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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application and Petition of The Champaign Telephone Company in Accordance With Section II.A.2.b of the Local Service Guidelines	)	**Case No. 04-1494-TP-UNC**
In the Matter of the Application and Petition of Telephone Service Company In Accordance With Section II.a.2.b of the Local Service Guidelines	)	**Case No. 04-1495-TP-UNC**
In the Matter of the Application and Petition of The Germantown Independent Telephone Company In Accordance With Section II.A.2.b of the Local Service Guidelines	)	**Case No. 04-1496-TP-UNC**
In the Matter of the Application and Petition of Doylestown Telephone Company In Accordance In Accordance With Section II.A.2.b of the Local Service Guidelines	)	**Case No. 04-1497-TP-UNC**

MOTION TO STRIKE OR, ALTERNATIVELY, SUPPLEMENTAL REPLY OF MCI

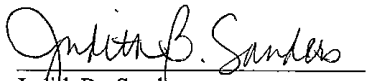
By Entry dated October 4, 2004, the Commission set a procedural schedule for these combined applications by the Champaign Telephone Company (Champaign), Telephone Service Company (TSC), Germantown Independent Telephone Company (Germantown) and Doylestown Telephone Company (Doylestown) (collectively "small ILECs") seeking exemptions from their §251(b) and (c) interconnection obligations pursuant to §251(f) and the Ohio Local Service Guidelines (LSG). The small ILECs were given until November 15, 2004 to file supplemental information in support of their applications, and interested parties could file comments on December 15, 2004. The

small ILECs were not given an opportunity for reply comments. Nonetheless, on January 3, 2005, the small ILECs filed a "supplemental memorandum to correct the record in response to comments regarding the applications and petitions." (Supplemental Memo) All of the statements in that filing were directed towards comments filed by MCI.

MCI is dismayed by the Supplemental Memo for two reasons. First, it was filed outside of the process established by the Commission for comments in this case. Second, and most important, the small ILECs have alleged that MCI made "misstatements" and that their filing was necessary to establish a "truthful" record (Supplemental Memo, 2). Such statements imply that MCI included deliberately misleading and untruthful information in its comments, which is simply not the case. As will be seen in this pleading, the small ILECs do not agree with MCI's comments and they have given their side of the story. However, MCI's comments were certainly not "untruthful" or inaccurate.

MCI's preference would be that the Commission strike the Supplemental Memo as being improvidently filed, and therefore this reply would also not be part of the record. However, if the Commission chooses to retain the Supplemental Memo, the MCI should also be permitted to briefly respond to the small ILECs allegations.

Respectfully submitted,



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MEMORANDUM IN SUPPORT OF MOTION TO STRIKE OR, ALTERNATIVELY, SUPPLEMENTAL REPLY OF MCI

As noted above, it is MCI's primary position that the Supplemental Memo should be stricken from the record. The 120 day time period for Commission consideration of the small ILECs' applications and petitions is almost over, and the Commission is urged to take prompt action in issuing a ruling. The submission of another set of filings, at this late date, could cause the Commission to miss the 120 day deadline. In the meantime, the "clock" for the arbitration of these interconnection agreements has been running, and the window for arbitration for opens on January 26, 2005. Thus, it would be most expeditious if the small ILEC filing is not considered.

To the extent that the Commission wishes to consider the late-filed comments submitted by the small ILECs, MCI should therefore be permitted to respond. The small ILECs have accused MCI of providing the Commission with untruthful and inaccurate information, and MCI simply cannot let these accusations stand without further comment. Thus, MCI will briefly address the allegations set forth in the Supplemental Memo, in the order in which the comments were made.

1. Supplemental Memo, page 2: MCI's actual statement, at page 4 of its December 15, 2004 Comments, was:

> The ubiquitous cellular telephone companies, who have interconnection agreements with all of the small ILECs, are also not subject to these rules and regulations [the MTSS].

The point of MCI's discussion on page 4 was that the small ILECs compete with cellular telephone companies in their service territories, and cellular telephone companies are also not subject to the MTSS, just as Time Warner Cable is not subject to those rules. This should have been clear from the previous paragraph, where MCI lead in with the comment "turning first to the 'unregulated' nature of Time Warner's VoIP offering..." (see MCI Comments, 3). Nonetheless, the small ILECs have argued that "the small ILECs do not have interconnection agreements with any of the cellular telephone companies", but rather have, "to a limited extent, executed traffic and exchange agreements" with them (citing, in a footnote, all of the Commission orders approving such arrangements). This is absurd. MCI was not trying to make the point that the small ILECs had agreements with cellular companies that are similar to the interconnection arrangements it is seeking pursuant to §251. Rather, MCI was arguing that the small ILECs are subject to competition from cellular companies, which are not regulated by the

Commission, because they have entered into agreements with these companies. Notably, the small ILECs did not disagree with the overall concept that MCI was trying to convey in this part of the discussion. Whether or not a traffic and termination agreement should have been called an "interconnection" agreement, in the context that MCI was using that phrase, is beside the point and certainly not a deliberately "untrue" use of the phrase.

