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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Policy and Rules Concerning the) CC Docket No. 96-61
Interstate, Interexchange Marketplace)
)
Implementation of Section 254(g) of the)
Communications Act of 1934, as amended)

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COMMENTS OF LDDS WORLDCOM

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt

WORLDCOM, INC.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 776-1550

Its Attorneys

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SUMMARY

LDDS WorldCom welcomes the Commission's interest in developing and implementing more refined analytical tools to examine the expected employment of market power by the Regional Bell Operating Companies as they enter the currently-competitive long distance service market. In particular, LDDS WorldCom supports the adoption of more sharply focused definitions of relevant product and geographic markets that will enable the Commission to evaluate the extent of the RBOCs' market power in their provision of long distance services in areas where they also provide local exchange and access services.

As the RBOCs begin to enter the long distance market with their continuing domination over the interstate access market, the dangers of introducing significant new market power to the long distance market will substantially increase. Given the RBOCs' monopoly control over both ends of nearly every interexchange telephone call, LDDS WorldCom believes the Commission should rule that the relevant geographic market for an RBOC will always be those individual regions from which it seeks to provide interstate, interexchange services. For all other entities that lack this bottleneck control over the access points to a long distance telephone call, the Commission's proposed geographic market definition, and two-part test for "special circumstances," is reasonable. Where the Commission proposes to analyze the points of origination and termination of interstate, interexchange calls, LDDS WorldCom supports a market definition based on Metropolitan Statistical Areas.

The second major issue presented for comment is whether the Commission should modify or eliminate the separate subsidiary requirements now imposed on independent LECs as a condition for nondominant regulatory treatment of their provision of interstate, interexchange services outside their local exchange areas. Should the independent LECs make a strong enough

showing in this proceeding that the structural separation requirement is no longer needed in its present form, LDDS WorldCom would not oppose modifying that requirement, or even eliminating it completely. In the case of the RBOCs, however, the conclusion is vastly different given their extensive and pervasive market power over wide geographic regions. LDDS WorldCom is greatly concerned that the issue of what structural safeguards to impose on the RBOCs' out-of-region interLATA services has already been debated in CC Docket No. 96-21, the RBOC Out-of-Region proceeding, less than two months ago. Separate treatment here seems redundant and confusing. LDDS WorldCom appends its reply comments in that proceeding and repeats its call for a strengthened form of structural separation as a necessary condition for the RBOCs to provide long distance services on a nondominant basis.

Finally, LDDS WorldCom generally supports the Commission's proposed rules to implement the new statute's rate averaging and rate integration requirements. However, Congress has acknowledged that the Act only incorporates present FCC policy in this area, which includes an exception allowing IXCs to charge non-averaged rates for Tariff 12-like contract tariffs and other specific services. LDDS WorldCom urges the Commission to adopt this specific exception as part of its rules, and to allow carriers to file petitions seeking authority to deaverage the rates of other discrete services. In addition, LDDS WorldCom also supports application of a "special circumstances" test that would allow the Commission to forbear from applying its rate averaging rules in situations dictated by competitive necessity. LDDS WorldCom does not oppose the Commission's proposal to enforce its rate averaging and rate integration policies through a self-certification process, backed by the Section 208 complaint process.

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COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to Sections IV, V, and VI of the Notice of Proposed Rulemaking ("Notice"), FCC 96-123, released by the Commission on March 25, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

I. INTRODUCTION

Under the recently-enacted Telecommunications Act of 1996,¹ the Commission is required to undertake dozens of new rulemaking proceedings in the coming months to implement the new statute. Two statutory provisions that are addressed in this proceeding are: (1) a requirement that the Commission forbear from applying any regulation or Act provision to certain telecommunications carriers or services, if the Commission determines that certain

¹ Pub. L. No. 104-104, 110 Stat. 56 (1996), to be codified at 47 U.S.C. §§ 151 et seq. ("1996 Act"). For the sake of clarity, LDDS WorldCom will cite to the provisions of the 1996 Act referencing the specific sections at which they will be codified.

specified conditions are satisfied;² and (2) a requirement that all carriers engage in geographic rate averaging and rate integration.³ From these two requirements, the Commission has fashioned two different phases of this rulemaking. The comments filed today address three major issues raised in the Notice: (1) definition of relevant product and geographic markets for future market power determinations; (2) separation requirements applicable to the independent local exchange companies ("LECs") and the Regional Bell Operating Companies ("RBOCs") to provide interstate, interexchange services outside their local service regions; and (3) implementation of the statutory rate averaging and rate integration requirements. Other related issues, including the Commission's proposed exercise of its new forbearance authority under the 1996 Act, will be addressed in a separate pleading cycle of this proceeding.

