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

In the Matter of	)	
	)	
Rules and Policies on Foreign Participation in the U.S. Telecommunications Market	)	IB Docket No. 97-142
	)	
	)	

COMMENTS OF WORLDCOM, INC.

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SUMMARY

WorldCom supports the World Trade Organization ("WTO") Agreement and the Commission's objectives in this proceeding. WorldCom is deeply concerned, however, that the Commission has underestimated the incentive and ability of certain foreign carriers to leverage control over bottleneck facilities to the detriment of U.S. competition. Even in the post-WTO environment, liberalization of telecommunications services will be a slow and evolutionary process in most markets. Many important Latin American and Asian countries have not committed to allowing U.S. carriers to own international facilities or land cables until the year 2000, or later, if at all.

In light of the continuing danger of abuse of bottleneck facilities, WorldCom opposes the Commission's proposal to establish rebuttal legal presumptions in favor of (i) Section 214 applications filed by carriers affiliated with foreign carriers from WTO member countries, and (ii) cable landing licence applications for cables between the United States and WTO member countries. It is imperative that the Commission retain unquestioned authority to examine relevant public interest factors on a case-by-case basis. The Commission must retain discretion to respond to the potential for anticompetitive harm raised by a foreign affiliate where the foreign carrier's home country has made no market liberalization commitment, only a weak commitment, or has failed to comply with its liberalization schedule. Furthermore, the Commission must adopt strong and effective service entry rules, including its settlement rate benchmark conditions proposed in IB Docket No. 96-261. These benchmarks provide transparent, certain, and enforceable

requirements that will significantly alleviate the potential for anticompetitive behavior by foreign carriers with market power.

WorldCom fully agrees that the Commission should continue to apply the ECO test for applications filed by carriers affiliated with foreign carriers from non-WTO member countries and the equivalency test for applications to provide switched voice service using private lines to non-WTO countries. Countries that are not WTO members have made no commitments to open their international services market or enforce rules of fair competition. The ECO and equivalency tests create important incentives for countries to join the WTO and make market-opening commitments.

WorldCom also supports the Commission's concept of identifying a range of post-entry "dominant carrier" safeguards that can be applied to address the specific level of risk presented by foreign carriers affiliates. WorldCom suggest that these safeguards be applied flexibly, on a case-by-case basis, rather than pursuant to artificial categories.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom") hereby submits its Comments in response to the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding. WorldCom supports the World Trade Organization ("WTO") Agreement on basic telecommunications services and the Commission's objectives in this proceeding.[1] Even in a post-WTO environment, however, there remains a substantial risk of abuse of overseas bottleneck facilities. WorldCom, therefore, opposes certain proposals in the Notice that, if adopted, would prevent the Commission from taking the steps necessary to protect U.S. competition from the risk of anticompetitive behavior. WorldCom proposes certain modifications to the proposals that will preserve the Commission's public interest authority and strengthen the safeguards protecting the U.S. market from competitive distortions.

I. INTRODUCTION AND SUMMARY

In its Notice, the Commission proposes to conform its international service regulations to the WTO Agreement by, among other changes, adopting an "open entry policy" for U.S. carriers affiliated with carriers from WTO member countries ("WTO-affiliated carriers"), and to act on

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[1] The Commission's stated goals are to promote effective competition in the international services market, prevent anticompetitive conduct, and encourage foreign governments to open their telecommunications markets. Id. at ¶¶ 25-27

Section 214 and cable landing license applications filed by such carriers without applying the Effective Competitive Opportunities ("ECO") test, and the ECO test's detailed review of the regulatory structure of the affiliate's home market. The Commission specifically proposes to adopt a rebuttable legal presumption in favor of WTO-affiliated carriers and WTO member countries when reviewing Section 214 and cable landing license applications. According to the Notice, a revised set of basic and supplemental "dominant carrier" safeguards will allow for monitoring and deterring anti-competitive behavior.

WorldCom is deeply concerned that the Commission has underestimated the continuing ability and incentive of foreign carriers with market power, and their affiliates, to leverage control over bottleneck facilities to the detriment of U.S. competition. Notwithstanding the WTO Agreement, there remains significant potential for misuse of bottleneck facilities concerning cable landing rights, as well as preferential treatment in facilities provisioning and maintenance, pricing, routing of traffic, and access to information. WorldCom therefore opposes the Commission's proposal to establish rebuttable legal presumptions in favor of (i) Section 214 applications filed by WTO-affiliated carriers, and (ii) cable landing license applications for cables between the U.S. and WTO member countries. WorldCom supports service entry rules that will alleviate the potential for bottleneck misuse including, particularly, the Commission's proposed settlement rate benchmark conditions, as well as strong and effective "dominant carrier" safeguards.

