ORIGINAL

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

RECEIVED
MAY - 8 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Petition for Declaratory Ruling, Special Relief, and	)	
Institution of Rulemaking by	)	
America's Carrier's Telecommunication Association	)	RM No. 8775
Re: The Provision of Interstate and International	)	
Interexchange Telecommunications Service Via the	)	
"Internet" By Non-Tariffed, Uncertified Entities	)	

DOCKET FILE COPY ORIGINAL

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

May 8, 1996

No. of Copies rec'd 0+5
List ABCDE

TABLE OF CONTENTS

		PAGE
	SUMMARY	i
I.	INTRODUCTION AND SUMMARY	1
	A. The ACTA Petition	1
	B. LDDS WorldCom's Position	3
II.	INTERNET-BASED TELEPHONE SERVICES HAVE RAPIDLY BECOME FUNCTIONALLY INDISTINGUISHABLE FROM MORE TRADITIONAL TELEPHONY SERVICES	5
III.	WHILE LDDS WORLDCOM OPPOSES THE SPECIFIC RELIEF SOUGHT BY THE ACTA PETITION, THE COMMISSION MUST REQUIRE INTERNET-BASED TELEPHONY SERVICES TO PAY THEIR FAIR SHARE OF ALL PERTINENT INTEREXCHANGE SERVICE FEES, INCLUDING INTERSTATE ACCESS CHARGES, UNIVERSAL SERVICE FUNDING, AND INTERNATIONAL ACCOUNTING SETTLEMENTS	11
	A. LDDS WorldCom Strongly Opposes ACTA's Request To Impose Tariffing and Section 214 Obligations On VON Services, And Its Call For An Interim Cessation Of All VON Services	11
	B. VON Services Should Pay Access Charges, Universal Service Contributions, and International Accounting Settlements	12
	1. Enhanced Services Currently Are Not Regulated Or Required To Pay Interstate Access Charges	12
	2. VON Services Are Not Enhanced Services	16
	3. Should The FCC Find That VON Services Are Enhanced Services, The Public Interest Dictates That The Commission Revisit Its Outdated Enhanced Services Exemption In This Instance	20
IV.	THE COMMISSION MUST ACT NOW TO PREVENT LONG-TERM DAMAGE TO ACCESS CHARGE PRICING, UNIVERSAL SERVICE, AND INTERNATIONAL RELATIONS	22
V.	CONCLUSION	26

SUMMARY

LDDS WorldCom strongly opposes any common carrier-type regulation of online information services, and does not favor such regulation of telephony services provided over the Internet. For this reason, LDDS WorldCom does not support the ACTA Petition's request that the Commission prohibit entities from providing telephony over the Internet, or subject those entities to common carrier-type regulation. However, LDDS WorldCom believes the Commission must take immediate and decisive action to rectify the fact that users of telephony over the Internet currently are not subject to the same cost structure which customers of LDDS WorldCom and hundreds of other long distance companies are obliged to shoulder. In short, Internet telephone services must be required to pay their fair share of Part 69 interstate access charges, universal service funding, and international accounting rate settlements.

Internet-based telephone services (also known as Voice On the Net, or "VON" services) are a new phenomenon in the telecommunications market. In exchange for paying a fixed one-time fee for software, a consumer can use VON services to make an unlimited amount of free telephone calls to practically anywhere around the world. While early versions of VON software were technically rudimentary and limited only to computer-to-computer calling, recent advances have now enabled Internet voice communications to cross from the Internet computer network to the public switched telephone network. As a result, consumers now are able to place free long distance calls, not just from one computer to another, but from one telephone to another. This significant advance alone guarantees a substantial new market for these services.

At the present time, over 1.5 million Internet phone products have already been shipped to the public, and tens of millions more are slated to follow in the coming months. Over one hundred major companies, led by Intel and Microsoft, are actively involved in forming

an open platform that would be built on common industry standards for voice communications services over the Internet. Other major companies, such as Netscape, America Online, PSI Net, and CompuServe, have added Internet telephony capability to their popular software systems. Most recently, AT&T's Bell Laboratories has begun developing advanced new Internet telephony products. The heavy involvement of all these leading companies should help develop and expand a true consumer mass market for Internet-based telephony in the very near future.