II. LDDS WORLDCOM SUPPORTS THE ADOPTION OF MORE SHARPLY FOCUSED DEFINITIONS OF RELEVANT PRODUCT AND GEOGRAPHIC MARKETS FOR FUTURE MARKET POWER ANALYSES

The Notice seeks comment on proposed changes to its current definitions of "relevant product market" and "relevant geographic market" for purposes of assessing the market power of interexchange carriers. In its Competitive Carrier proceeding, the Commission found that the relevant product market comprises "interstate, domestic, interexchange telecommunications services," while the relevant geographic market comprises the United States, including many U.S. offshore points such as Alaska, Hawaii, Puerto Rico, and the Virgin

² 1996 Act, Section 10.

³ 1996 Act, Section 254(g).

Islands.⁴ The Commission explains in the Notice that "more sharply focused market definitions will aid us in evaluating whether the BOCs possess market power with respect to the provision of interLATA services in areas where they provide local access service."⁵ In this regard, the Notice endorses the approach taken by the Department of Justice and Federal Trade Commission in their 1992 Merger Guidelines.⁶

A. Relevant Product Market

The Commission first seeks comments on the proposed definition of "relevant product market" as "an interstate, interexchange service for which there are no close substitutes or a group of services that are close substitutes for each other but for which there are no close substitutes."⁷ The Commission proposes not to delineate the boundaries of specific product markets "except where there is credible evidence suggesting that there is or could be a lack of competitive performance with respect to a particular service or group of services."⁸

LDDS WorldCom generally supports the proposed definition of relevant product market. It is beyond dispute that, as the Notice reiterates, the long distance market currently is "characterized by substantial competition."⁹ With AT&T's reclassification as a nondominant

⁴ Notice at para. 40; see Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor ("Competitive Carrier"), Fourth Report and Order, 95 FCC 2d 554, 563 (1984).

⁵ Notice at para. 40.

⁶ Notice at para. 41.

⁷ Notice at para. 41.

⁸ Id.

⁹ Notice at para. 2.

carrier for interstate, domestic, interexchange services, all IXCs now in the long distance market lack market power. However, as the RBOCs begin to enter the long distance market with their continuing stranglehold over the interstate access market still intact, the dangers of introducing significant new market power to the long distance market will substantially increase. A more refined definition of the relevant product market will enable the Commission to focus its limited regulatory resources in a more productive and pro-competitive fashion.

LDDS WorldCom suggests that the Commission will always find that the RBOCs' continuing control over access (unless eliminated by actual local competition) will lead to a potential "lack of competitive performance" by other carriers' future long distance service offerings. Thus, the Commission should find here that RBOC-provided long distance services likely will constitute a separate product market that will require a separate, more detailed FCC analysis of RBOC market power.

B. Relevant Geographic Market

The Notice next seeks comment on its tentative conclusion that "interstate, interexchange calling" generally constitutes one national market.¹⁰ If credible evidence suggests "a lack of competition" in one or more point-to-point markets, and geographic rate averaging will not sufficiently mitigate the exercise of market power, the Commission proposes to examine those specific markets individually for the presence of market power.¹¹

LDDS WorldCom agrees with the Commission that, for most purposes, the appropriate definition of the relevant geographic market is the national market for interstate,

¹⁰ Notice at para. 42.

¹¹ Id.

interexchange services. This definition comports well with the current structure and national character of the long distance market. However, as competition unleashed by the 1996 Act begins to break down existing barriers to competition in the local market, the present demarcation between local service and long distance service will begin to blur. The relevant geographic market definition should readily adapt to such changes in the competitive landscape.