II. WORLDCOM OPPOSES THE CREATION OF A LEGAL PRESUMPTION IN FAVOR OF WTO-AFFILIATED CARRIERS AND WTO MEMBER COUNTRIES

The Commission proposes to eliminate the ECO test for WTO-affiliated carriers seeking Section 214 authority to provide facilities-based, resold switched, and resold non-interconnected private line services and for cable landing license applications for cables between the United States and WTO member countries. In reviewing such applications, the Commission proposes to adopt a rebuttable presumption in favor of Section 214 applications filed by WTO-affiliated carriers and in favor of cable landing license applications for cables between the U.S. and WTO member countries.[2] In the Commission's view, the WTO commitments made by the 68 other governments will, when fulfilled, substantially address the Commission's goals, and post-entry regulatory safeguards will effectively guard against and redress anticompetitive behavior in the absence of the ECO test.[3]

WorldCom submits that liberalization of telecommunications services in most markets, particularly outside of Northern Europe, will be a slow and evolutionary process. Effective competition in these markets will not develop overnight. Many carriers with market power today

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[2] Id. at ¶ 32. For Section 214 applications, the presumption could be overcome only by a showing that a grant of the application would "pose a very high risk to competition in the U.S. telecommunications market that could not be addressed by conditions" placed on the authorizations. Cable landing licenses would be routinely granted unless the State Department had disapproved the application or opponents were able to show that compelling reasons exist to deny the application. Id. at ¶ 62.

[3] Id. at ¶ 29 (emphasis added). Such safeguards include dominant carrier regulation, fines, forfeitures, revocation, enforcement of the antitrust laws, and conditions relating to benchmark settlement rates. Id. at ¶ 38.

will continue to exercise market power long after the January 1, 1998 effective date of the WTO Agreement. Consequently, WorldCom believes that the Commission should not adopt rebuttable presumptions for reviewing the Section 214 applications of WTO-affiliated carriers or cable landing license applications for U.S.-WTO member country cables. Neither the WTO Agreement nor the Commission's policy objectives require -- or justify -- the Commission's surrender of its case-by-case public interest scrutiny of Section 214 and cable landing license applications.

A. Section 214 Applications

WorldCom opposes the adoption of a rebuttable presumption in favor of the Section 214 applications of WTO-affiliated carriers. The WTO Agreement by no means automatically eliminates an affiliated carrier's incentive and ability to engage in anticompetitive behavior that harms competition in the U.S. market. While the WTO Agreement is a major step in lowering barriers to competition, it is hardly a guarantee of effective competition. Thus, it is imperative that the FCC retain unquestioned authority to consider the relevant public interest factors on a case-by-case basis. Few WTO member countries have a proven track record of opening bottleneck facilities in their market. The Commission should retain discretion to respond to the potential for anticompetitive harm raised by a WTO-affiliated carrier's application where the foreign affiliate's home country has made no market liberalization commitment, only a weak commitment, or has failed to comply with its liberalization schedule. As has been the U.S. experience with the Telecommunications Act of 1996, actual implementation of sweeping procompetitive policies can be as difficult and time-consuming as establishing the initial policies.

WorldCom recommends that, in lieu of adopting a new rebuttable presumption as proposed in the Notice, the Commission should review applications of WTO-affiliated carriers under its long-standing public interest standard -- the same standard applied to applications filed by unaffiliated carriers. This approach will further the non-discrimination principles of the General Agreement on Trade in Service ("GATS") without making drastic and unnecessary changes to the U.S. regulatory process that may inadvertently disadvantage U.S. carriers or preclude the Commission from exercising its discretion to respond to specific circumstances. Implementation of the WTO Agreement does not warrant, at this stage, a new regulatory framework that would create an unprecedented departure from the long-standing and well-tested public interest standard and, apparently, go so far as to grant WTO-affiliated carriers more favorable treatment than unaffiliated carriers.

If the Commission nonetheless decides to adopt a presumption, the standard proposed in the Notice creates far too high a burden for opponents. It is entirely possible that certain applications could pose an unacceptable risk to U.S. competition (e.g., where a foreign affiliate controls bottleneck facilities on major foreign routes), but that interested parties may be unable to demonstrate that the carrier's application presents a "very high risk to competition." The standard proposed in the Notice appears virtually to eliminate consideration of all but the most certain and egregious harm to U.S. competition -- an extreme result not required by the WTO.

