Robert M. Pepper
Chief, Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W. - Room 822
Stop Code 1000
Washington, D.C. 20554

Peggy Reitzel
Policy and Program Planning Division
Common Carrier Bureau
1919 M Street, N.W. - Room 544
Washington, D.C. 20554

ITS, Inc.
2100 M Street, N.W., Suite 140
Washington, D.C. 20037

Patricia A. Green

Patricia A. Green

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In the Matter of Unbundling of Local Exchange Carrier Common Line Facilities	)))	RM-8614

RESPONSE OF LDDS COMMUNICATIONS, INC. TO PETITION FOR RULEMAKING

Of Counsel

Catherine R. Sloan
Richard L. Fruchterman III
Richard S. Whitt
LDDS Communications, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20006

Richard J. Heitmann
LDDS Worldcom
515 East Amite
Jackson, MS 39201-2702

Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Counsel for LDDS Communications, Inc.
d/b/a LDDS Worldcom

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SUMMARY

LDDS agrees with MFS that that the Commission can play an important leadership role in the development of local exchange competition -- acting in partnership with the states who bear direct responsibility for local service. We therefore support use of this docket as a vehicle for debate of the steps that can be taken to promote exchange competition.

LDDS also agrees with MFS that local loop unbundling is one action that could create more choices for consumers, and we support MFS's request for loop unbundling. However, this proposal does not go far enough. First, the Commission, and particularly the states, also must establish policies to require LECs to make available "carrier's carrier" wholesale local service products that can be resold by new entrants. LDDS in no way disagrees with the need for new facilities-based and partial facilities-based local service. But experience in the interexchange market demonstrates that -- in order for entry to proceed, and for entry barriers to remain low - carriers must be able to purchase and resell a bulk discount wholesale product. Such products exist today in the interexchange market; indeed, they would provide the RBOCs the means to immediately enter the interLATA market if the MFJ were to be lifted. Equivalent "carrier's carrier" local service products are necessary so that CAPs, IXCs, and others have a corresponding ability to enter the local market and create full service offerings for customers.

The need for a "carrier's carrier" wholesale local service product is increasingly being recognized in proceedings like those concerning Ameritech's Customers First plan. The concept is reflected in part in the Rochester Open

Market Plan. It therefore is timely for the Commission to look more closely at this issue, which in our view is an even more crucial precondition to local competition than the loop unbundling proposed by MFS. Both should be required.

Second, the MFS Petition is too narrow because it asks the Commission for only limited access charge relief, and does not address the broader pricing problems affecting all access services. Specifically, MFS asks that purchasers of unbundled loops not be required to pay carrier common line charges. In our view, the FCC should not create an access charge exemption for one class of carrier. Rather, it should rationalize the access scheme for all carriers.

As telecommunications competition develops, pricing of the use of the LEC network must be rationalized so that different rates are not charged to different competing carriers for the use of the same network features and services. When services make the same use of the local network, the LEC price should be the same.

These are difficult questions that can be answered only in the context of overall access reform and close coordination between the FCC and the states. LDDS strongly supports prompt action to address universal service and related access issues. In that sense we support MFS on the need to move forward on these matters. However, no particular carrier or type of carrier should be given special treatment before then.

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BEFORE THE

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RESPONSE OF LDDS COMMUNICATIONS, INC. TO PETITION FOR RULEMAKING

LDDS Communications, Inc., d/b/a LDDS Worldcom ("LDDS"), hereby respectfully submits its comments in response to the referenced petition for rulemaking filed by MFS Communications Company, Inc. ("MFS"), on March 7, 1995.

Introduction

As one of the nation's four largest long distance companies, LDDS strongly supports the development of local exchange competition. Such competition has the potential to expand choices for consumers, if implemented on an open and nondiscriminatory basis.

LDDS recognizes that under the bi-jurisdictional structure of the Communications Act, state regulatory commissions will be responsible for much of the work that must be done to create the conditions under which local exchange competition can flourish. Nevertheless, LDDS agrees with MFS that the federal government can and should assume a leadership role in promoting the development of local competition and, to the extent possible, establishing the necessary preconditions for that competition.

The MFS Petition, however, goes only part of the way toward laying a foundation for local exchange competition. The petition's concepts need to be more broadly implemented. First, the Commission -- and the states -- will need to require telephone companies to provide wholesale local exchange service for resale by other new entrants, in addition to providing opportunities for entry through switch-based resale (loop unbundling), as MFS requests

Second, the MFS Petition is too narrow because it asks the Commission to rectify an irrational access pricing scheme in only one respect, without regard to the overall discrimination embedded in that scheme. LDDS supports MFS's request to bring access rates down to true cost -- but the Commission must do so not just with respect to a limited category of access services. The FCC -- and the states -- will need to correct the pricing of all the wholesale inputs that carriers need to provide competitive retail services.