Of course, while the technology behind VON services is truly remarkable, its singular attraction to consumers is the ability to make national and international telephone calls for free. However, the free nature of Internet telephony services is the very basis of the problem it presents to federal regulators. These services are free precisely because, among other things, they do not include any of the interstate access charges, universal service contribution, or international accounting settlements that traditional long distance companies are required to pay. **It is the wholly artificial pricing of VON services, based exclusively on implicit subsidies provided by other users of the telephone network, that the Commission must remedy at once.**

Under the FCC's rules, long distance companies must pay interstate access charges to the local exchange carriers in order to originate and terminate long distance traffic over their local networks. A small portion of these access charges is intended to compensate the LECs for use of their local infrastructure. A sizable amount of the access charges paid by long distance carriers also supports intrastate services, including some local residential rates, and also supports the Commission's universal service program, which subsidizes the local telephone rates of residents of rural and high-cost areas, and low-income consumers. Of course, a

substantial percentage of the interstate access charges collected by the LECs covers other implicit subsidies, or consists of non-cost-based LEC "expenses." In addition, certain fees are assessed whenever a long distance company sends or receives an international call. Under this overarching fee structure, for every dollar of revenue generated by a long distance company, at least 45 cents must be given to other telecommunications carriers.

In contrast, online information services currently are classified by the FCC as "enhanced services," and hence are exempt from paying interstate access charges or universal service support. It is important to note, however, that VON services have never been formally classified by the FCC as "enhanced services." In fact, these comments show that VON services are not properly classified as "enhanced services" under the Commission's three-part test, and thus must pay interstate access charges under current law and regulation. Moreover, VON services actually constitute "telecommunications services" under the new Telecommunications Act of 1996, which automatically subjects them to an obligation to contribute support to universal services. Thus, whether as part of comprehensive access charge reform that drives interstate access rates down to economic cost, or prior to such a reform effort, VON services must be brought under the Commission's access charge regime.

The question of subjecting VON services to interstate access charges, universal service contribution obligations, and international accounting settlements is not merely an academic one. The public interest dictates that the Commission act now to require users of VON services to pay their fair share of these charges. Otherwise, in the coming weeks and months, consumers will have every incentive and opportunity to begin a large-scale migration off the fee-based public switched telephone network in order to use free VON services. This

migration will lead to, among other things, a general degradation of the Internet and persistent and frequent outages in the local telephone network. As more voice traffic bypasses the public switched telephone network in favor of VON services on the Internet, fewer consumers will remain on the network to pay interstate access charges and universal service obligations. Universal service will suffer because significantly less financial support will be available for low-income consumers, and for residents of rural and high-cost areas across the country. Finally, foreign and U.S. carriers will not be fully compensated for their origination and termination of voice traffic. Moreover, should the Commission decide to require VON services, along with all enhanced services, to pay their fair share of current long distance fees, the incumbent LECs will receive additional funds that could be used to forestall any potential increases in local telephone service during the transitional period to new universal service and access charge regimes. Thus, all users and providers on the public telephone network will benefit from prompt Commission action. Conversely, users and providers will be adversely affected should the Commission not act promptly to remedy the current inequitable situation.

The Commission cannot afford to simply sit back and watch as these dire events begin to unfold. VON services in their present form make a mockery of the traditional interstate access charge regime and are fast becoming a serious threat to all underlying carriers, to the FCC's universal service policies, and to international comity. Congress has indicated that recent events have prompted it to consider taking another look at the issue of regulating enhanced services, but that scrutiny could take many months. The Commission must take action now so that VON services are required to contribute their fair share to support the public telephone infrastructure.

RECEIVED

MAY - 8 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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

In the Matter of	)	
	)	
Petition for Declaratory Ruling, Special Relief, and	)	
Institution of Rulemaking by	)	
America's Carrier's Telecommunication Association	)	RM No. 8775
Re: The Provision of Interstate and International	)	
Interexchange Telecommunications Service Via the	)	
"Internet" By Non-Tariffed, Uncertified Entities	)	

COMMENTS OF LDDS WORLDCOM

WorldCom, Inc., d/b/a LDDS WorldCom ("LDDS WorldCom"), hereby files its comments in response to the Petition for Declaratory Ruling, Special Relief, and Institution of Rulemaking ("Petition") filed by America's Carriers Telecommunication Association ("ACTA") on March 4, 1996 in the above-referenced proceeding. As one of the four largest facilities-based interexchange carriers ("IXCs") in the United States, and as a major provider of both Internet backbone network services and Internet access services, LDDS WorldCom has a substantial interest in the outcome of this proceeding.