LDDS WorldCom also agrees with the Commission's recognition of the three basic components of an interstate interexchange call: originating access (provided by an incumbent LEC), interstate transport (provided by a competitive IXC), and terminating access (provided by an incumbent LEC). However, LDDS WorldCom strongly disputes the flawed analysis that accompanies this view. Although the Notice is correct when it states that "all originating and terminating access services are currently subject to some form of price regulation," it is certainly not the case that the price caps regime "constrains a LEC's ability to raise access prices to monopoly levels," or "further reduce[s] the likelihood that an [RBOC-affiliated] interexchange carrier could exercise market power in most point-to-point markets."¹² LDDS WorldCom does not believe that the FCC's price cap rules have constrained the incumbent LECs' ability to keep its access prices at monopoly levels, or to otherwise maximize its rivals' costs in a myriad of ways.¹³

LDDS WorldCom agrees with the Commission that "special circumstances" should allow for an exception to its proposed treatment of interexchange services as a national

¹² Notice at para. 52.

¹³ See, e.g., Reply Comments of LDDS WorldCom, CC Docket No. 94-1, filed March 1, 1996.

market.¹⁴ While the Commission's proposed two-part test for determining "special circumstances" -- (1) a lack of competition, and (2) failure of geographic rate averaging to mitigate market power -- is acceptable in most cases, the RBOCs present a unique situation. The Notice itself acknowledges that "the BOCs' control of access facilities in their local service regions may require us to examine those regions individually in determining whether the BOCs have market power with respect to in-region interexchange services."¹⁵ Given the RBOCs' monopoly control over both ends of nearly every interstate, interexchange telephone call, LDDS WorldCom believes the Commission should rule that the relevant geographic market for an RBOC will always be those individual regions from which it seeks to provide interstate, interexchange services. For all other entities that lack this bottleneck control over the access points to a long distance telephone call, the Commission's proposed geographic market definition, and two-part test for special circumstances, is reasonable.

Where the Commission proposes to analyze the points of origination and termination of interstate, interexchange calls, several possible market definitions are offered, including local exchange areas, Major Trading Areas ("MTAs"), Basic Trading Areas ("BTAs"), or Metropolitan Statistical Areas ("MSAs").¹⁶ LDDS WorldCom supports using MSAs to define the local access markets. As a recent article in the Federal Communications Law Journal notes, the relevant geographical market is "the area of effective competition -- the area in which buyers can practically turn for alternative sources of supply or in which there are sellers who

¹⁴ Notice at para. 53.

¹⁵ Notice at para. 53.

¹⁶ Notice at para. 55.

could act to restrain the prices charged to those buyers."¹⁷ The Supreme Court has indicated that the most important criterion is the geographic structure of supplier-customer relations.¹⁸ In the case of local telephone service, what the customer and potential competitor see in their relationship with the RBOC is a discrete calling area over which the RBOC has total control. Both the MSA and its rural equivalent, the Rural Statistical Area ("RSA"), roughly approximate this calling area from the all-important perspective of the RBOC's customers and would-be competitors. The MSA and RSA structure is also currently used in the FCC's licensing of cellular telephone systems, so the Commission is already familiar with this approach. Finally, local RBOC bottlenecks can be pinpointed with more accuracy and expediency in an MSA or RSA, as opposed to the more unwieldy MTA or BTA.

III. LDDS WORLDCOM STRONGLY SUPPORTS COMPREHENSIVE SEPARATION REQUIREMENTS AS A NECESSARY CONDITION FOR THE BELL OPERATING COMPANIES TO PROVIDE OUT-OF-REGION INTERSTATE, INTEREXCHANGE SERVICES ON A NONDOMINANT BASIS

The Commission next seeks comment on whether it may be appropriate to modify or eliminate the separate subsidiary requirements that are now imposed on independent LECs as a condition for nondominant regulatory treatment of their provision of interstate, interexchange services outside their local exchange areas.¹⁹ Should the Commission decide to modify or eliminate those separation requirements for the independent LECs, the Notice also

¹⁷ John W. Berresford, Mergers in Mobile Telecommunications Services: A Primer on the Analysis of Their Competitive Effects, 48 FED. COMM. L.J. 247, 275 (1996) (citation omitted).

¹⁸ See, e.g., Brown Shoe Co. v. United States, 370 U.S. 294, 336-37 (1962).

¹⁹ Notice at para. 61.

asks whether "we should apply the same requirements to BOC provision of out-of-region interstate, interexchange services."²⁰ The Notice duly notes that, in a separate proceeding, the Commission already has proposed imposing, "on an interim basis," separation requirements on the RBOCs' provision of out-of-region interstate, interexchange services as a condition of treating those services as nondominant.²¹

LDDS WorldCom believes that the current structural separation requirements have offered an important safeguard against potential unlawful actions by the independent LECs as they provide long distance services on a nondominant basis. LDDS WorldCom is not aware of any compelling need to alter or eliminate this safeguard at this time. However, should the independent LECs make a strong enough showing in this proceeding that the structural separation requirement is no longer needed in its present form, LDDS WorldCom would not oppose modifying that requirement, or even eliminating it completely.