In sum, LDDS welcomes the filing of the MFS Petition. The Petition identifies many important issues that the FCC must begin to address in order to contribute to the development of local exchange competition. The Petition also surely will stimulate vigorous debate about the proper roles of the FCC and the states in promoting local competition.

I. The Commission Should Expand Any Rulemaking to Include "Carrier's Carrier" Wholesale Local Exchange Service.

The MFS Petition for loop unbundling recognizes the importance of resale of LEC facilities as a means of entry into the local market. The unbundling requested by MFS is important, and LDDS supports MFS's request that the Commission take whatever steps are within its jurisdiction to encourage unbundling of the local loop. Access to unbundled loops, and establishment of the technical interconnection standards and pricing rules for those loops, are essential preconditions necessary for local competition to develop.

But loop unbundling is actually an intermediate step in the continuum from pure resale to pure facilities-based service provision. In acting on MFS's petition, the Commission must also take the necessary first step: it must ensure the availability of off-the-shelf "carrier's carrier" local exchange service to any service provider, regardless of its ownership of facilities.

A. Loop Unbundling Alone Will Not Create Full Local Exchange Competition.

The MFS Petition correctly recognizes that the local loop connecting each customer to the LEC public switched network is a unique asset that gives the LEC control over access by others to its customers. As MFS observes, "[t]he local

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loop is and will remain the quintessential telecommunications bottleneck facility." Petition at 6. MFS also is correct in observing that it often will be uneconomic for firms to duplicate the ubiquitous LEC local exchange networks. It is difficult for anyone observing the local exchange market today to conclude that it is realistic for many firms to duplicate the local wireline network -- even in the long run.

But access to unbundled local loops will not be enough to permit creation of a truly competitive local exchange market with a wide range of potential service providers. Only firms that have local exchange switches can take advantage of the availability of unbundled local loops. The Commission must also provide for access to wholesale local exchange products that do not require any local facilities investment. Access to an off-the-shelf wholesale local exchange product would enable any service provider immediately to enter the local market, and readily to combine local exchange service with other products in full-service packages that can be offered in competition with those of other local service providers.

The service we describe would be equivalent to the "carrier's carrier" interexchange products that LDDS and others offer today on a competitive basis. The existence of these wholesale products form the foundation for the competitive interexchange market that exists today, and its low entry barriers. Firms can enter the market reselling the wholesale "carrier's carrier" product, and then substitute their own network facilities where and when it becomes efficient to do so. As discussed in more detail below, the need for an equivalent local service product is increasingly recognized by those who advocate local service competition.

The importance of "carrier's carrier" local service is particularly seen in the context of discussions to eliminate the interLATA prohibition of the MFJ. This is not the place to debate the circumstances in which such entry should be permitted. No one can disagree, however, that at that time the RBOCs will be able to choose among several IXCs competing to offer low cost wholesale interLATA service. The RBOCs will be able to enter the interexchange market swiftly using wholesale products that make it economically feasible to compete. However, today no corresponding "carrier's carrier" local service exists (let alone one priced at cost through the pressures of the competitive market). As a result, IXCs and others cannot enter the local market and begin the process of building a local business in competition with the RBOC.

A "carrier's carrier" wholesale local exchange service product would include not just local exchange service but also any necessary support functions, such as order processing. The availability of such wholesale local exchange service will promote competition in the local market and it will enable any service provider to use the local service platform to create competitive and innovative service packages for consumers. As the artificial lines between markets continue to dissolve, providers will offer, and customers will demand, full-service packages that include both local and long distance telecommunications services. These service packages will form a springboard for enhanced services as well. Indeed, the basis for the Commission's enhanced service policy has been that enhanced service providers will acquire transmission capacity on a resale basis from underlying carriers -- and that the LEC will do the same, acquiring capacity pursuant to tariff on the same terms and conditions as its competitors.

For firms to be able to develop these special applications, however, they will need to put together the underlying telecommunications service packages. To be competitive, they will need to include local exchange service in those packages, even if they are not facilities-based local providers. Ownership of facilities should not be a prerequisite for entry into the local market or for provision of full-service-packages to consumers. Certainly facilties ownership is not a prerequisite to entry in the long distance market.