2) Supplemental Memo, page 3: The second of MCI's "claims" with which the small ILECs have taken issue is MCI's statements on page 6 of its Comments that there will be some charges paid to the small ILECs as part of the interconnection agreement being sought by MCI. The small ILECs have correctly quoted MCI's statements at page 3 of the Supplemental Memo, but have countered with the underlined response that "in fact, the payments for the services referenced by MCI in its proposed interconnection agreement are insignificant". Not surprisingly, MCI's proposed contract, which was attached to its motion to dismiss, did not contain the prices for interconnection and did propose that certain costs, such as LNP, should be borne by each party. However, these prices clearly were--and are-- subject to the negotiations that MCI has been seeking, as MCI explained in this sentence:

> For example, MCI will pay the small ILECs for the submission of LNP orders (a non-recurring service order charge), monthly recurring charges for trunk servicing, interconnection transport charges, traffic transit charges and E911/911 trunking charges (if the ILEC is the PSAP provider), *all pursuant to the terms of the yet-to-be-negotiated interconnection agreement.* (MCI comments, 6; emphasis added)

Indeed, it is significant that MCI admitted, in its comments, that there are certain charges it is willing to pay, even though these were not included in its model contract. However, for the purposes of this pleading, the point is that MCI did not make "untruthful" or "misleading" statements about the fact that certain charges will be paid to

the small ILECs. To the extent that the small ILEC believe these charges to be so insignificant that they did not include them in their financial analysis, this is responsive information but does not make the record "truthful". Furthermore, it is ironic that the small ILECs have yet to contact MCI and express concern that the pricing proposed in MCI's model contract (to the extent any was proposed) is not compensatory.

3) Supplemental Memo, page 4: The small ILECs have disputed MCI's comments that certain customer costs are "avoided" when the customer switches to a competing carrier. They state that customer and marketing costs may increase (rather than decrease) because of winback efforts. Be that as it may, the small ILECs have, once again, not shown that MCI's statement was "untruthful." Furthermore, the notion that "avoided" costs are a concept related only to resale services is nonsense. A look at the small ILECs' reference, LSG V.A.4, shows that the Commission identified the very costs that are not incurred ("avoided") when the customer is not receiving retail service from an ILEC: for example, product management, sales, product advertising, call completion services, etc. (see LSG V.A.4. a.). The fact that an ILEC might, or might not, be selling services to a CLEC at wholesale has little to do with whether these customers costs will be avoided, which was the point of MCI's comments. The small ILECs may disagree that certain costs will not be incurred, but such disagreement would be in the nature of reply comments, which were not procedurally permitted. They do not further the "truthfulness" of the record.

4) Supplemental Memo, page 5: The small ILECs do not agree with MCI's statement that:

> Furthermore, the notion that rates must be raised when revenues decrease is based on a "make whole" revenue requirement concept that is entirely

> inconsistent with the competitive environment within which these companies are happily competing today.

However, their comments in the Supplemental Memo seem to misunderstand the point that MCI was trying to make here. Notions of "make whole", based on revenue requirements, are derived from traditional ratemaking concepts embodying the principal that if there is a loss of customers, a public utility's fixed costs must be made up from the other customers. MCI and Time Warner do not have this luxury, nor do any other providers in a competitive market. If MCI loses customers, any associated fixed cost losses must be borne by the company (including the costs of MTSS compliance). The "high fixed costs" of which the ILECs complain may be fully depreciated plant or equipment which is still being reflected in rates (or being recouped through high access charges). At any rate, MCI's characterization of the small ILECs' financial analysis as being based on "make whole" revenue requirement concepts is simply a fact that cannot be controverted, and certainly is not "untruthful" or "inaccurate."

