d) require that rates for unbundled elements and termination of local traffic be set at TSLRIC. At a minimum, depending upon the FCC's rulemaking, rates will have to satisfy some cost standard. In the case of this Agreement -- because it was a "voluntary agreement" pursuant to Section 252(a) and does not need to be reviewed according to Section 251 and 252 standards, there has

been no cost data submitted to support the rates specified in the Agreement. Consequently, it is impossible to determine at this point whether any of the rates contained in the Agreement satisfy the pricing rules of Section 252(d) and, consequently, of Section 271(c)(2)(B).[3]

CONCLUSION

MCI submits that an analysis of whether the Agreement satisfies the requirements of Section 271(c)(1)(A) and/or Section 271(c)(2)(B) is premature. Time Warner does not yet have approved tariffs on file, and the provision of residential and business service predominantly over Time Warner's own network in Ohio is not a reality. Thus, there is no basis on which the Commission can make a determination regarding Section 271(c)(1)(A). In addition, regarding Section 271(c)(2)(B), the FCC has yet to issue its regulations regarding Sections 251 and 252. These regulations are integrally related to any substantive review of Section 271(c)(2)(B) issues.

At the very least, the Commission will need to conduct more investigation before it can make any substantive determination on these issues. For example, data on the extent to which meaningful competition exists in Ohio will be necessary for any Section 271(c)(1)(A) determination. Also, review of cost information in light of the

[3] The Agreement does contain rates for interim number portability. That provision would be contrary to the FCC's recent order on interim number portability cost recovery since the rates appear to require Time Warner to shoulder an inordinate share, if not all, of the costs of interim number portability costs. Thus, this provision of the Agreement cannot be said to satisfy the requirements of Section 271(c)(2)(B)(xi).

pricing rules will be necessary to determine whether rates in any agreement comply with the requirements of Section 271(c)(2)(B). None of that information is available.

In any event, the Agreement on its face fails to comply with Section 271(c)(2)(B) standards. The Agreement fails completely to address resale and unbundled switching.

For all of these reasons, if the Commission does not find directly that the Agreement fails to satisfy Section 271(c)(1)(A) and Section 271(c)(2)(B), the Commission should at least make no findings at all on these issues at this time in the context of this Agreement.

Respectfully submitted,

MCI Telecommunications Corporation

By: Darrell S. Townsley /BS

Darrell S. Townsley
205 North Michigan Avenue, Ste. 3700
Chicago, Illinois 60601
TEL: (312) 938-3395
FAX: (312) 938-4929

By: Judith B. Sanders

Judith B. Sanders
BELL, ROYER & SANDERS CO., LPA.
33 S. Grant Ave.
Columbus, Ohio 43215
TEL: (614) 228-0704
FAX: (614) 228-0201

ATTORNEYS FOR MCI
TELECOMMUNICATIONS CORPORATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of MCI Telecommuncations Corporation was forwarded the parties listed below via U.S. mail, postage prepaid, on July 19, 1996.

Judith B. Sanders

Richard P. Rosenberry
Denise C. Clayton
Samuel C. Randazzo
EMENS, KEGLER, BROWN,
HILL & RITTER
65 East State Street
Columbus, Ohio 43215

Michael T. Mulcahy
Ameritech Ohio
45 Erieview Plaza
Room 1400
Cleveland, Ohio 44114