B. The Experience of the Interexchange Market Demonstrates the Critical Role of Wholesale Products.

The Commission long has recognized the importance of unlimited resale in promoting competition, easing entry into markets, driving prices to cost, and facilitating diversity of service providers and service offerings. These same policy considerations support the adoption of a requirement that LECs make local exchange service, bundled or unbundled, available for resale.

In the long distance market, resale of wholesale products has formed the entry point for many companies that later became full facilities-based providers. It should be noted that this process did not happen overnight. Initially the favored resale vehicle was AT&T's heavily-discounted WATS product. However, over time as other interexchange carriers deployed network facilities, new products evolved that were specifically aimed at the resale market. These products combined both wholesale discount rates and other service features to permit IXC resellers to market their own services, at their own rates, to their own customers, at retail prices that were competitive with AT&T and other long distance providers. Resale enabled these companies to build a customer base, and from that customer base to build facilities, usually beginning with the installation of a switch -- just as MFS contemplates doing with the unbundled loops. From that point, a carrier can gradually build out its facilities network to the extent that duplicating the facilities of other carriers makes economic sense.

Today, there are four nationwide fiberoptic long distance networks -- one of them owned by LDDS. 1/ There are many other regional fiber networks, and hundreds of resellers. A significant number of carriers provide service over a mix of owned and leased facilities and resold services. It took many years for the long distance industry to evolve to the current state of network diversity and facilities investment. Without "carrier's carrier" interexchange products, perhaps none of those facilities would have been built. Without the continued availability of resale, the business would be limited to at most four long distance carriers.

It is clear that the availability of wholesale "carrier's carrier" products forms the basis for the diversity and large number of interexchange service providers today. Similar "carrier's carrier" local service products can play the same key role in the development of local exchange competition. But it will not happen

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1/ Early in 1995, LDDS acquired WilTel and IDB Communications. WilTel owned one of the nation's four nationwide fiberoptic networks. Acquisition of WilTel gave LDDS this valuable asset, which complemented LDDS's existing regional fiberoptic network and switching facilities.

without help from regulators, both state and federal. In the interexchange industry, it took regulatory intervention to eliminate restrictions on resale and to set fair and nondiscriminatory access prices. Even carriers that face competition may have incentives to restrict resale and to inhibit the ability of potential competitors to resell their services.

Indeed, clear regulatory policies fostering "carrier's carrier" local service products will be even more important to promoting local competition. At least in the interexchange market, AT&T already was offering a bulk discounted service at the time long distance competition began. The Commission could then simply eliminate restrictions on the resale of that product. Then, as AT&T began to make WATS resale increasingly less economical, other IXCs began to exert competitive pressure on AT&T by offering their own bulk discount products for resale. The Commission also played a role by ruling that AT&T could not prevent resale of its better prices as that pricing shifted from WATS to new vehicles like Tariff 12 options. However, even there continuing FCC involvement has been necessary. 2/

In contrast, generally LECs do not currently offer bulk local service products, let alone permit their resale. And we are a long way from a time when alternative facilities networks are available that can exert market pressure on

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2/ Early this year, the FCC proposed to levy on AT&T a forfeiture of $1 million because AT&T had denied resale of its Tariff 12 services. Notice of Apparent Liability and Order to Show Cause, FCC 94-359 (released January 4, 1995).

LECs to offer wholesale bulk pricing of local service. This docket presents an appropriate vehicle for the Commission to develop rules to address this structural problem in the local market.

Chairman Hundt recently recognized the important role of regulators in promoting competition through resale. In a recent speech, he said that "principles of interconnection and fair pricing are crucial because would-be competitors are not likely to construct an entire competing local phone network right off the bat. Rather, competitors are likely to provide one or more network components themselves and lease the rest from the incumbent." 3/

The Department of Justice also has recognized that there should be an opportunity for entry to the local exchange market on both a facilities and a non-facilities basis. Assistant Attorney General Anne K. Bingaman, in testimony before the Senate Commerce Committee, observed that a necessary step for local competition is the "implementation of unbundling and other arrangements for resale of local services on terms that make competition in local markets feasible." 4/ And in its recent filing with the divestiture court proposing an MFJ modification to permit Ameritech to enter the interLATA market, the Justice Department included as one of the necessary preconditions that Ameritech must file tariffs that would

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3/ Speech of FCC Chairman Reed E. Hundt before the American Bar Association, Antitrust Section, Spring Meeting, April 6, 1995, at 3.