5) Supplemental Memo, page 5: Of all of the small ILECs' accusations, this one is probably the most ridiculous. In commenting on the small ILECs' comparisons of their basic local exchange rates with SBC Ohio's "frozen" local exchange rate of $14.25, MCI stated:

> While SBC Ohio does serve urban areas in Ohio, a better rate comparison would have also included the other large ILECs whose service territories *also* surround the small ILECs, *e.g.* Verizon and Sprint. (MCI comments, 8; emphasis added)

The small ILECs have stated that all of them have EAS routes with SBC Ohio, and therefore the SBC Ohio rates were appropriate. Be that as it may, MCI's implicit suggestion was that *surrounding* service areas, rather than EAS routes, may more accurately reflect similar costs of service—and therefore local rates—than SBC's rates in

urban areas. A look at a telephone exchange service area map, prepared by the Commission, shows that the exchanges of each small ILEC adjoin either Sprint, Verizon, or other ILECs in addition to SBC.[1] See attached map. Furthermore, the edge-out authority granted Doylestown and Germantown reference adjoining exchanges of non-SBC ILECs. (Germantown, Case No. 02-2436-TP-UNC, edge-out authority in the Gratis Exchange of Verizon; Doylestown, Case No. 01-568-TP-UNC,the Rittman and Marshallville exchanges of Sprint)

Obviously, the small ILECs thought that SBC Ohio provided the best rate comparison. MCI disagreed with this notion, for the reasons set forth above. This is a difference of opinion which the Commission can evaluate, not an example of "misleading information."

6) Supplemental Memo, page 6: The small ILECs have taken issue with MCI's statement that they have prepared themselves for competition from cable companies by becoming cable operators themselves (MCI comments, 9, 11). Their point of contention is that "Germantown Independent Telephone Company is not a provider of cable television services." MCI never said that Germantown *did* provide such services (see MCI comments, 9-12). MCI specifically identified the other three small ILECs as cable operators, and included information from the small ILEC websites regarding their services. Once again, the small ILECs' response to MCI's statements do not take away from the point that at least three of them are sophisticated telecommunications/television cable service providers, and that MCI said nothing that was "untruthful" about any of them.

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[1] Indeed, as tacitly admitted by the small ILECs, the TSC service territory is nowhere near SBC's exchanges.

7) Supplemental Memo, page 6: The small ILECs' disagreement with MCI's "claim" about expanding customer bases through edge-out and other competitive activities is very strange (MCI comments, 12). The complete MCI statement is

> Time Warner Communication's comments about shrinking customer bases, taken out of context by the small ILECs eight years after being made in the CBT case, are clearly inapplicable to these companies in light of their expanding customer bases through edge-out authority and competitive activities in other regions.

MCI's basis for the reference to expanding customer bases was grounded largely on the quoted materials on page 10 and attached to MCI's comments as Exhibit A. There, Champaign's CLEC affiliate, CT, bragged that "by the end of 2003, CT forecasts that they will own 40% of the telephone market in West Liberty, their newest subscriber region where they are not the local phone provider." Despite this public information, the small ILECs have argued, with a straight face, that "Champaign has only one (1) edge out customer." What difference does that make? MCI referred to both edge out authority and competitive activities in the statement quoted above. Not only was MCI's comment absolutely accurate, based on materials that had previously been presented, but the small ILECs are being less than above aboard with this response. The number of "edge out" customers (as opposed to customers obtained via the activities of CLEC affiliates) is information know only to the small ILECs. MCI relied solely on public information, attached to its comments, in making references to expanding customer bases. Nothing MCI stated was untruthful.

8) Supplemental Memo, page 6-7: Here the small ILECs have taken issue, once again, with MCI's statement that they have entered into "interconnection agreements" with competitors, and they have repeated that they do not have "interconnection agreements" with cellular telephone companies. MCI has already addressed this

argument above. They have also repeated, once again, that the Commission did not premise Doylestown's edge-out authority on the loss of a rural exemption claim. MCI acknowledged this fact specifically in its Motion to Dismiss, at pages 7-8. The small ILECs' response to MCI's summary statement adds nothing to the record, and does not correct any "untruthfulness".

9) Supplemental Memo, page 7: As a final shot, the small ILECs have taken issue with MCI's legal arguments interpreting the LSG and their rights to request rural exemptions. In the first place, legal arguments and rule interpretations are not factual so MCI's statements cannot be characterized as "untruthful" or "inaccurate" in this regard. The small ILECs' legal advisers might not agree with MCI's arguments, but that is neither here nor there. However, not only have the small ILECs singled out just a bit of legal argument contained at page 13 of MCI's comments, but they have taken it out of context and therefore misrepresented the whole point. The small ILECs restated MCI's argument as "The small ILECs gave up their rights to extend their exemptions because, pursuant to Local Service Guideline II.A.2.b.iv., such applications were to have been filed prior to January 1, 1998." (Supplemental Memo, 7) What MCI actually said was:

> Additionally, the small ILECs long ago gave up their rights *to extend their exemptions from §251(b) obligations* as rural carriers, pursuant to Local Service Guideline (LSG) II.A.2.b.iv. (such applications were to have been filed prior to January 1, 1998). (MCI Comments, 13, emphasis added).

