

of any meaningful competition in the local exchange market now and in the immediate future,<sup>15</sup> the RBOCs have every ability and incentive to leverage their market power into discriminatory conduct against their new rivals in the long distance market.<sup>16</sup>

The Commission, and the parties, should not have to continually reargue the obvious: that the RBOCs control monopoly bottlenecks that will not disappear overnight, and that these 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.

**B. The Commission Has Undiminished Authority Under The New Act To Impose Appropriate Public Interest Safeguards, Including A Separate Subsidiary Requirement, On The Bell Companies' Provision Of Out-of-Region Long Distance Services**

The Notice proposes classifying 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.<sup>17</sup> In the absence of such an affiliate, the RBOCs' out-of-region services would be regulated as dominant.

Excepting NYNEX, the RBOCs express strong displeasure at the Commission's proposal and insist that it is contrary to the dictates of the new Telecommunications Act of

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<sup>15</sup> TRA Comments at 6-11.

<sup>16</sup> See, e.g., TRA Comments at 12-18; Sprint Comments at 2.

<sup>17</sup> Notice at para. 11.

1996.<sup>18</sup> Stating that Congress "rejected a separate subsidiary requirement for out-of-region services," BellSouth finds the Commission's proposal to be "repugnant to the 1996 Act" and "directly contrary to the will of Congress, as expressed in the statute itself."<sup>19</sup> Ameritech, Bell Atlantic, and SBC also claim that the separate subsidiary option would be "inconsistent" with the letter and spirit of the Act,<sup>20</sup> while US West and Pacific Bell only observe that Congress expressly declined to impose a separate subsidiary requirement.<sup>21</sup> Interestingly, by expressing support for the Commission's proposal, NYNEX implicitly accepts the FCC's authority to condition favorable regulatory treatment on the use of a separate subsidiary.

As usual, the RBOCs' display of regulatory and statutory interpretation generally leaves much to be desired. First, as is obvious from the face of the Notice, the Commission nowhere requires that the RBOCs adopt a separate subsidiary to provide out-of-region interLATA services. Rather, the Notice merely attaches this necessary public interest safeguard to the preferential nondominant treatment of the RBOCs' out-of-region services. Nothing prevents the RBOCs from providing their local and long distance services on a unified basis, so long as the FCC's dominant carrier rules are followed.

Second, and more pointedly, the new 1996 Act does not even suggest that the Commission cannot impose a separate subsidiary safeguard as a precondition to nondominant regulatory status. Section 271(b)(2) of the Act authorizes the RBOCs to provide out-of-region

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<sup>18</sup> Public Law No. 104-104, 110 Stat. 56 (1996) ("The 1996 Act").

<sup>19</sup> BellSouth Comments at 2, 4, 2.

<sup>20</sup> Ameritech Comments at 7; Bell Atlantic Comments at 4-5; SBC Comments at 6.

<sup>21</sup> US West Comments at 2; Pacific Bell Comments at 5.

interLATA services upon enactment,<sup>22</sup> while Section 272(a)(2)(B) simply indicates that out-of-region services are not those "services for which a separate affiliate is required" under the statute.<sup>23</sup> These provisions do not forbid the FCC from requiring the RBOCs to employ separate subsidiaries to provide all out-of-region interLATA services, nor do they limit the FCC's considerable authority to determine the appropriate regulatory structure to apply to the RBOCs' provision of out-of-region services. Just because the statute mandates the use of a separate subsidiary for in-region interLATA services, does not in any way imply that the statute prohibits the Commission from establishing a separate affiliate structure as a condition of nondominant regulation of out-of-region services. Despite what the RBOCs claim, the 1996 Act is completely silent on the issue.

Finally, the Communications Act of 1934, as amended, gives the FCC ample power to establish regulations that will assure just and reasonable rates, terms, and conditions of service by the RBOCs,<sup>24</sup> and nondiscriminatory treatment of all service providers and end users.<sup>25</sup> Nothing in the new 1996 Act, expressly or implicitly, supersedes this overarching public interest authority.

Thus, ironically, the RBOCs' arguments against the proposed separate subsidiary themselves are "inconsistent" with the proposed terms of the Notice, the actual words of the 1996 Act, and the continuing public interest reach of the 1934 Act. The Commission is free to

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<sup>22</sup> Section 271(b)(2), the 1996 Act.

<sup>23</sup> Section 272(a)(2)(B), the 1996 Act.

<sup>24</sup> 47 U.S.C. § 201(b) (1994).

<sup>25</sup> 47 U.S.C. § 202(a).

impose on the RBOCs' provision of out-of-region services whatever public interest safeguards are dictated by the record in this proceeding. That record clearly supports a well-crafted separate subsidiary requirement as a critical condition of nondominant status for the RBOCs' out-of-region services.