4/ Statement of Assistant Attorney General Anne K. Bingaman before the Committee on Commerce, United States Senate, March 2, 1995, at 14.

ensure opportunities for non-facilities-based local entry. 5/ Before interLATA entry would be allowed, the Department would have to find that "as a matter of economic reality, there were meaningful opportunities for commercially feasible non-facilities-based competition in business and residential service . . . ." 6/

In sum, carrier's carrier local service can and should play as key a role in the development of local competition as it played, and continues to play, in the interexchange market, where consumers have benefited from substantial rate reductions and rapid development of technology.

II. Comprehensive Access Reform Must Be Completed Before the FCC Adopts the Pricing Rules Proposed by MFS.

The MFS Petition correctly observes that the current access pricing scheme will not easily accommodate the unbundling of local loops. But the MFS Petition addresses only one aspect of a larger access pricing problem. The Commission must not put in place a partial fix; instead, it should move quickly to more broadly reform the existing access charge scheme.

First, the FCC should adopt rules that would require incremental cost pricing of all access services, with any demonstrated need for contribution recovered

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5/ Motion of the United States for a Modification of the Decree to Permit a Trial, Supervised by the Department of Justice and the Court, in Which Ameritech Could Provide Interexchange Service for a Limited Geographic Area, filed April 3, 1995, in U.S. v. Western Electric Co., Civ. No. 82-0192, Proposed Order at 11.

6/ Preliminary Memorandum of the United States In Support of Motion, U.S. v. Western Electric Co., Civ. No. 82-0192, filed April 3, 1995, at 6.

on a nondiscriminatory basis from all services. The FCC would thereby eliminate the opportunity for LECs to discriminate unreasonably in the recovery of network costs, including overheads, among customer groups. If local competition is to develop, the FCC must rationalize its access pricing scheme in this manner and address these cost recovery issues. 7/

Second, and more important here, if the FCC decides to establish guidelines for states in pricing of unbundled loops, it must also establish the same pricing guidelines for all wholesale services made available to other carriers, including wholesale local exchange service -- whether the services are unbundled or bundled -- and those guidelines must not favor any particular class of competitor or any particular configuration of facilities.

A. The FCC's Regulatory Focus Should be on the Wholesale Inputs Necessary to Provide Retail Services.

All interstate access services are wholesale inputs into a retail product -- whether interstate long distance service or interstate enhanced services. The FCC has not before now focused on the wholesale character of most of the LEC services it regulates. But recent events, particularly the advent of local competition and the possible entry of the RBOCs into the interLATA market, have made it clear

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7/ LDDS has offered specific proposals for the Commission to address these pricing issues in comments filed in the LEC Price Cap Review proceeding. See Comments of WilTel, Inc., (filed May 9, 1995) in CC Docket 94-1. As noted above, LDDS acquired WilTel in early 1995 and supports WilTel's views in the price cap proceeding. See also Comments of LDDS Communications, Inc. in response to Notice of Inquiry in CC Docket No. 80-286 (filed October 28, 1994).

that the FCC's most important task will be to ensure that wholesale LEC services are provided to all competitors on a nondiscriminatory basis.

It also goes without saying that if the RBOCs are ever allowed into the interLATA market, they will have greater incentives to favor themselves over their competitors in the provision of the necessary inputs required to provide retail interstate services. And at least in the near term, it is likely that the LEC will be the sole provider of those inputs. As a spokesman for Bell Atlantic recently observed, telephone "[c]ompanies will survive by becoming a 'network of networks,' operating more as wholesaler than retailer." 8/ Chairman Hundt, in a recent speech, also noted the importance of the action of Rochester Telephone Company to divide itself into two entities, one wholesale and one retail, with the retail subsidiary purchasing necessary inputs, including local exchange service, from the wholesale entity. 9/

The MFS Petition asks the FCC to require the LECs to provide a key piece of the local exchange network on a wholesale basis -- at incremental cost, and without being required to pay for what they do not use. The Petition correctly focuses on the need to remove subsidy elements from wholesale prices. But the petition only addresses one particular wholesale input -- unbundled local loops.

8/ Remarks of Pat Hanley, President, Carrier Services, Bell Atlantic Network Systems, as reported in Communications Daily, April 6, 1995, p.8.

9/ Speech of FCC Chairman Reed E. Hundt before the American Bar Association, Antitrust Section, Spring Meeting, April 6, 1995, at 5.

