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BEFORE THE

Federal Communications Commission

WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

TO: The Commission

PETITION FOR CLARIFICATION OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys and pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.429, hereby petitions the Commission to clarify its First Report and Order (FCC 96-325) ("First Report"), released in the above-captioned proceeding on August 8, 1996, as specified below.[1]

I. THE COMMISSION SHOULD CLARIFY THAT ILECS MUST PROVIDE A USAGE OPTION FOR REQUESTING CARRIERS TO OBTAIN TRANSPORT ON A NETWORK ELEMENT BASIS

The First Report requires incumbent local exchange carriers ("ILECs") to provide transport at TELRIC-based rates pursuant to Section 251(c)(3) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 ("1996 Act"). However, the Commission did not directly address the applicable rate structure when ILECs provide tandem-switched transport between their end offices and serving wire centers ("SWCs") on a network element basis. It is clear from the Commission's rules that ILECs must offer the requesting carrier the option of purchasing the end office-to-tandem link as shared transport and the tandem-to-SWC link as

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[1] Should the Commission not regard this petition as a request for clarification of the First Report, WorldCom requests that it be regarded as a petition for reconsideration.

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dedicated transport.[2] It is not clear from the First Report or the Commission's rules whether requesting carriers have the option of purchasing tandem-switched transport on a network element basis pursuant to other rate structures. As shown below, the Commission should clarify that Section 251(c)(3) requires the ILECs to provide tandem-switched transport as a combined network element pursuant to a usage option whereby the requesting carrier pays a single, usage-based rate for routing functionality between the end office and the SWC. More broadly, the Commission should clarify that ILECs must offer a usage option for shared transport whenever a requesting carrier seeks to route traffic between two end offices on a network element basis, regardless of whether the traffic is tandem-routed. Otherwise, the Commission's rules would be skewed in favor of requesting carriers with the largest traffic volumes.

A. Tandem-Switched Transport.

The Commission should clarify that ILECs must offer requesting carriers a usage option for tandem-switched transport between the end office and the SWC. The provision of tandem-switched transport as a single, combined network element pursuant to an end-to-end, usage-based rate with airline mileage measured between the end office and the SWC is fully consistent with the TELRIC methodology adopted by the Commission for deriving network element rates. The TELRIC methodology estimates network element costs based upon "the most efficient technology deployed in the incumbent LEC's current wire center locations."[3] The Commission explained that TELRIC rates should be based on "costs that assume that wire centers will be placed at the incumbent LEC's current wire center locations, but that the

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2 47 C.F.R. §§ 51.319(d); 51.507(b)-(c); 51.509(c)-(d).

3 First Report at para. 685.

reconstructed local network will employ the most efficient technology for reasonably foreseeable capacity requirements."[4] Hence, while an ILEC's configuration of wire centers (including end offices and SWCs) can affect its TELRIC costs and rates, the number and location of tandem offices in its current interoffice network -- i.e., the ILEC's actual tandem office topography -- are irrelevant to estimating costs under the TELRIC methodology.

It would be inconsistent with the TELRIC methodology for the Commission to mandate "sub-transport" unbundling -- the discrete offering of dedicated and common transport over the shared interoffice network -- as the sole option for purchasing transport on a network element basis. Although the ILEC's tandem office topography is irrelevant to calculating the ILEC's costs under the TELRIC methodology, that topography would affect network element charges under sub-transport unbundling because the number and geographic placement of tandems within the ILEC's network would affect the pricing of the end office-to-tandem and tandem-to-SWC links. By contrast, a usage option is fully consistent with the TELRIC methodology because it treats tandem-switched transport as an end-to-end functionality between the ILEC's end office and SWC, thereby according no significance to the actual deployment of tandem offices by the ILEC. If an ILEC's tandem office topography is irrelevant to calculating its TELRIC costs, then that topography should be irrelevant to recovering those costs through network element rates.

There is no basis for the Commission to assume that the ILECs' current tandem office topography is identical or even similar to the efficiently reconstructed tandem network that

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4 Id.; see also 47 C.F.R. § 51.505(b)(1) (measuring TELRIC based on "the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers").

must serve as the basis for deriving TELRIC rates. To the contrary, record evidence indicates that the ILECs have deployed tandem networks that do not aggregate long distance traffic efficiently,[5] thereby ensuring that sub-transport unbundling will penalize requesting carriers by forcing them to pay for inefficient routing of tandem-switched transport traffic.