I. INTRODUCTION AND SUMMARY

A. The ACTA Petition

The ACTA Petition raises several issues concerning the Commission's role in regulating telecommunications entities and services. The Petition is aimed at a narrow class of currently unregulated services "allowing users of the Internet to make free or next to free local, interexchange (intraLATA, interLATA) and international telephone calls using the user's

computer."[1] ACTA cites in particular the "Internet Phone," a software package produced by a company called Vocaltec which enables users to "audibly talk with one another in real-time."[2] ACTA asserts that users of the Internet Phone pay for the software, but otherwise "incur no other charges for making local or long distance telephone calls...."[3]

ACTA asks the Commission to issue a declaratory ruling confirming its authority over interstate and international telecommunications services using the Internet.[4] ACTA also asks the Commission, as special relief, to order various "Respondents" to immediately stop their unauthorized provisioning of telecommunications services pending their compliance with various statutory requirements, including Section 203 (tariff filing requirement) and Section 214 (common carrier certification filing requirement) of the Communications Act of 1934, as amended.[5] ACTA also asks the Commission to institute a proceeding to determine what rules should govern the use of the Internet for providing telecommunications services. In support of its Petition, ACTA notes the "unfair competition created by the currently unregulated bypass of the traditional means by which long distance services are sold...."[6] ACTA claims this bypass could create "serious economic hardship on all existing participants in the long distance

---

[1] ACTA Petition at 3.

[2] Id.

[3] Id.

[4] Id. at 4.

[5] Id.

[6] Id.

marketplace and the public which is served by those participants."[7]

The Commission issued a Public Notice on March 25, 1996 seeking comments on the ACTA Petition. The Notice commented that its goal in seeking comments is "to develop a record on which to base a decision about whether or not the issues raised by the outside party merit consideration."[8]

B. LDDS WorldCom's Position

LDDS WorldCom has always been a strong supporter of new technologies and services. In this regard, it is obvious that the Internet represents one of the most remarkable technological and social achievements of the 20th Century. LDDS WorldCom plays a significant role in the Internet by providing a sizable portion of the DS-3 backbone telecommunications network that supports the Internet and various Internet access providers. LDDS WorldCom is also becoming a major player in the Internet access market as well. LDDS WorldCom sees tremendous opportunities as the Internet continues to attract additional users and new providers of content, products, and services.

The Internet has been such a great success precisely because it has been allowed to grow unfettered by burdensome and costly regulation. LDDS WorldCom is a staunch opponent of unnecessary regulation by the federal and state governments. Unless there is a truly compelling social need for an agency such as the Federal Communications Commission to establish rules that limit what any particular entity or group of entities can do, such rules should

---

[7] Id.

[8] Public Notice, DA 96-414, Report No. CC 96-10, issued March 25, 1996.

not be imposed. In the case of the ACTA Petition, LDDS WorldCom believes that the extreme form of relief sought simply does not meet that standard. In particular, LDDS WorldCom opposes any attempt to subject telephony over the Internet to any common carrier-type regulation, including the filing of tariffs under Section 203 of the Communications Act or federal certification under Section 214 of the Communications Act. LDDS WorldCom also opposes any "special relief" order by the Commission which would in any way prohibit any entity from providing telephony over the Internet.

At the same time, however, the ACTA Petition does merit close attention to the extent that it asks the Commission to institute an expedited rulemaking proceeding to determine what, if any, FCC rules should apply to Internet telephony. LDDS WorldCom does not believe that any common carrier-type rules should apply to Internet telephony. Nonetheless, as will be explained in detail below, LDDS WorldCom believes that all users of the telecommunications network should be required to pay their fair share of the costs of interconnecting with the public switched telephone network. The Commission must take quick steps to rectify the fact that users of telephony over the Internet currently are not subject to the same cost structure which LDDS WorldCom and hundreds of other long distance companies are obliged to shoulder under the FCC's Part 69 access charges scheme. In short, Internet telephone services must be required to pay their fair share of interstate access charges, universal service funding, and international accounting rate settlements. In response to the new Telecommunications Act of 1996, the FCC has initiated proceedings to establish interconnection rules by August 1996, and to overhaul the universal service system by May 1997. The Commission has also pledged to undertake comprehensive access charge reform soon. Without prompt, concurrent, and decisive

Commission action on this related Internet telephony issue, all users of the public telecommunications network, and especially consumers needing universal service, will be adversely affected. In addition, should the Commission act promptly, additional funds will be available to the local exchange carriers to help ease the transition to fully-reformed access charge and universal service regimes.