If the Commission insists on adopting a rebuttable presumption, WorldCom proposes that opponents be required to show that the proposed entry presents a "substantial risk to competition" in the U.S. international services market. If opponents are able to meet this burden, no presumption

in favor of a grant would apply and the Commission would analyze the specific public interest considerations relevant to the particular application.

In addition to the public interest inquiry set forth above, WorldCom strongly supports measures that condition service entry in order to prevent anticompetitive behavior from occurring in the first instance. In particular, it is critical that the benchmark settlement rate conditions proposed in the Commission's separate rulemaking proceeding[4] be applied to all affiliated carriers providing service to the home market(s) of their foreign affiliates. Furthermore, such settlement rate safeguards must apply to all affiliated carriers regardless of whether a carrier's affiliation arises from ownership of 25% or greater by a foreign carrier in a U.S. carrier or from ownership of 25% or greater by a U.S. carrier in a foreign carrier. Consistent application of the affiliation standard comports with the non-discrimination principles of the GATS, and is important to deter the incentive and ability of affiliated carriers to leverage the market power of the foreign affiliate in an anti-competitive manner.

B. Cable Landing License Applications

The Notice proposes to eliminate the ECO test and the consideration of any reciprocity criteria in reviewing applications for cable landing licenses for cables between the United States and

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[4] In International Settlement Rates, Notice of Proposed Rulemaking, IB Docket No. 96-261 (Released December 19, 1996) ("Benchmark Notice"), the Commission proposed to establish settlement rate benchmarks based on foreign carrier tariff component pricing. The Commission specifically proposed to condition a carrier authorization to provide facilities-based service to an affiliated foreign market on the foreign carrier offering a settlement rate within the benchmark range. The Benchmark Notice also proposed that authorizations to provide switched service over private lines be conditioned on all settlement rates on the route being within the benchmark range.

WTO member countries.[5] The Commission asserts that the WTO Agreement has largely eliminated the risk that any of the member countries will deny cable landing licenses and therefore the ECO test (and any reciprocity test) is unnecessary to "assist in securing rights for the landing or operation of cables in foreign countries."[6] The Commission thereby proposes to routinely grant cable landing license applications for cables between the U.S. and WTO member countries, unless the State Department disapproves or there exist compelling reasons for denial[7] -- a standard that appears to be akin to a rebuttable presumption with a very high burden of proof for opponents.

WorldCom opposes the Commission's proposal to routinely grant cable landing license applications filed by WTO-affiliated carriers for U.S.-WTO member country cables. The WTO Agreement has not substantially eliminated the risk that WTO member countries will not allow U.S. carriers to land cables. Many significant Asian and Latin American countries have not committed to allow U.S. carriers to own international facilities, let alone to land cables, until the year 2000 or later, if at all. These asymmetric market opening commitments will significantly disadvantage U.S. carriers. For example, if the Commission were to adopt its proposal, Hong Kong Telecom International might be able to obtain cable landing rights in the United States as of January 1, 1998, but U.S. carriers will not be able to obtain such landing rights in Hong Kong until the year 2006, at the earliest. Given the lack of capacity on the U.S.-Hong Kong route, the possibility of a U.S. affiliate of Hong Kong Telecom having exclusive access to cable capacity on the U.S.-Hong Kong

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[5] Notice at ¶ 62.

[6] Id.

[7] Id.

route would put other U.S. carriers at a tremendous competitive disadvantage. WorldCom also has serious concerns about the compliance of various countries with their liberalization commitments regarding the ownership of international facilities. In light of such concerns, WorldCom urges the Commission to retain adequate discretion in reviewing such applications to consider any and all relevant factors bearing on the public interest, including whether a cable proposal raises the potential for anticompetitive leveraging of bottleneck facilities by overseas carriers.

III. THE COMMISSION SHOULD RETAIN THE ECO TEST FOR APPLICATIONS FILED BY NON-WTO AFFILIATED CARRIERS AND THE COMMISSION SHOULD RETAIN THE EQUIVALENCY TEST FOR APPLICATIONS TO PROVIDE SWITCHED VOICE SERVICE OVER PRIVATE LINES TO NON-WTO COUNTRIES

