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June 28, 1996

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Notice of Ex Parte Presentation in CC Docket No. 96-98 (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996)

Dear Mr. Caton:

Yesterday, June 27, 1996, on behalf of WorldCom, Inc., Bernard Ebbers, Catherine Sloan, and Richard Fruchterman of WorldCom, Inc., and Linda Oliver of Hogan and Hartson L.L.P., met with FCC Chairman Reed Hundt's legal advisor, John Nakahata. Kathy Haycock of Call America also attended the meeting. The oral presentation concerned issues previously raised in written comments filed by WorldCom in response to the Commission's Notice of Proposed Rulemaking, FCC 96-182 (released April 19, 1996) in the above-captioned proceeding. No written ex parte presentations were submitted, but attached is a copy of the summary points of the items discussed.

An original and one copy of this letter are hereby submitted to your office today pursuant to the requirements of Section 1.1206(a)(2) of the Commission's rules. Please contact the undersigned if you have any questions.

Respectfully submitted:

Richard S. Whitt
Director, Federal Affairs
WorldCom, Inc.

cc: John Nakahata

Attachment

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BUILDING REAL LOCAL COMPETITION: MAKING THE ACT WORK

Outline of Ex Parte Presentation

I. THE ACT PERMITS AND REQUIRES THE COMMISSION TO RATIONALIZE ALL INTERCONNECTION PRICING.

Now: The Commission should conclude that, as a matter of statutory interpretation, all forms of carrier-to-carrier interconnection are subject to the long-term unified structure of Section 251.

Transition: At the same time, the FCC should establish a transition plan to move gradually from today's patchwork of compensation arrangements to the Act's unified structure. [The steps of such a plan are set forth in LDDS WorldCom's reply comments at 35-36 and are attached at page 3].

Current interstate access charges can remain in place pending completion of universal service proceedings and implementation of any necessary universal service support mechanism. 1/

A. "Interconnection" under Section 251(c)(2) includes interconnection for purposes of originating and terminating any call, regardless of the nature or point of origin of the call.

- Under the Act, interstate/intrastate jurisdictional lines no longer exist for unbundled network elements and interconnection.
- For example, the function of terminating a call on the ILEC network is the same regardless of where the call originates and regardless of the technology used to originate the call.

1/ Of course, if a competing local exchange carrier uses a combination of ILEC unbundled network elements, it would be the provider of exchange access to and from its local service customers. See below at p. 7 and n.5.

- ILECs agree that artificial distinctions among different users of the ILEC network cannot be maintained.

- Over time, discrimination in pricing of call termination will distort competition and will create incorrect investment signals.

- Maintaining such distinctions will require regulators to draw arbitrary lines based on geographic and technological differences that have nothing to do with cost.

B. The FCC has the authority under the Act to defer reducing interstate access to cost-based levels until it has completed universal service proceedings.

- Section 251(g) maintains the existing access compensation scheme in place until superseded by the FCC.

- Ultimately, all uses of the ILEC network by other carriers, including all forms of call termination, must be priced the same -- at economic cost (the ILEC's own cost).

C. If the FCC <u>does not</u> conclude, as a matter of law, that Section 251 interconnection includes interexchange access, the FCC will lose the ability to rationalize the pricing of access in the future.

- The Commission will lack the ability to bring various call termination schemes into harmony.

- The existing jurisdictional cost separations process must continue, even though it will disappear for other uses of the ILEC network (unbundled network elements, for example).

- Artificial regulatory distinctions (rather than the market) will drive the success of certain service configurations and technologies over others.

STEPS OF PROPOSED TRANSITION PLAN 1/

The FCC may use its authority under Section 251(g) to establish a transition to cost-based interconnection rates for interstate access:

(1) The Commission should conclude as a matter of law that "interconnection" in Section 251(c)(2) includes interexchange access provided directly by ILECs to interexchange carriers, and that Section 252(d)(2) requires such interconnection to be priced on the basis of cost.

(2) The Commission should adopt rules requiring rates for interconnection and unbundled elements to be set at economic cost (TSLRIC).

(3) State commissions should set interconnection and unbundled element rates based on TSLRIC pricing principles. The interconnection rates would apply at least to local call termination, and, at the option of the ILEC (pending completion of the universal service proceeding) to interexchange access as well.

(4) State commissions could also order TSLRIC pricing of interconnection for purposes of terminating all intrastate calls, if they choose, or they can await completion of the FCC's universal service proceeding.