II. INTERNET-BASED TELEPHONE SERVICES HAVE RAPIDLY BECOME FUNCTIONALLY INDISTINGUISHABLE FROM MORE TRADITIONAL TELEPHONY SERVICES

Internet-based telephone services (also known as Voice On the Net, or "VON" services) are a relatively new phenomenon in the telecommunications market. As recently as a year ago, few people were even aware of the possibility that the Internet could be used successfully for voice traffic. Then in February 1995, VocalTec Inc., one of the pioneers in the field, first introduced its "Internet Phone." Another company, Electric Magic Co., released its "NetPhone" around the same time. Both software products did essentially the same thing: translate a human voice into binary data bits that are sent over the Internet's computer data network and then converted back into sound on the receiving end. Early users of these services apparently became frustrated by its considerable technical drawbacks, including the poor sound quality and the fact that the technology was only half duplex, which allowed only one person to speak at a time over the link. Another important limitation was that both users needed to be logged on to their computers at the same time. Balanced against these constraints, however, was one major benefit: users were only paying a fixed one-time fee for the software (usually less than $50.00) in return for an unlimited amount of free telephone calls to other computer users

located practically anywhere around the world. Although early news reports of this rudimentary new service mentioned its technical shortcomings, at least one commentator queried whether this type of service might one day replace traditional telephone service.[9]

Early in 1996, however, telephony over the Internet quickly turned from a back-room curiosity into front-page material. At least a dozen new companies had become deeply involved in the business of providing Internet phone service, including Quarterdeck (with WebTalk), Camelot (with DigiPhone), Voxware Inc., Connectix, and International Discount Telecommunications.[10] These new companies fiercely competed in attempts to smooth out the technical flaws in the service. As a result, stunning improvements in Internet telephony technology began to roll out at a rapid pace. In newer software versions, for example, voice sound quality was dramatically improved over earlier products, and full duplex capability was finally realized.

Then, in March 1996, the young VON service industry reached a milestone, caused by two separate but related events. First, the aptly-named "Free World Dialup" (FWD) Global Server Network became established publicly in late February 1996. The FWD was staffed by hundreds of volunteers located worldwide who offered free telephone calls by patching Internet voice transmissions directly into the nearest local phone network. These calls were not limited to the Internet network; for the first time, users of the Internet were able to directly call off-Net telephone users simply by making a local telephone call. Although the FWD tapped into

---

[9] See, e.g., "Planet Internet," Business Week, April 3, 1995, at 120.

[10] See "Talk is cheap in high tech's fledgling market," USA TODAY, January 19, 1996, at 1B; "Try Beating These Long-Distance Rates," Business Week, April 22, 1996, at 132.

the public switched telephone network ("PSTN"), users were able to bypass much of the costs associated with using the network.[11] At its initiation, the FWD reached 42 computer servers located around the world in 40 countries;[12] in less than three months, the FWD's free telephone coverage has now doubled to include 80 countries [13]

On the heels of the first public uses of the new FWD system, a second major event occurred. Vocaltec unveiled a new commercial software product, the Internet Phone Telephony Gateway, that allowed Internet voice communications to cross from the Internet computer network over to the public switched telephone network -- without volunteers. The Gateway, built in conjunction with Dialogic Corp., essentially is comprised of a system of gateways that links Internet calls to and from local exchange networks. Users then are able to place free long distance calls from one telephone to another -- not just from one computer to another, as was the case previously.[14] With this singular advance, Vocaltec's Chief Executive Officer predicted that voice communication over the Internet "is about to become so widespread that it would be impossible to regulate."[15] Other similar products soon followed. In April 1996, NetSpeak Corporation offered its WebPhone, complete with voicemail, call blocking, and speed dial features, to provide "real-time, full-duplex, high-quality voice conversations over the

---

[11] "The Sound of the Internet," Jeff Pulver, Boardwatch, May 1996, at 86-87.

[12] "Struggle Emerges Between Net, Phone Industries: Voice on Net Products Ignite First Round of Long-Term Battles," INTERNET WEEK, March 18, 1996.

[13] "Try Beating These Long Distance Rates," Business Week, April 22, 1996, at 132.

[14] Id.