The issue of structural separation requirements applicable to the RBOCs' long distance services is a wholly different matter. LDDS WorldCom is greatly concerned that the issue of what, if any, structural safeguards to impose on the RBOCs' out-of-region interLATA services is being debated before this Commission for the second time in less than two months.²² Given the FCC's extremely tight timetable under the 1996 Act, and its very limited resource constraints, LDDS WorldCom believes the Commission would be better served by focusing here

²⁰ Id.

²¹ Notice at para. 56.

²² See In the Matter of Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services, CC Docket No. 96-21, Notice of Proposed Rulemaking, FCC 96-59, issued February 14, 1996 ("RBOC Out-of-Region Notice").

on other, at least equally pressing matters that are dictated by the new statute. LDDS WorldCom also is concerned that the Notice nowhere indicates that the very pertinent comments filed by dozens of parties in CC Docket No. 96-21 will be relied upon, let alone acknowledged, in this proceeding as well. Given the obvious relevance of that earlier proceeding to the issue presented here, LDDS WorldCom requests that all comments filed in that proceeding be included in the formal record of this proceeding as well. LDDS WorldCom attaches herein a copy of its reply comments in CC Docket No. 96-21,²³ and asks that the Commission treat it as if also filed in this proceeding.

As the attached comments by LDDS WorldCom show, it is indisputable that the RBOCs retain substantial market power in the local exchange, based on their unique control over bottleneck facilities.²⁴ This is due to the critical and inextricable link between market power in the local exchange and access markets, and market power in the long distance market. A key determinant of market power under the FCC's own definition is the fact that a company or group of companies control a bottleneck facility that is "an essential commodity or facility" to competitors in the relevant market.²⁵ As the Notice here indicates, interstate access at both the originating and terminating ends of an interexchange telephone call -- access that is absolutely necessary to an IXC to complete such a call -- is completely controlled by the RBOCs.²⁶

²³ See Attachment A (Reply Comments of LDDS WorldCom, CC Docket No. 96-21).

²⁴ Reply Comments of LDDS WorldCom, CC Docket No. 96-21, at 4.

²⁵ See Competitive Carrier, First Report and Order, 85 FCC 2d 1, 21 (1980). The definition of market power adopted in the Competitive Carrier proceeding is not altered by the FCC's proposed changes in this proceeding to the definitions of relevant product and geographic markets. See discussion in Section II, supra.

²⁶ See, e.g., Notice at para. 52.

Surely, then, by any relevant analysis, interstate access is an essential commodity or facility within the Commission's classic market power definition. This local bottleneck power can be exercised beyond the boundaries of any one RBOC's service area, and extends both to interexchange carriers and to the RBOCs' potential in-region and out-of-region customers. Given the paramount fact of overwhelming RBOC market power, and the lack of any meaningful competition in the local exchange market now and in the immediate future, the RBOCs have every ability and incentive to leverage their market power into discriminatory conduct against their new rivals in the long distance market.

Given the unchallenged fact that the RBOCs control monopoly bottlenecks, and given the logical and practical conclusion that these access bottlenecks constitute substantial market power in the adjacent long distance services market, the public interest dictates that the Commission craft the appropriate safeguards to prevent the RBOCs from exercising the full extent of their market power in discriminatory and anticompetitive ways. LDDS WorldCom supported the Commission's proposal in the RBOC Out-of-Region Notice to classify as nondominant the out-of-region interLATA services provided by the RBOCs, but only on the condition that the RBOCs utilize a separate affiliate similar to the one that independent LECs were required to establish under the FCC's Competitive Carrier rules. However, LDDS WorldCom expressed serious concerns that the separate affiliate structure advocated in the RBOC Out-of-Region Notice would be woefully insufficient to act as a viable safeguard. In its reply comments, LDDS WorldCom suggested a number of improvements, including: (1) a more complete structural separation between affiliate and RBOC parent; (2) a prohibition on RBOC joint marketing of out-of-region interLATA services and in-region LEC services; (3) a

requirement that the RBOC's out-of-region affiliate obtain all pertinent Title II communications services from the RBOC's generally-applicable tariffs; (4) a requirement that the RBOC's out-of-region affiliate have no preferential access to non-Title II services offered by the RBOC; and (5) a requirement that the RBOC's affiliate transaction practices and cost allocation procedures be subject to annual independent audit.²⁷ With these significant improvements, LDDS WorldCom indicated it would fully support the FCC's proposed bifurcated regulatory treatment of the RBOCs' out-of-region interexchange services. That same conclusion should hold in this proceeding as well.