(5) The FCC would move expeditiously to complete its universal service proceeding and to create a universal service fund or other mechanism to recover revenues above TSLRIC that must be recovered other than through the ILEC's retail rates for its own services.

(6) Once the universal service mechanism has been created and implemented, carriers would be free to use Section 251(c)(2) interconnection for any purpose.

(7) Until then, Section 251(c) would not be deemed to have been met, and therefore the Section 271(c)(2)(B) competitive checklist for RBOC entry also could not be deemed to have been met.

(8) If an RBOC wished to provide in-region interLATA services before completion of the above steps, it could propose to charge the same cost-based interconnection rates for interexchange access that it charges for local interconnection. (See item (3) above.) Assuming those rates otherwise satisfy the requirements of the Act, the FCC could conclude that Section 251(c)(2) had been satisfied for checklist purposes.

1/ From LDDS WorldCom Reply Comments in CC Docket No. 96-98, filed May 30, 1996, at 35-36.

II. THE FCC MUST ORDER THE ILECS TO OFFER THE CORE UNBUNDLED ELEMENTS THAT COMPETITORS REQUIRE.

The FCC's goal must be to enable competitors to employ unbundled elements to become full-fledged local exchange carriers.

ILECs must provide access to a set of core unbundled elements, and do so in a manner that permits competitors to provide service to their customers as quickly and seamlessly as the ILEC itself does.

A. The core unbundled network elements that must be made available immediately include:

- Loop, unbundled switching, and transport and termination
- Signaling, operational support, and logical elements (AIN interconnection)
- The state commissions, the FCC, and the ILECs must continue to develop this list over time, as warranted by experience, competitor needs, and technological changes.

B. Customers must be able to switch local providers as easily and seamlessly as they switch long distance providers today

- ILECs must be required to provision network elements in a manner that will allow competing carriers to quickly turn up service for new customers, through software changes, without requiring physical reconnections.
- Providing unbundled elements in a combination of loop, switching, and transport and termination can enable a carrier to take on new customers quickly via software changes.
- Carriers then can engage in the slower process of physical reconfiguration later, bringing on non-ILEC network elements transparently to the customer.

C. The Commission cannot assume that competition will develop quickly if competitors must rely solely on the unbundled elements that require physical reconfiguration.

- For example, connecting an unbundled ILEC loop to a competitor's local switch requires manual reconnection of the loop.

- Manual network reconfiguration is, by definition, a relatively slow, labor-intensive process that limits the number of customers that can be switched to new carriers.

- ILECs in fact have imposed strict limits on the rate at which they can switch customers to new service providers where such physical reconnections are required. 2/

- This stands in stark contrast to the fully automated, software-based interexchange PIC-change process.

D. The Commission must also require ILECs to provide the operational support necessary to enable competitors to provide local service quickly to a wide range of customers using unbundled elements.

E. The Commission should be skeptical of ILEC claims of technical infeasibility or lack of network capacity.

- The ILECs rarely advance network capacity claims as a basis for denying service to end user customers. ILECs must meet carrier customer demand as the telecom market grows just as they meet any other demand.

- The Commission also should ignore arguments that ILECs should not have to provide a particular unbundled element because that element has not yet been provided or tested. Such arguments would reward the ILECs for their past refusal to offer unbundled elements -- a refusal that in part led to the statutory requirement to unbundle.

2/ In Pennsylvania, for example, Bell Atlantic stated that during its three month "ramp-up" period, it could only reconfigure 25 loops per carrier per LATA per week, and stated that it could not predict how many conversions it would be able to perform after that ramp-up period. See LDDS WorldCom Reply Comments in CC Docket No. 96-98, filed May 16, 1996, at 48-49, citing Bell Atlantic Statement No. 2.1 (Rebuttal Testimony of Albert) in Application of MFS Intelenet of Pennsylvania, et al., Pennsylvania Public Utility Commission Docket Nos. A-310203F0002 et al., at 1, and Transcript at 956-59 (Testimony of Albert) (April 10, 1996).

III. ILECS CANNOT RESTRICT THE ABILITY OF COMPETITORS TO PURCHASE AND USE UNBUNDLED NETWORK ELEMENTS

A. Local facilities ownership is not a prerequisite for purchase of unbundled elements.

- The language of Section 251(c)(3) is plain: any carrier may purchase unbundled elements, and those elements must be provided "in a manner that allows requesting carriers to combine such elements in order to provide service."