[15] "Freebie Heebie Jeebies," The Washington Post, March 8, 1996, at E1.

computer network."[16] NetSpeak stated that, with its new product, "the ability to offer voice-based communications over traditional data networks is now both a practical and technological reality," and that the WebPhone "is designed to drastically reduce the cost of long-distance" telephone calls.[17]

As the feasibility of true Internet telephony set in, interest quickly spread. In March 1996, over 100 leading companies, led by Intel and Microsoft, announced the formation of an open platform that would be built on common industry standards for voice communications services over the Internet. These new standards would greatly reduce the remaining problems of delays and out-of-sequence delivery of digital data packets through the heavily-congested Internet system. Intel and Microsoft stated that the new platform would be available later in 1996.[18]

With the substantial improvements to the quality of Internet phone service, major companies began to add Internet telephony capability to their popular software systems. In early 1996, Netscape Communications Corp. announced it was bundling DigiPhone software into its World Wide Web software, while America Online and PSI Net began bundling Vocaltec's Internet Phone software into their systems.[19] Then Netscape announced in March 1996 that it would actually build into its popular Navigator program new voice software called Insoft to

---

[16] "NetSpeak Corp. Introduces WebPhone, Industry's First Full-Featured Internet-Based Telephony Solution," PR Newswire, April 9, 1996.

[17] Id.

[18] "More Than 100 Leading Companies Join Intel and Microsoft to Support Standards-Based Communications Over the Internet," PR Newswire, March 11, 1996.

[19] Id.

allow free long distance calls via the Internet. A vice-president with Netscape claimed that the company would "get it out to 25 or 30 million desktops in the next six months. That's a big enough critical mass for it to take off."[20] He predicted that, as a result, telephone companies would find much of their equipment "rapidly becoming useless."[21] CompuServe also announced in March 1996 that it would offer the latest version of Vocaltec's "Internet Phone" software at no additional cost to over one million of its monthly subscribers.[22]

As Business Week reported recently, "the Net calling phenomenon, which began as an amusing pastime a year ago, is going mainstream."[23] It is estimated that about 1.5 million Internet phone products have already been shipped to the public, and tens of millions more are soon to follow.[24] Indeed, Newsweek reports a estimate by International Data Corporation that up to 63 million "cyberyakkers" will be using Internet telephony by 1999.[25] James Crowe, Chairman of MFS Communications, has indicated that the primary force behind his company's recent purchase of Internet service provider UUNet for $2 billion was "this fundamental shift in the nature of communications" that will move the entire infrastructure of voice telecommunications to the less expensive Internet.[26] AT&T has also announced that by

---

[20] "Netscape to Build Telephony into Navigator," Newsbytes Network, March 13, 1996.

[21] Id.

[22] "CompuServe to Offer Internet Phone Service," Agence France Press English Wire, March 13, 1996.

[23] "Try Beating These Long-Distance Rates," Business Week, April 22, 1996, at 131.

[24] Id.

[25] "Calling All Computers," Steven Levy, Newsweek, May 13, 1996, at 43.

[26] Id.

the end of 1996, the best researchers from its Bell Laboratories will take a lead role in developing Internet telephony products that will raise the level of sound quality and reliability even further.[27] AT&T's heavy involvement should help guarantee a true mass market for Internet-based telephony in the very near future.

The technological advances made by skilled entrepreneurs in developing and improving Internet telephony is astounding.[28] As more advanced versions of these services introduce even better sound quality and improved features, their popularity undoubtedly will continue to increase. Of course, it is not the technology alone that attracts users to Internet-based telephony. Obviously one of the main reasons for the growing success of these services is that they allow the consumer to make national and international telephone calls for free. As will be explained below, however, the free nature of Internet telephony services is the true problem because it is based on an entirely artificial economic construct.[29] In short, these services are free because, among other things, they do not include any of the interstate access charges, universal service charges, or international accounting settlements that traditional long distance companies are required by law to pay. It is this anomalous situation that the Commission must address promptly and forcefully in this proceeding.

---

[27] "AT&T Will Be in Net Telephony," Inter@ctive Week, May 1, 1996.

[28] Most recently, WebCentric Communications released its Conference Now software, which allows audio conferencing over the Internet by "integrating Internet and public telephone network services." Communications Daily, May 2, 1996, at 8.

[29] In part, the artificially low rates derive from longstanding federal government subsidization of the Internet's backbone network -- a subsidy program that has just been discontinued.