IV. LDDS WORLDCOM GENERALLY SUPPORTS THE COMMISSION'S PROPOSED RULES TO IMPLEMENT THE NEW ACT'S RATE AVERAGING AND RATE INTEGRATION REQUIREMENTS

The 1996 Act stipulates that the Commission must adopt rules within six months which require that:

the rates charged by providers of interexchange telecommunications services to subscribers in rural and high cost areas shall be no higher than the rates charged by each such provider to its subscribers in urban areas. Such rules shall also require that a provider of interstate interexchange telecommunications services shall provide such services to its subscribers in each State at rates no higher than the rates charged to subscribers in any other State.²⁸

The Commission indicates that it has long supported a general policy of "geographic rate averaging" (same service rates in rural and high-cost regions as in urban areas) and "rate

²⁷ Reply Comments of LDDS WorldCom, CC Docket No. 96-21, at 8-10.

²⁸ 1996 Act, Section 254(g).

integration" (same service rates in each state as in any other state).²⁹ Nonetheless, neither policy has ever been articulated in the form of a formal, binding Commission rule.

A. Rate Averaging

The Commission proposes to adopt a rule requiring rate averaging by "all providers of interexchange telecommunications services."³⁰ According to the Commission, state laws and rules are preempted to the extent they are inconsistent with the FCC's rules.³¹ However, the Notice observes that "there may be competitive conditions or other circumstances that could justify Commission forbearance from enforcing the proposed geographic rate averaging requirement with respect to particular interexchange telecommunications carriers or services."³² As one example, the Commission cites a situation where an entity provides service "in areas with high volumes and low costs," which could place other IXC's at a competitive disadvantage if they cannot offer regional discounts in response.³³ The Notice also seeks comment on its proposal to enforce geographic rate averaging by a certification process and the complaint process, rather than via the tariff process.³⁴ Finally, the Commission asks whether IXC's provide optional discount plans to subscribers in rural and high-cost areas, and whether

²⁹ Notice at para. 67, 74.

³⁰ Notice at para. 67.

³¹ Notice at para. 68.

³² Notice at para. 69.

³³ Notice at para. 69 n.154.

³⁴ Notice at para. 70.

such plans should be required as part of the rate averaging rule.³⁵

LDDS WorldCom agrees with the Commission that all interexchange carriers should be subject to the rate averaging requirement imposed by the 1996 Act. To the extent state laws are inconsistent, the FCC's rules should predominate in order to prevent the appearance of an untenable patchwork of inconsistent state requirements.

It also must be noted that the rate averaging requirement imposed by the 1996 Act is not all-encompassing. In the Conference Report that accompanies the 1996 Act, Congress cautions the Commission that the new statute seeks only to "incorporate" current FCC policies on rate averaging and integration.³⁶ The Conference Report goes on to clarify that the conferees were aware that:

the Commission has permitted interexchange providers to offer non-averaged rates for specific services in limited circumstances (such as services offered under Tariff 12 contracts), and intend that the Commission, where appropriate, could continue to authorize limited exceptions to the general geographic rate averaging policy using the authority provided by new section 10 of the Communications Act.³⁷

Thus, the general rate averaging rules adopted in this proceeding should include "limited exceptions" for several classes of service that are now provided by carriers in the highly competitive long distance market using non-averaged rates. These services include Tariff 12-like services provided by AT&T and other carriers using contract-tariffs. The rules should also

³⁵ Notice at para. 72.

³⁶ Joint Explanatory Statement of the Committee on Conference regarding the Telecommunications Act of 1996, at 18.

³⁷ Id. Section 10 of the 1996 Act grants the Commission authority to forbear from imposing a wide range of statutory and/or regulatory requirements on certain classes of carriers or services. See 1996 Act, Section 10.

explicitly allow carriers to petition the FCC for the inclusion of other services in this category of "limited exceptions" to the general rate averaging requirement.

