



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554

DA 97-1062

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**EX PARTE PROCEDURES ESTABLISHED FOR FORMAL COMPLAINT FILED BY
AMERITECH CORPORATION AGAINST MCI TELECOMMUNICATIONS
CORPORATION (FILE NO. E-97-17), AND FOR MCI PETITION FOR
DECLARATORY RULING REGARDING THE JOINT MARKETING RESTRICTION
IN SECTION 271(E)(1) (CC DOCKET NO. 96-149)**

Ameritech Corporation ("Ameritech") filed a formal complaint, File No. E-97-17, against MCI Telecommunications Corporation ("MCI") on April 9, 1997. Ameritech subsequently amended its complaint on April 24, 1997. In both the original and the amended complaints, Ameritech alleges, *inter alia*, that MCI has violated the joint marketing restriction in Section 271(e)(1) of the Communications Act ("the Act"), 47 U.S.C. § 271(e)(1), and Section 53.100(c) of the Commission's rules, 47 C.F.R. § 53.100(c), by representing in its advertising that MCI may offer bundled packages of interLATA and local exchange services, and that MCI may sell such services in one transaction. The formal complaint is restricted for purposes of the Commission's *ex parte* rules. See 47 C.F.R. § 1.1208(c)(1)(i)(B).

Section 271(e)(1) prohibits certain interexchange carriers, including MCI, from marketing jointly interLATA services with telephone exchange service purchased for resale from a Bell Operating Company ("BOC") in an in-region state until the earlier of February 8, 1999, or the date on which the BOC is authorized to provide interLATA services in such state. On December 24, 1996, the Commission released a report and order in which the Commission discussed, among other things, the joint marketing restriction in Section 271(e)(1), and the marketing practices that it interpreted Section 271(e)(1) to proscribe and to permit. See *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, FCC 96-489 (rel. December 24, 1996) (*Non-Accounting Safeguards Order*), petitions for recon. pending.

On May 1, 1997, MCI filed a petition for declaratory ruling regarding how the rules the Commission adopted in the *Non-Accounting Safeguards Order* concerning the joint marketing restriction in Section 271(e)(1) would apply to certain MCI marketing materials. MCI states that a declaratory ruling would terminate a significant controversy and remove substantial uncertainty in the marketplace. On May 9, 1997, the Commission issued a Public Notice establishing the pleading cycle for comments and reply comments pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, on MCI's petition for declaratory ruling regarding the joint marketing restriction in Section 271(e)(1) of the Act (CC Docket No. 96-149).

Upon review, it appears that MCI's petition for declaratory ruling and Ameritech's complaint raise the same fundamental issues. Both proceedings raise the issue of how the constraints applicable to the joint marketing by covered long distance carriers of their long distance and resold BOC local exchange services would apply to MCI's marketing advertisements. Additionally, both proceedings raise issues relating to Section 271(e)(1) of the Communications Act.

The declaratory ruling proceeding raises legal and policy issues that have widespread impact and importance. We believe that the public interest in fully and expeditiously resolving the significant issues raised by the declaratory ruling proceeding would best be served by conducting the declaratory ruling proceeding as a "permit but disclose" proceeding, as contemplated by the Commission's *ex parte* rules. See 47 C.F.R. § 1.1206(b)(4). Because the declaratory ruling and the complaint proceedings raise the same issues, however, as a practical matter, we will be unable to do so if the complaint proceeding continues to be conducted as a restricted proceeding. Therefore, pursuant to Section 1.1200(a) of the Commission's rules, 47 C.F.R. § 1.1200(a), we find, in this particular instance, that the public interest would be served by applying to both proceedings the "permit but disclose" *ex parte* rules applicable to non-restricted proceedings. Accordingly, this Public Notice establishes that both the formal complaint and the declaratory ruling proceedings are "permit but disclose" proceedings for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216.

Consistent with this Public Notice, all parties making *ex parte* presentations in either proceeding shall file any written *ex parte* presentations and summaries of oral *ex parte* presentations in both the declaratory ruling proceeding, CC Docket No. 96-149, and the formal complaint proceeding, File No. E-97-17.

Questions relating to the formal complaint may be directed to Sumita Mukhoty of the Enforcement Division, Common Carrier Bureau, at (202) 418-0960. The formal complaint materials are available for inspection and copying in the Enforcement Division, Formal Complaints and Investigations Branch, Room 6120, 2025 M Street, N.W., Washington, DC 20554. Questions relating to MCI's petition for declaratory ruling may be directed to Christopher Heimann, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418-1580. The MCI petition for declaratory ruling, comments, and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. 20554. Copies can also be obtained from ITS at 2100 M Street, N.W., Suite 140, Washington, D.C. 20037, or by calling (202) 857-3800.

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