MCI's reference to filing an application for exemption by January 1, 1998 was to the small ILECs' exemptions from §251(b), not §251(c). The Entry attached to the Supplemental Memo, which gave the small ILECs an extension of this deadline, clearly

referred only to the ILECs' *§251(c)* obligations. (See the December 23, 1997 Entry, ¶¶ 2-3[2]).

MCI will freely admit that the rules are not abundantly clear as to the distinction between §251(b) and 251(c) exemptions. LSG II.A.2.b.iii states that if an SLEC seeks suspension or modification from §251(b) obligations, an application must be filed with the Commission. II.A.2.b.iv refers to applications for exemptions from §251(c) obligations, and this section contains the filing deadline of January 1, 1998. It is MCI's belief that the Commission intended iv. to apply to both i. and iii., so that applications for both §251(b) and (c) suspensions would be filed by the same date. This interpretation makes the rules consistent with II.A.2.b.v., which imposes a 180 day deadline on the Commission to make a determination.

MCI's interpretation of iv. also is consistent with the Telecom Act. §251(f) has two provisions: (f)(1) addresses exemptions from §251(c), and (f)(2) addresses exemptions from §251(b) and (c). LSG. II.A.2.b. iii., iv. and v. track §251(f)(2), especially when read in context with the lead-in paragraph to II.A.2.b.:

> In this subsection, the Commission recognizes that an incumbent SLEC is both an RLEC subject to the automatic exemption from Section (c) until such time as the SLEC receives a bona fide request for interconnection and the Commission reviews such request, and a rural carrier which may request a suspension or modification of all or portions of Sections 251(b) and (c) of the 1996 Act by filing an application with the Commission.

Thus, it is MCI's opinion that the January 1, 1998 deadline set forth in II.A.2.b.iv. was meant to apply to both types of applications for exemptions [§251(b) and (c)], and that the small ILECs were given an extension of this deadline for §251(c) only. Having not timely filed a request for §251(b) exemption as "rural carriers" (as opposed to "RLECs")

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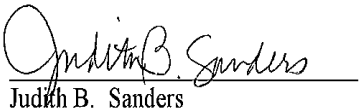
[2] In a footnote in that entry, the Commission referred to II.A.2.b. i. as affording "the SLECS an exemption from those portions of the 845 guidelines which relate to §251(c) of the Telecommunications Act of 1996."

by that date, the small ILECs right to file such applications has been waived. The small ILECs might not agree with this opinion, but MCI has made this argument in good faith, not in an attempt to mislead the Commission, and believes it to be correct.

As can be seen from the above discussion of each of the small ILECs' assertions, there is no basis for the contention that MCI made untruthful statements that must be corrected. The Supplemental Memo should be stricken from the record. Alternatively, the Commission should expeditiously review all of the record information, including that presented herein, and deny the small ILECs' applications and petitions.

Respectfully submitted,



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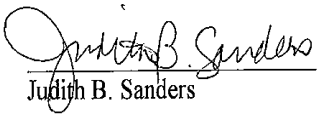
CERTIFICATE OF SERVICE

I hereby certify that the foregoing MCI Comments have been served upon the parties listed below, via first-class U.S. mail, postage prepaid, this 6th day of January, 2005.