III. WHILE LDDS WORLDCOM OPPOSES THE SPECIFIC RELIEF SOUGHT BY THE ACTA PETITION, THE COMMISSION MUST REQUIRE INTERNET-BASED TELEPHONY SERVICES TO PAY THEIR FAIR SHARE OF ALL PERTINENT INTEREXCHANGE SERVICE FEES, INCLUDING INTERSTATE ACCESS CHARGES, UNIVERSAL SERVICE FUNDING, AND INTERNATIONAL ACCOUNTING SETTLEMENTS

A. LDDS WorldCom Strongly Opposes ACTA's Request To Impose Tariffing and Section 214 Obligations On VON Services, And Its Call For An Interim Cessation Of All VON Services

LDDS WorldCom has long been an avid proponent of creative uses of advanced technologies to meet the diverse communications needs of the American public. In particular, LDDS WorldCom supports the unfettered growth and success of the Internet "network of networks." Indeed, as mentioned above, LDDS WorldCom is playing a major role in bringing the many benefits of the Internet to its commercial, residential, and carrier customers. In particular, LDDS WorldCom provides part of the DS-3 backbone telecommunications network that supports the Internet, as well as a number of Internet access providers. LDDS WorldCom is also becoming a major player in the Internet access market.

LDDS WorldCom believes that the regulatory measures called for in the ACTA Petition are unnecessary and wholly without merit. In particular, LDDS WorldCom opposes any attempt to subject telephony over the Internet to any common carrier-type regulation, including tariff filing requirements under Section 203 of the Communications Act of 1934, and federal certification under Section 214 of the Communications Act. LDDS WorldCom also opposes any Commission order which would prohibit any entity from providing telephony over the Internet. ACTA has presented no evidence that such drastic actions are necessary at this time.

Nonetheless, the ACTA Petition does raise an important issue that must be resolved by the Commission thoroughly and promptly. LDDS WorldCom is deeply concerned

that VON services are now being provided to the public for free precisely because they do not include the various network charges that other providers of long distance services are compelled by law to pay. The Commission must promptly institute a rulemaking proceeding to examine this issue, and the potentially negative effect that cost-free VON services will have on universal service obligations, our nation's common carriers, and international relations.

B. VON Services Should Pay Access Charges, Universal Service Contributions, and International Accounting Settlements

1. Enhanced Services Currently Are Not Regulated Or Required To Pay Interstate Access Charges

The Internet and related computer-based communications services enjoy widespread use based in large part on the favorable environment nurtured by the federal government. The Internet enjoys a particularly advantageous position because of at least two basic facts. First, the federal government's funding and know-how was responsible for the initial development and growth of the Internet. As Internet usage has risen, government officials also have been instrumental in further promoting its use by educational facilities, medical industry, and libraries. Large corporate entities, not-for-profit organizations, and government agencies all have helped subsidize access to the Internet for these purposes.

Second, the Internet to date has been fully protected from any common carrier-type regulation. On the surface, this regulation entails the filing of federal and state tariffs describing all charges and terms of providing service, as well as certificates of public necessity and convenience authorizing the provision of interstate and intrastate service. Common carriers also are required to pay various fees and charges in order to operate in the telecommunications

market.

Under the FCC's Part 69 rules, long distance companies must pay interstate access charges to the local exchange carriers in order to originate and terminate long distance traffic over their local networks.[30] A small portion of these access charges is intended to compensate the LECs for use of their local infrastructure. A sizable amount of the access charges paid by long distance carriers also supports intrastate services, including some local residential rates. Interstate access charges currently also support the Commission's universal service program, which subsidizes the local telephone rates of residents of rural areas and high-cost areas. Low-income consumers also receive subsidies from telecommunications carriers. In addition, whenever a long distance company sends or receives a call overseas, certain rates are assessed to compensate the foreign carrier for the use of its infrastructure. A significant percentage of the interstate access charges collected by the LECs covers other implicit subsidies, or consists of non-cost-based LEC "expenses." In all, these various fees account for at least 45 percent of a long distance company's total revenues. In other words, for every dollar of revenue generated by a long distance company, at least 45 cents must be given to the LECs or other carriers.

At present, Internet-type services are classified by the FCC as "enhanced services," and hence are exempt from a wide panoply of federal regulations applicable to providers of "basic services" such as long distance carriers.[31] For example, providers of Internet services are not required to pay interstate access charges, and currently are subsidized by IXCs who must pay those charges. Nor are Internet service providers required to pay any

---

[30] See 47 C.F.R. § 69.01 et seq. (1995).