LDDS urges the Commission to expand its inquiry to include the examination of pricing of all wholesale inputs to prevent the LECs' arbitrary assignment of subsidy burdens. Our point is that the Commission should approach all access services in the same way.

B. The FCC Should Not Limit Access Relief to Purchasers of Unbundled Loops.

Under the MFS proposal, carriers that purchase unbundled loops and provide interstate interexchange services over those loops would be exempt from paying carrier access charges (carrier common line charges). 10/ LDDS agrees that purchasers of unbundled loops should not have to pay carrier common line charges; other vehicles are necessary to identify and recover universal service support. Our primary concern here is that no single party be excused from the current, admittedly unsatisfactory system until access is reformed for all users of the local network. To the extent there is still a proven need for support for universal service, those support payments should be made independent of access pricing and should be recovered on a competitively neutral basis from all access customers.

In other words, the FCC should only adopt MFS's pricing proposal as part of a comprehensive resolution of the broader problem of recovery of the

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10/ MFS justifies a carrier common line charge exemption for unbundled loops on the ground that switch-based loop resellers would be unable to distinguish between local and interexchange traffic on their loops. Petition at 43-44. MFS implicitly agrees that under the current access scheme, a purchaser of unbundled loops would otherwise be required to pay access to compensate the LEC for the interstate costs associated with the use of the common line that are not recovered from end users. The unbundled loop price would only cover the LEC's intrastate costs.

common costs of the network, LEC overheads, and universal service contribution. All services use the LEC network in fundamentally the same way. This is so regardless of whether a carrier is seeking to originate or terminate long distance calls, enhanced services, or local calls. In every case the LEC network performs the same function -- the charges for such functions should not differ based on the use.

MFS's proposal, if adopted in isolation, also could have the effect of distorting competition because access charges would not be applied evenly. Under MFS's proposal, companies that are purchasers of unbundled loops would avoid paying access charges for the interstate services they provide to their loop customers, while other IXCs would still pay full CCL charges. LDDS therefore urges the Commission to adopt MFS's proposal only after it has revised the access charge scheme for all access customers.

Moreover, if the Commission were to limit access reform to purchasers of unbundled loops, then the entire burden of subsidizing residential subscriber line rates could be left on the consumers of those IXCs that are not also operating local switches and reselling unbundled loops. Put differently, if the Commission only adopts a partial fix to the access pricing problem, an access customer could only obtain access charge relief by installing a local switch. The Commission should recognize that all providers should pay the same for using the LEC network in exactly the same fashion.

In sum, the FCC should take this opportunity to reform current access pricing generally, rather than piecemeal.

Conclusion

MFS has provided the Commission with an important opportunity to consider what steps the FCC can take, consistent with its role as regulator of interstate services, to promote the development of a vigorously competitive local exchange marketplace. First, LDDS supports MFS's request for loop unbundling, but urges the Commission also to take the more fundamental step of requiring LECs to provide a generic wholesale local exchange service product for resale. Second, LDDS believes that the Commission must correct the broader inequities in its access charge scheme before adopting MFS's proposed access charge treatment of unbundled loops. Third, if the Commission chooses to establish pricing guidelines for states with regard to unbundled loops, it should establish parallel guidelines to govern the pricing of wholesale local exchange service.

Respectfully submitted,

By [signature]
Peter A. Rohrbach
Linda L. Oliver
Hogan & Hartson
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Counsel for LDDS Communications, Inc.
d/b/a LDDS Worldcom

Of Counsel

Catherine R. Sloan
Richard L. Fruchterman III
Richard S. Whitt
LDDS Communications, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20006

Richard J. Heitmann
LDDS Worldcom
515 East Amite
Jackson, MS 39201-2702

April 10, 1995

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, Plaintiff, v. Western Electric Co., Inc. and American Telephone and Telegraph Company, Defendants.	)	Civil Action No. 82-0192 (HHG)

RESPONSE OF LDDS WORLDCOM TO MOTION OF THE UNITED STATES FOR A MODIFICATION OF THE DECREE TO PERMIT A LIMITED TRIAL OF INTEREXCHANGE SERVICE BY AMERITECH

Catherine R. Sloan, Esq.
Vice President, Federal Affairs
WorldCom, Inc.
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

Richard J. Heitmann, Esq.
Associate General Counsel
WorldCom, Inc.
515 East Amite
Jackson, MS 39201-2702

Peter A. Rohrbach
D.C. Bar No. 295865
Linda L. Oliver
D.C. Bar No. 333559
Hogan & Hartson L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004

Its Attorneys

May 31, 1995

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