- The Illinois Commission recently reached this conclusion, rejecting the argument that "allowing a purchasing carrier to combine network elements is redundant of the additional requirement on incumbent LECs to make their retail services available at wholesale pricing for resale " 3/

- Congress intended competition to develop quickly even though new networks will take time to deploy and may not be efficient everywhere.

B. Purchase of unbundled elements in combination allows competing carriers to behave as LECs themselves

- Competitors can design their own competing retail services; craft their own service offerings, pricing structures, and feature packages; draw their own local calling areas; and provide exchange access to other carriers.

- The Illinois Commission concluded that purchasing elements in a platform configuration "provides potential entrants with "the flexibility to design their own operational and marketing strategy to compete with the incumbent LEC . . . " 4/

- Section 251(c)(4) service resale is no substitute for purchase of unbundled network elements.

3/ AT&T Communications of Illinois, Inc., and LDDS Communications Inc., Case Nos. 95-0458 and 95-0351, Order, June 26, 1996, at 65 ("Illinois Order").

4/ Id.

C. The combined network elements option makes it easy for new service providers to "change out" the ILEC elements for their own or other carriers' facilities for those of the ILECs over time as those competitive local facilities become available.

D. Unbundled elements can be used by purchasing carriers for any purpose, including providing interexchange access to themselves and to other carriers. 5/

- This reflects the fact that carriers purchase unbundled elements as facilities over which they provide services as they choose.

- ILECs may not levy access charges on carriers purchasing unbundled elements.

5/ The Illinois Commission also concluded that in a platform configuration, purchasers of unbundled network elements would keep access revenues associated with their own local customers. "Having paid the incumbent LEC for the use of the network elements, the purchasing carrier is entitled to all revenues generated by local exchange, exchange access, and other telecommunications services it provides utilitizing the purchased network elements, in the same fashion as incumbent LECs." Illinois Order at 65.

IV. THE ACT REQUIRES ILECS TO PROVIDE AN UNBUNDLED LOCAL SWITCHING ELEMENT.

The proposed unbundled local switching element must be one of the essential, baseline unbundled elements that all ILECs offer immediately.

A. Unbundled local switching is a critical component for competitive entry.

- Competitors will not be able to provide their own local switching in every exchange, especially in the near term.
- The existence of unbundled local switching from the ILEC will enable all consumers -- not just those living in dense geographic areas -- immediately to enjoy the benefits of competition that Congress envisioned.
- The unbundled local switching element will allow competitors to offer the same range of services -- including exchange access services -- that any ILEC or any other local exchange carrier using unbundled elements may offer
- The Illinois Commission recently adopted its staff's proposal for an unbundled "local switching platform." See FCC Notice at para. 100. 6/

B. ILEC proposals for an unbundled switch port do not constitute unbundled local switching.

- Those proposals merely give a competitor "access" to the retail services that ILECs provide, not access to unbundled switching features and functions, as required by Section 251(c)(3).
- Under the ILEC unbundled port proposals, competitors still would pay retail rates (less avoided costs) for "access" to the services provided through the switch, rather than paying the cost-based rates prescribed for unbundled elements under Section 252(d)(1).

6/ Illinois Order at 63-64.

- An unbundled switch port does not satisfy the requirement of the Section 271(c)(2)(B) competitive checklist that switching be unbundled from loop and transport. because the ILECs would require carriers purchasing an unbundled switch port also to purchase retail offerings that bundle switching and transport.

V. SERVICE RESALE CANNOT BE ARTIFICIALLY LIMITED.

A. No restrictions on resale of retail services should be permitted,

- Except that an ILEC may obtain state commission authority to limit resale of a particular service that is subsidized for public policy reasons to the same category of customers, pursuant to Section 251(c)(4)(B).

- The Commission should expressly prohibit ILECs from restricting resale of such services as contract offerings, discounted offerings, promotions, bundled offerings, optional calling plans, and time-limited offerings.

B. Every retail offering must have a wholesale rate in place. The wholesale rate must remove all retail-related costs from the retail rates.

C. An ILEC cannot be deemed to have satisfied Section 251(c)(4) until it has implemented nondiscriminatory operational support mechanisms for ordering, installation, repair, and maintenance.

D. Service resale, although a useful option, will never be truly viable until access charges are brought to economic cost. Until they are, the ILEC, not the reseller, will retains all the profits that are embedded in access.