[31] 47 C.F.R. § 64.702(a).

universal service support at the present time.

In the 1970s and 1980s, ESPs such as CompuServe and Prodigy first began subscribing to hundreds, and later thousands, of local telephone lines to allow their subscribers to access their information services with a local telephone call. These ESPs obtained flat-rated business lines, taken from the state tariffs of local exchange carriers, in order to make their information services available to the public. By using these flat-rated, intrastate business lines, ESPs in effect were avoiding paying the usage-sensitive, interstate access charges which were part of the federal access charges that long distance carriers were required to pay to compensate the LECs for use of their network and to provide contribution to universal service.

In 1983, the FCC first declined to apply federal access charges to the nascent ESP industry because it was concerned that such charges would result in "huge increases in their costs of operation which could affect their viability."[32] In 1988, the Commission resorted to this "rate shock" argument to support its decision not to require ESPs to pay interstate access charges.[33] In the early 1990s, however, ESPs began to press the Commission to allow them to take federally-tariffed access arrangements that were cost-based and designed for the needs of ESPs. By agreeing to consider taking interstate access arrangements for the first time, ESPs were hoping to be able to take advantage of advanced federally-tariffed network functionalities being offered by the LECs under the rubric of the FCC's Open Network Architecture ("ONA") policy. In a 1991 decision, the Commission decided otherwise, finding that a cost-based

---

[32] MTS and WATS Market Structure, Memorandum Opinion and Order, 97 FCC 2d 682, 715 (1983).

[33] Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, Order, 3 FCC Rcd 2631, 2633 (1988).

interstate access arrangement designed for ESPs would be "inconsistent with our current rate structure," and that there was no reason to deviate from that rate structure "for one group of access users."[34] As a result, the ESP exemption from interstate access charges remains in place to this day.

Thus, the Commission is faced with an inequitable disparity between traditional long distance services, which currently are paying above-cost interstate access charges, and VON services, which pay essentially nothing. The Commission has several options to deal with the VON services problem. LDDS WorldCom believes that the Commission should and must immediately initiate its long-promised proceeding to comprehensively reform the LECs' interstate access charge system and bring those charges down to economic cost.[35] As part of that process, all interstate access providers and users -- including VON services and enhanced services -- then could be brought into the access charge system to pay the same cost-based rates that other users of the public switched telephone network would pay. ESPs actually would benefit greatly under this approach because, for the first time, they could utilize cost-based interstate access arrangements, and finally gain access to an array of advanced, federally-tariffed network features and functionalities that they have sought for many years. As an alternative, the Commission could decide now, pending full access charge reform, to simply add VON services to the current contribution pool and eliminate the ESP exemption so that all ESPs also

---

[34] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd 4524, 4535 (1991).

[35] LDDS WorldCom believes that the Commission's pending Section 251 interconnection proceeding offers the best immediate opportunity for comprehensive access charge reform that is required by the Telecommunications Act of 1996.

must pay pertinent interstate access charges.[36] One virtue of this approach is that the interstate access charges collected from VON services and the ESPs in the short-term could be used by the LECs to forestall any increases in the subscriber line charge ("SLC") and otherwise prevent residential rates from rising. The important point, however, is to bring access charges to cost and to include all users of the network, including ESPs, in an equitable access charge system.

Even though LDDS WorldCom believes the time has come to reevaluate the ESP exemption from interstate access charges, the discussion below will focus more narrowly on why VON services are not enhanced services, and therefore should be required to pay access charges under current law. The larger question of eliminating the ESP exemption is best dealt with in conjunction with the Commission's long-promised proceeding to comprehensively reform its interstate access charge system.

2. VON Services Are Not Enhanced Services

Section 64.702(a) of the FCC's Rules lays out a three-part test to determine whether a service should be classified as enhanced, and thus exempt from regulation and the payment of interstate access charges.[37] It is important to note, however, that VON services have never been formally classified by the FCC as "enhanced services." In fact, VON services are not properly classified as an "enhanced service" under the Commission's three-part test.

First, VON services do not "employ computer processing applications that" act

---

[36] In the Commission's universal service proceeding, LDDS WorldCom suggested that the Commission might take this route. See Comments of LDDS WorldCom, CC Docket No. 96-45, filed April 12, 1996, at 15 n.46; Reply Comments of LDDS WorldCom, CC Docket No. 96-45, filed May 7, 1996, at 14.