LDDS WorldCom also supports application of a "special circumstances" test that would allow the Commission to forbear from applying its rate averaging rules in situations dictated by competitive necessity. The example supplied in the Notice is not at all unrealistic. Where an incumbent LEC or regional IXC provides originating long distance service primarily from a low-cost geographic region, competitive necessity requires that other IXCs receive an exemption from the rate averaging rules. Because that regional carrier's rates reflect only its own region's relatively low costs, those IXCs which provide long distance service on a nationwide basis, and so must average those rates based on LEC costs in all areas, will be placed at a significant competitive disadvantage. Competing IXCs should have flexibility under the "special circumstances" test to tailor their rates in low-cost regions to counter a regional carrier's rates, while still supporting their access costs in higher cost regions across the country. Otherwise, the averaging policy could result in a disincentive for carriers to serve high-cost areas.

LDDS WorldCom does not necessarily oppose the Commission's proposal to enforce the rate averaging policy through a self-certification process, backed by the Section 208 complaint process. As LDDS WorldCom will explain in its comments next week in the second phase of this proceeding, the Commission should adopt a permissive detariffing policy that allows most nondominant carriers to file tariffs at their own discretion. Nonetheless, self-certification may be an adequate process to police the rate averaging rule. However, the Commission should clarify that any sanctions for inadvertent violations of the certification

process can only extend to actual damages or regulatory fines under the Communications Act of 1934, as amended.

Finally, in response to the question posed in the Notice, LDDS WorldCom can report that it offers its optional discount service plans on a nationwide basis to all subscribers, including those in rural and high-cost areas. However, the failure to provide such plans in some areas of the country should not necessarily be viewed as a prima facie violation of the FCC's rate averaging policy. As long as carriers are generally offering the same rates for their services in both urban areas and high-cost or rural areas, the Commission should not inhibit carriers from offering occasional discount plans to all similarly-situated customers, whatever the region.

B. Rate Integration

The Commission also proposes to adopt a rule requiring that all providers of interstate, interexchange services provide integrated rates.³⁸ The Notice proposes to enforce rate integration through both a self-certification process and the Section 218 complaints process, rather than through the filing of federal tariffs.³⁹

LDDS WorldCom supports the Commission's proposed definition of rate integration as consistent with the statutory language and intent. As with the rate averaging rule, LDDS WorldCom does not oppose the use of a limited certification process and the complaints process to enforce the rate integration requirement.

³⁸ Notice at para. 76.

³⁹ Notice at para. 78.

V. CONCLUSION

The Commission should act in accordance with the recommendations proposed above.

Respectfully submitted,



Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt

WORLDCOM, INC.
d/b/a LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036
(202) 776-1550

Its Attorneys

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ATTACHMENT A

**Reply Comments of LDDS WorldCom
(CC Docket No. 96-21)
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COPY

ATTACHMENT A

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Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Bell Operating Company Provision of)
Out-of-Region Interstate, Interexchange Services)
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CC Docket No. 96-21

REPLY COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its reply to the initial comments filed in response to the Notice of Proposed Rulemaking ("Notice"), FCC 96-59, released by the Commission on February 14, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

I. INTRODUCTION AND SUMMARY

In its Notice, the Commission describes the substantial market power possessed by the Regional Bell Operating Companies ("RBOCs") in the local exchange market, and the need for public interest safeguards to protect competition and ratepayers from potential RBOC misdeeds.¹ The Commission proposes to regulate as nondominant those long distance services provided by the RBOCs through a structurally separate subsidiary. Should an RBOC choose to provide its local and out-of-region long distance services together, the FCC proposes as an interim measure to regulate those services as dominant.²

¹ Notice at paras. 9-10.

² Notice at para. 11.

Not surprisingly, all the RBOCs' initial comments deride the very notion that the RBOCs somehow would possess market power in any part of the long distance services market.³ The RBOCs -- excepting NYNEX -- also claim that the Telecommunications Act of 1996 either expressly prohibits or implicitly disfavors the imposition by the Commission of any public interest safeguards on the RBOCs' provision of out-of-region long distance services, including a separate subsidiary requirement.⁴