Moreover, requiring ILECs to offer requesting carriers a usage option for tandem-switched transport is consistent with the Commission's interpretation of Section 251(c)(3) to entail combined network element offerings. Expanding upon its interpretation of Section 251(c)(3) as "requir[ing] incumbent LECs to combine elements as requested by carriers,"[6] the Commission emphasized that "[u]nder our method, incumbents must provide, as a single, combined element, facilities that could comprise more than one element."[7] Therefore, requesting carriers are entitled to combine the end office-to-tandem and tandem-to-SWC links into a single network element based upon the Commission's interpretation of the plain language of Section 251(c)(3).

In addition, there are strong public policy reasons to mandate a usage option for tandem-switched transport. An ILEC's tandem office configuration is within the exclusive control of the ILEC. Interconnecting carriers have no control whatsoever over the number, location, deployment or efficiency of an ILEC's interoffice network. By making interconnectors pay for transport based on how the incumbent LEC chooses to configure the routing of traffic,

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5 See Petition for Expedited Rulemaking of WilTel, Inc., filed June 11, 1992 (providing quantitative data that ILECs have deployed tandems nationwide in a manner that does not efficiently aggregate long distance traffic).

6 First Report at para. 294.

7 First Report at para. 295.

mandatory sub-transport unbundling would unfairly place the carrier's rates and costs at the discretion of the ILEC.

Further, the Commission must mandate the usage option to ensure that its rules do not discriminate against tandem-switched transport users. As currently written, the Commission's rules permit requesting carriers to obtain dedicated interoffice routing through network elements pursuant to a single, flat rate for transport based upon airline mileage between the ILEC's end office and SWC.[8] In CC Docket No. 91-213, there is undisputed record evidence that ILECs often route direct-trunked transport between the end office and the SWC through the same tandem offices used for tandem-switched transport.[9] It would unfairly discriminate between tandem-switched and direct-trunked transport to permit the latter, but not the former, to be provided and priced as a combined network element even though both traffic streams may be routed over the same facility through the tandem location. Such discrimination would undermine competitive market conditions given the well-recognized fact that smaller carriers in general, and competitive entrants in particular, will be disproportionately dependent upon tandem-switched routing.[10] Such discrimination also would create needless asymmetry with the access charge

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8 47 C.F.R. §§ 51.507(b) & 51.509(c).

9 The Commission has recognized that "the physical routing of direct-trunked transport may parallel the routing of tandem-switched transport, passing through the tandem office, or may pass through some other intermediate LEC office." Transport Rate Structure and Pricing, 7 FCC Rcd 7006, 7020 (1992); see also id., 7 FCC Rcd at 7029 & n.86 (recognizing that direct-trunked traffic may be routed through intermediate ILEC offices). In support of the instant petition, WorldCom hereby incorporates the record in CC Docket No. 91-213 into this proceeding.

10 E.g., Competitive Telecommunications Ass'n v. FCC, 87 F.3d 522, 524 (D.C. Cir. 1996) (recognizing, based on the record in CC Docket No. 91-213, that smaller carriers are more dependent upon tandem-switched transport, while larger carriers are the primary users of direct-trunked transport).

regime under which long distance carriers today have a usage option for tandem-switched transport. New entrants purchasing tandem-switched transport through network elements should have no fewer rate structure options available to them than purchasers of tandem-switched transport as an interstate access service.

Moreover, it would promote the Commission's goals in this proceeding to require ILECs to establish a usage option for tandem-switched transport as a combined network element. Recognizing that the ILECs' networks embody "economies of density, connectivity, and scale," the First Report (at para. 11) correctly holds that "the local competition provisions of the Act require that these economies be shared with entrants." A usage option for tandem-switched transport is necessary to share those economies with new entrants, who often will lack the traffic volume to justify dedicated transport. Similarly, the usage option would promote the Commission's avowed goal of facilitating new entry by maximizing options for procuring interoffice facilities.[11] Just as long distance carriers currently have a usage option under the ILECs' interstate access charge tariffs, it is important that all new entrants have a usage option when purchasing transport on a network element basis under Section 251(c)(3).

Finally, the Commission also should clarify that ILECs have an obligation to provide a usage option for shared interoffice transport even when there is no tandem routing involved. Tandem-switched routing is not the only situation where ILECs route traffic over shared circuits on dedicated facilities between two end offices. For example, a new local entrant who purchases the local loop for a particular customer on a network element basis may need to purchase shared interoffice transport from the ILEC for the routing of that customer's local

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[11] First Report at para. 441.

traffic to the ILEC's end office from which that traffic will be terminated. In general, the Commission should clarify the First Report to require ILECs to offer a usage option for the routing functionality between any two end offices over common or shared circuits.