[37] See 47 C.F.R. § 64.702(a).

on "aspects of the subscriber's transmitted information." The sound waves that are sent from one end of a VON service transmission are the very same signals that are received at the other end. The computer processing that takes place in between the originating and terminating signals merely facilitates the routing of the call; the essential nature is not changed. Indeed, the processing employed by VON service providers can be analogized almost exactly to the same type of processing done by long distance companies when they transmit telephone calls. Long distance calls typically are converted from analog sound waves to digital bits of light sent over fiber optics links, are amplified, switched, multiplexed, combined into other packets, disassembled, and finally reestablished at the other end in the same format that they began. VON services are no different.

Second, VON services do not provide the subscriber "additional, different, or restructured information." Whatever signals are put in at the originating end of a VON call are the same signals that are sent out at the terminating end. The VON service does not give the receiving party anything more or different than is already provided in the original signal.

Third, VON services do not "involve subscriber interaction with stored information." As VON service providers proudly point out, their products allow real-time, two-way interactive communications between parties. No storage capability, such as is the case with voice mail or electronic text messaging, is involved. Thus, VON services meet none of the prongs of the enhanced services test.

Instead of being an enhanced service, VON services actually meet the FCC's definition of a basic, regulated service. In one pertinent decision, the Commission defined a basic service as offering "a pure transmission capability over a communication path that is

virtually transparent in terms of its interaction with customer supplied information."[38] This description perfectly matches a VON transmission.

The new Telecommunications Act of 1996 offers further insight into the proper classification of VON services. In its comments in the universal services proceeding, LDDS WorldCom showed how VON services meet the three-pronged definition of "telecommunications service" in the 1996 Act, so that these services should be required to contribute their fair share of universal services funding.[39] The new statute defines a "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."[40] This definition is basically the flip-side of the enhanced services definition. VON services clearly: (1) allow the user to specify the ultimate destination "points" of the call; (2) only give information of the user's choosing (i.e., his or her voice or other sounds); and (3) do not change the form or content of the information that is sent.

Moreover, several commenters in the Commission's universal service proceeding, in an attempt to demonstrate how the entire class of information services are not "telecommunications services" under the 1996 Act, actually present compelling arguments why VON service is actually a basic telecommunications service. As one example, the Interactive

---

[38] See Amendment of Section 64.702 of the Commission's Rules and Regulations, Second Computer Inquiry, Report and Order, 77 FCC 2d 384, 420 (1980).

[39] See Comments of LDDS WorldCom, CC Docket No. 96-45, filed April 12, 1996, at 16; Reply Comments of LDDS WorldCom, CC Docket No. 96-45, filed May 7, 1996, at 15-16.

[40] Telecommunications Act of 1996, Pub.L.No. 104-104 § 3(a)(2), 110 Stat. 56, to be codified at 47 U.S.C. § 153(48).

Services Association argued that, under the statute's three-part test, telecommunications services (as opposed to online services) "enable users to transmit information of their own choosing," "operate on a peer-to-peer model" where the information is "transmitted between or among points specified by the user," and involve "no change in the form or content of the information transmitted."[41] While one might argue that some information services offered by the same vendor may not meet this definition, it is obvious that the VON service is a perfect fit.[42] Thus, VON service is a telecommunications service, under both the FCC's "enhanced services" definition pursuant to the 1934 Act, and under the 1996 Act itself.

Even if the Commission incorrectly finds that VON services somehow meet the enhanced services definition, VON services still must be classified as an "adjunct-to-basic" service under the FCC's NATA Centrex doctrine.[43] Under this doctrine, the Commission treats a particular service as a regulated basic service if it "might indeed fall within possible literal readings of our definition of an enhanced service, but which [is] clearly 'basic' in purpose and use...."[44] LDDS WorldCom does not believe the Commission will find that VON services somehow meet the enhanced services definition. Still, the "adjunct to basic" classification certainly would allow the Commission to require that VON service providers pay applicable interstate access charges and other mandated long distance service fees.

---

[41] ISA Comments, CC Docket No. 96-45, filed April 12, 1996, at 6, 7, 8.

[42] Interestingly, no party in the universal service proceeding filed initial comments that even attempted to dispute LDDS WorldCom's conclusion. Of course, the access charge exemption for enhanced services runs to the particular service being provided, not to certain vendors regardless of whether their customers are actually taking basic or enhanced service.

[43] See, e.g., NATA Centrex Order, 101 FCC 2d 358 (1985).

[44] Id. at 359.