LDDS WorldCom shares the well-founded concerns of most commenters that the RBOCs' local bottleneck gives them significant market power in the adjacent interexchange market, even for out-of-region long distance services (though admittedly their in-region stranglehold is far greater). As pointed out by AT&T, MCI, Sprint, the Competitive Telecommunications Association ("CompTel), Cable & Wireless, Excel Telecommunications, Telecommunications Resellers Association ("TRA"), Association for Local Telecommunications Services ("ALTS"), and others, it is obvious that the Bell Companies possess significant and undiminished market power within their local exchange regions, and by virtue of their concomitant bottleneck control over access to the competitive long distance market.⁵ Given this overwhelming market power, LDDS WorldCom believes that the FCC's proposed bifurcated regulatory treatment of the RBOCs' long distance services -- nondominant treatment of services

³ NYNEX Comments at 8; US West Comments at 3-4; Pacific Bell Comments at 5; Ameritech Comments at 3; SBC Comments at 8-9; Bell Atlantic Comments at 2-3; BellSouth Comments at 9-11.

⁴ US West Comments at 2, 4; Pacific Bell Comments at 5; Ameritech Comments at 7-8; SBC Comments at 5-6; Bell Atlantic Comments at 4-5; BellSouth Comments at 2-4.

⁵ AT&T Comments at 5-8; MCI Comments at 5-9; Sprint Comments at 2; CompTel Comments at 2-7; Cable & Wireless Comments at 2; Excel Comments at 2-5; TRA Comments at 6-18.

provided via separate subsidiary, dominant treatment of services not provided via separate subsidiary -- appears to be a largely reasonable means of assuring that the Bell Companies do not use their market power to impede competition and harm ratepayers. However, LDDS WorldCom urges the Commission to significantly strengthen its proposed separate affiliate requirements in order to minimize the RBOCs' ability to discriminate against competitors and cross-subsidize their long distance ventures with ratepayer funds.

II. LDDS WORLDCOM JOINS THOSE COMMENTERS WHICH GENERALLY SUPPORT THE FCC'S PROPOSAL TO CLASSIFY AS NONDOMINANT THE BELL OPERATING COMPANIES' PROVISION OF OUT-OF-REGION INTEREXCHANGE SERVICES VIA SEPARATE SUBSIDIARIES

A. The Bell Companies Have Substantial Market Power Given Their Monopoly Bottleneck Control Over Critical Access Points To The Long Distance Market

The RBOCs in unison voice disbelief that they possess market power in the local exchange and access markets that translates into market power in the adjacent interexchange services market. For example, Ameritech argues that its out-of-region interLATA services should not be classified as dominant because the RBOC currently has "no customers, no presubscribed lines, no traffic, and no revenues" in the long distance market.⁶ The other RBOCs agree.⁷ US West even suggests that the FCC "should simply terminate this docket and permit BOC interLATA services to develop within the context of the marketplace and the Act."⁸ However, there is no merit to these self-serving claims.

⁶ Ameritech Comments at 3.

⁷ NYNEX Comments at 8; US West Comments at 3-4; Pacific Bell Comments at 5; SBC Comments at 8-9; Bell Atlantic Comments at 2-3; BellSouth Comments at 9-11.

⁸ US West Comments at 5.

The Commission has long recognized that the RBOCs retain substantial market power in the local exchange, based on their unique control over bottleneck facilities. The Notice itself concludes that the RBOCs "continue to control bottleneck local exchange facilities in their in-region states."⁹ What the RBOCs repeatedly -- and incorrectly -- fail to recognize is the critical and inextricable link between market power in the local exchange and access markets, and market power in the long distance market. As CompTel explains, a key determinant of market power under the FCC's own definition is the fact that the RBOCs control a bottleneck facility -- the local exchange network -- that is essential to competitors in the long distance market.¹⁰ AT&T also discusses this "established linkage between local bottlenecks and market power."¹¹ It is notable that even Ameritech admits that interstate access is an "essential commodity or facility" within the Commission's classic market power definition.¹² MCI shows further how the RBOCs' local bottleneck power can be exercised beyond the boundaries of any one RBOC's service area,¹³ while CompTel explains how the RBOCs' market power extends both to interexchange carriers and to the RBOCs' potential in-region and out-of-region customers.¹⁴ Given the paramount fact of overwhelming RBOC market power, and the lack

⁹ Notice at para. 9.

¹⁰ CompTel Comments at 2-3. See Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order, 85 FCC 2d 1, 21 (1980).

¹¹ AT&T Comments at 6, 7.

¹² Ameritech Comments at 4.

¹³ MCI Comments at 5-9.

¹⁴ CompTel Comments at 3-5; see also AT&T Comments at 8; Excel Comments at 3-5.