**C. Although LDDS WorldCom Does Not Necessarily Oppose Nondominant Treatment of The Bell Companies' Separate Subsidiary, The Conditions Must Be Strengthened Significantly To Guard Against Potential Anticompetitive Activities By The Bell Companies**

While LDDS WorldCom supports the Commission's proposed bifurcated approach establishing nondominant regulation if the RBOCs provide their out-of-region interLATA services via a separate affiliate, and dominant regulation in the absence of such an affiliate, there are serious concerns that the separate affiliate structure advocated in the Notice is woefully insufficient to act as a viable safeguard.<sup>26</sup> Most commenters share this serious concern, and suggest various changes that will significantly strengthen the proposed affiliate structure.<sup>27</sup>

LDDS WorldCom strongly supports a number of these suggested improvements:

- o The proposed structural separation between affiliate and RBOC parent must be more complete, with separate officers, directors, and employees; use of separate switching and transmission facilities, and separate databases; conduct of all affiliate transactions on an arms-length basis; and separate financing and credit obligations so that the affiliate cannot rely on the RBOC to guarantee its debts.<sup>28</sup>

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<sup>26</sup> Of course, LDDS WorldCom's position in this proceeding in no way implicates its position on the wholly separate issue of the proper regulatory treatment of the RBOCs' provision of in-region interLATA services, if and when such authority eventually is granted.

<sup>27</sup> See CompTel Comments at 8-14; AT&T Comments at 7-10; MCI Comments at 10-23; Cable & Wireless Comments at 3-5; Sprint Comments at 3-5; TRA Comments at 18-22; ALTS Comments at 4-6; Excel Comments at 2-7; Ohio Public Utilities Commission at 4-10.

<sup>28</sup> CompTel Comments at 8-9; TRA Comments at 20-21; Cable & Wireless Comments at 3-5; Ohio PUC Comments at 4-6.

- o The RBOC must be prohibited from joint marketing its out-of-region interLATA services and in-region LEC services; this prohibition should include the marketing of out-of-region interLATA services to in-region LEC customers, as well as the marketing of LEC services outside the RBOC's region in conjunction with its out-of-region interLATA services.<sup>29</sup>
- o The RBOC's out-of-region affiliate must obtain all pertinent Title II communications services from the RBOC's generally-applicable tariffs.<sup>30</sup>
- o The RBOC's out-of-region affiliate must have no preferential access to non-Title II services offered by the RBOC, such as billing and collection services.<sup>31</sup>
- o The RBOC's affiliate transaction practices and cost allocation procedures should be subject to annual independent audit.<sup>32</sup>

Several commenters also note that the Commission could simply decide to apply to the RBOCs' nondominant out-of-region services the same structural separation requirements that are dictated for their in-region services by Section 272 of the 1996 Act.<sup>33</sup> LDDS WorldCom agrees. This proposal has the important virtue of creating one unified separate affiliate requirement which the RBOCs could meet in order to provide both out-of-region and in-region services. Of course, many of the key improvements suggested by the initial commenters regarding the proposed affiliate rules in the Notice would still apply to the Section 272 affiliate requirements in both the in-region and out-of-region contexts.

In addition, LDDS WorldCom agrees with several clarifications requested by

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<sup>29</sup> CompTel Comments at 10; AT&T Comments at 7-8; ALTS Comments at 4; Excel Comments at 6-7.

<sup>30</sup> CompTel Comments at 10.

<sup>31</sup> CompTel Comments at 11; ALTS Comments at 5-6; TRA Comments at 19-20.

<sup>32</sup> CompTel Comments at 11; AT&T Comments at 8-9; TRA Comments at 19-20; Ohio PUC Comments at 7-8; MCI Comments at 19-20.

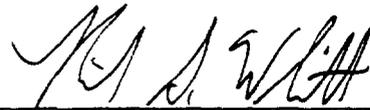
<sup>33</sup> See, e.g., CompTel Comments at 9; Sprint Comments at 3-5; Excel Comments at 6.

CompTel. In particular, the RBOCs' out-of-region affiliate should be classified as dominant where the affiliate provides interLATA services in a region where the RBOC has a cooperative arrangement with that region's incumbent LEC.<sup>34</sup> Moreover, incidental services authorized by the 1996 Act should be treated in the same fashion as the RBOCs' out-of-region interLATA services.<sup>35</sup>

### III. CONCLUSION

For the reasons articulated above, the Commission should adopt a strengthened form of its original proposal to regulate as nondominant the out-of-region interexchange services provided by the Bell Operating Companies.

Respectfully submitted,



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March 25, 1996

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<sup>34</sup> CompTel Comments at 12; ALTS Comments at 5.

<sup>35</sup> CompTel Comments at 14.

**CERTIFICATE OF SERVICE**

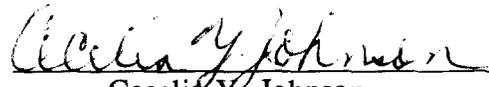
I, Cecelia Y. Johnson, hereby certify that I have this 19th day of April, 1996, sent a copy of the foregoing "Comments of LDDS WorldCom" by hand delivery to the following:

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