B. The "Shared Facilities" Rules.

The First Report defines "shared facilities" to be "those [facilities] used by multiple parties." The Commission requires the costs of "shared facilities" to be apportioned through usage-sensitive charges or capacity-based flat-rate charges if "the state commission finds that such rates reasonably reflect the costs imposed by the various users."[12] With respect to the costs of "shared transmission facilities between tandem switches and end offices," the Commission requires that such costs be recovered through usage-sensitive charges "or in another manner consistent with the manner that the incumbent LEC incurs those costs."[13] At the same time, the Commission requires that the costs of "dedicated transmission links" shall be recovered exclusively through flat-rated charges.[14]

Those rules contradict each other when the ILECs provide dedicated circuits to requesting carriers over shared facilities. One such example is the ILECs' interoffice transport network. As noted above, ILECs typically use the same fiber optic facility (or less frequently, copper wire facility) to carry both dedicated and common transport traffic. Both types of traffic are routed "side-by-side" (i.e., on separate time slots) within the same facility, including between the end office and the tandem location. WorldCom recommends that the Commission remove

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12 47 C.F.R. § 51.507(c); see also First Report at para. 757.

13 47 C.F.R. § 51.509(d).

14 47 C.F.R. § 51.509(c).

this internal conflict within its rules by substituting the term "shared circuits" for the term "shared facilities" in 47 C.F.R. § 51.507(c), and by substituting the term "shared transmission circuits" for the term "shared transmission facilities" in 47 C.F.R. § 51.509(d). This change will confirm that dedicated transmission links over shared facilities are provided on a flat-rate basis as the Commission intended.

The Commission's rules also fail to address the situation where ILECs provide both shared and dedicated circuits to a requesting carrier over shared facilities, such as tandem-switched transport pursuant to a usage option. WorldCom recommends that the Commission insert the following sentence at the end of 47 C.F.R. §§ 51.507(c) and 51.509(d): "Incumbent LECs shall establish a single, usage-based charge to recover the costs of shared circuits, or shared and dedicated circuits combined pursuant to 47 C.F.R. § 51.315, provided over shared facilities on an end-to-end basis." This rule would not interfere with the current discretion of state commissions to determine whether ILECs should make additional rate options (i.e., flat rates, or a combination flat- and usage-based rate) available to carriers who purchase shared transport through network elements.

II. THE COMMISSION SHOULD IMPOSE A REPORTING REQUIREMENT ON ILECS FOR OPERATIONS SUPPORT SYSTEMS FUNCTIONS

The First Report (at para. 525) directs the ILECs to provide non-discriminatory access to their operations support systems ("OSS") functions -- including pre-ordering, ordering, provisioning, maintenance and repair, and billing -- "as expeditiously as possible" and in no event later than January 1, 1997.[15] The Commission correctly recognized that this non-

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[15] 47 C.F.R. § 51.321.

discrimination requirement is absolutely "critical" to the ability of carriers to enter the local market pursuant to Sections 251(c)(3)-(c)(4).[16]

To ensure that the Commission and the industry have adequate information to monitor and enforce the OSS provisioning requirement, and to maximize the ability of potential new entrants to establish compatible systems quickly, the Commission should impose a reporting requirement upon the ILECs. WorldCom recommends that the Commission require the ILECs to submit a report by December 1, 1996 regarding their OSS compliance efforts. Further, at the time an ILEC purports to be in compliance with the non-discrimination requirement, it should submit a report containing all technical specifications and other information necessary to establish compliance and to permit requesting carriers to access the ILEC's OSS systems as quickly as possible. The Commission also should require ILECs to submit quarterly reports for a period of at least three years showing on a quantitative and qualitative basis that requesting carriers are obtaining non-discriminatory access to the ILECs' OSS functions compared to the access that the ILECs provide to themselves and affiliated companies.

Finally, as part of the agreements between ILECs and new entrants subject to arbitration by state commissions, the Commission should require the ILECs to accept provisions establishing reasonable performance standards for providing OSS functionality on a timely, non-discriminatory basis. Certainly, when the ILECs negotiate contracts for long distance network capacity, they insist upon contractual standards governing the timeliness and adequacy of performance by the long distance carrier, including monetary penalties or additional discounts for non-performance. As several parties discussed during the public forum on enforcement issues on

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16 First Report at para. 27.

September 17, 1996, the Commission should require, or at least declare presumptively reasonable, similar contractual provisions regarding the ILECs' compliance with the Commission's critical policies on OSS functions. Such contractual mechanisms would not only provide an incentive for ILECs to comply in a full and timely manner with the Commission's rules and policies in this area, but they would, over the long term, decrease the likelihood that the Commission and state commissions would have to expend scarce resources policing these matters.

Respectfully submitted,

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September 30, 1996

CERTIFICATE OF SERVICE

I, Regina Alston, hereby certify that I have caused a copy of the foregoing "**Petition for Clarification of WorldCom, Inc.**" to be served on this 30th day of September, 1996, by U.S. mail, first class postage, upon the following:

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