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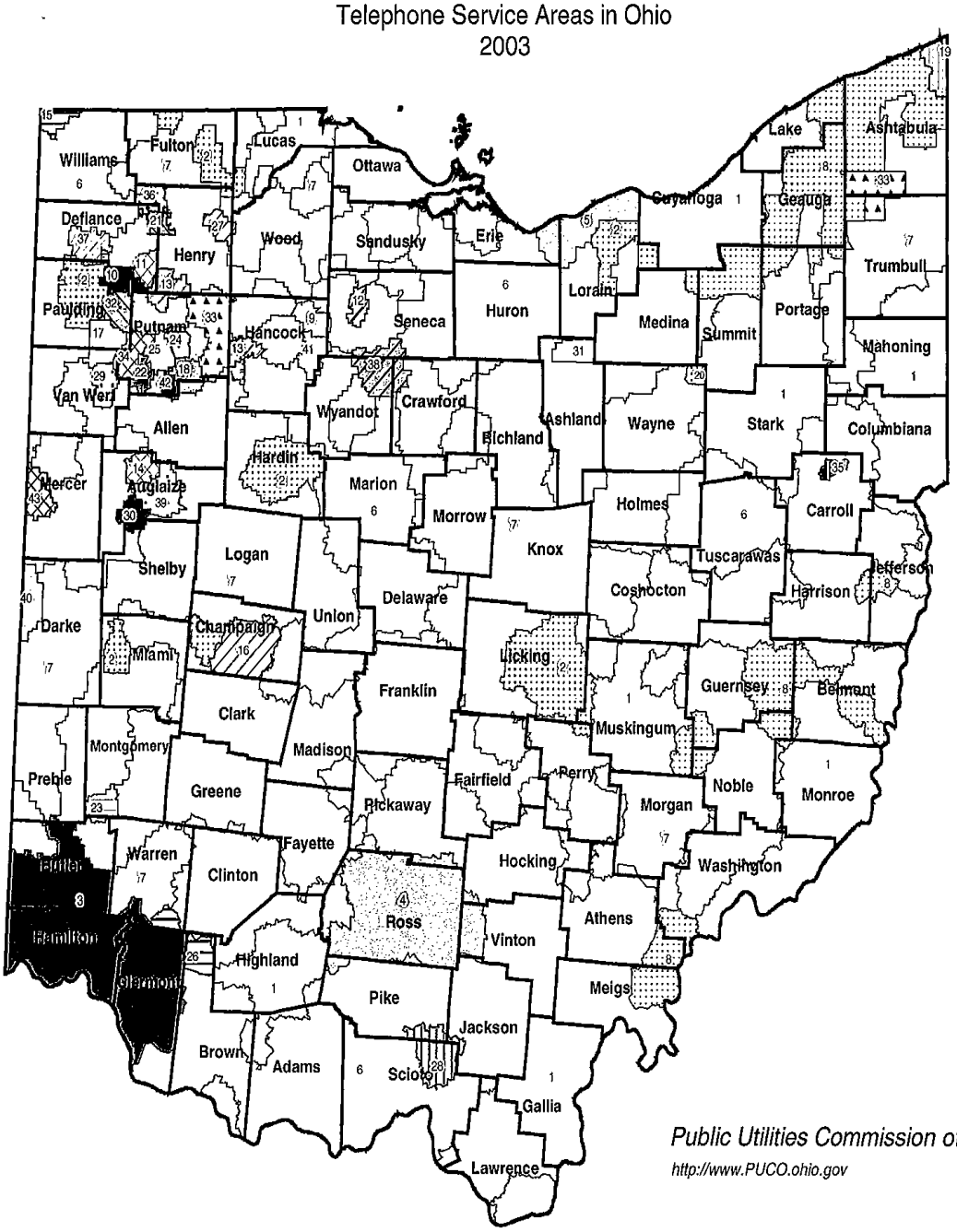
Telephone Service Areas in Ohio
2003



Public Utilities Commission of Ohio

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Large Incumbent LECs

- (1) SBC Ohio
- (2) Alltel Ohio
- (3) Cincinnati Bell
- (4) Chillicothe
- (5) Century
- (6) Verizon North
- (7) United of Ohio (d/b/a Sprint)
- (8) Western Reserve

Small Incumbent LECs

- (9) Arcadia (TDS)
- (10) Arthur Mutual
- (11) Ayersville
- (12) Bascom Mutual
- (13) Benton Ridge
- (14) Buckland
- (15) Frontier
- (16) Champaign
- (17) Continental (TDS)
- (18) Columbus Grove
- (19) Conneaut
- (20) Doylestown
- (21) Farmers Mutual
- (22) Fort Jennings
- (23) Germantown
- (24) Glandorf
- (25) Kalida
- (26) Little Miami (TDS)
- (27) McClure
- (28) Minford
- (29) Middle Point Home
- (30) New Knoxville
- (31) Nova
- (32) Oakwood (TDS)
- (33) Orwell
- (34) Ottoville Mutual
- (35) Pattersonville
- (36) Ridgeville
- (37) Sherwood Mutual
- (38) Sycamore
- (39) Telephone Service
- (40) United of Indiana
- (41) Vantue (TDS)
- (42) Vaughnsville
- (43) Wabash Mutual