WorldCom fully supports the Commission's proposal to retain the ECO test for facilities-based, resold switched, and resold non-interconnected private line applications filed by carriers affiliated with foreign carriers from non-WTO member countries ("non-WTO affiliated carriers") and the equivalency test for applications for switched service over private lines to non-WTO member countries.[8] Countries that are not WTO members have made no commitments under the GATS to open their international services market or to enforce rules of fair competition. In fact, there has been little progress toward liberalization in these countries. WorldCom strongly agrees with the Commission that for non-WTO affiliated carriers and countries, the ECO and equivalency tests remain necessary to achieve the Commission's overarching public interest goals. Retention of the ECO test for non-WTO countries not only guards against anticompetitive conduct, but also it creates an important incentive for such countries to join the WTO, make market opening commitments, and

[8] Notice at ¶¶ 55, 59.

adopt the Reference Paper. With respect to the use of private lines for switched service, the equivalency test -- and the additional benchmark settlement rate conditions -- are the principal protections against one-way bypass into the United States from non-WTO member countries.

WorldCom also supports the application of the ECO test to U.S. carriers that hold a 25% or greater interest in a foreign carrier with market power from a non-WTO country.[9] The ECO test is appropriate because the carrier has the same incentive to use a foreign affiliation to engage in harmful anticompetitive behavior as a U.S. carrier in which a foreign carrier holds a 25 % or greater interest.

IV. STRONG AND EFFECTIVE REGULATORY SAFEGUARDS ARE NECESSARY TO PROTECT U.S. RATEPAYERS AND COMPETITORS

The Notice proposes to modify the current regulatory protections set forth in the scheme of dominant carrier regulation and create a new framework whereby U.S. carriers that are regulated as dominant on a particular route due to an affiliation with a foreign carrier with market power in the destination country would be subject only to a set of basic safeguards if the foreign carrier faces competition from multiple facilities-based carriers in the foreign destination market.[10] A carrier

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[9] Id. at ¶ 57.

[10] Id. at ¶ 84. Basic safeguards, as proposed in the Notice, would consist of a relaxed version of the current dominant carrier requirements. The proposed basic safeguards are as follows: (1) one-day advance notice of tariff filings (reduced from the previous 14-day notice period) with a presumption of lawfulness, id. at ¶ 94; (2) quarterly notification (eliminating the prior approval requirement) of the addition of any circuits on the dominant route, such reports to specify the joint owner and particular facilities on which circuits were added (or discontinued), id. at ¶ 96; (3) quarterly traffic and revenue reports, id. at ¶ 99; and (4) maintenance of records of provisioning and maintenance of basic network facilities and services provided on the foreign carrier route. Id. at ¶ 103.

affiliated with a foreign carrier that does not face competition from multiple international facilities-based carriers in the foreign destination country would be subject to more stringent supplemental safeguards, in addition to the basic safeguards.[11] According to the Notice, this approach will allow the Commission to adjust its oversight to address the level of competitive risk without unnecessarily burdening foreign affiliated carriers.[12]

As a threshold matter, WorldCom believes that, despite the more dynamic competition expected in the post-WTO market, strong safeguards are needed to address the continuing risk of anticompetitive conduct by certain foreign affiliated carriers (including U.S. carriers involved in non-equity and co-marketing arrangements). While the proposed basic and supplemental safeguards are important, they are secondary to strong and effective service entry conditions, such as benchmark settlement rate requirements, which provide a transparent, certain and enforceable means to reduce the risk of anticompetitive harm.

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[11] Id. at ¶¶ 84, 104. U.S. carriers involved in non-equity and co-marketing arrangements also would be subject to basic and, where applicable, supplemental dominant carrier safeguards. Id. at ¶ 86. The proposed supplemental safeguards include a prohibition on U.S. carriers from entering into an exclusive arrangement with a foreign affiliate for joint marketing of basic telecommunications services, the steering of customers by the foreign affiliate to the U.S. carrier, and the use of foreign market telephone customer information. U.S. carriers would be required to obtain prior approval to add circuits on the dominant route and file quarterly public circuit status reports for facilities-based circuits and resold private line circuits, such reports to specify the particular facilities on which each of the circuits on the dominant route is activated or idle. Id. at ¶ 107. Carriers would required to make available electronic summaries of contracts filed pursuant to Section 43.51, to specify what provisions supersede terms in prior contracts, and to file quarterly reports summarizing the records of provisioning and maintenance of facilities and services by affiliated foreign carriers. Id. at ¶ 108.

[12] Id. at ¶ 84.

With respect to the specific safeguards proposed in the Notice, WorldCom supports the Commission's concept of identifying a range of regulatory safeguards that can be applied to address the specific level of risk presented by foreign-affiliated carriers. To that end, WorldCom suggests that the Commission refrain from creating inflexible classes of carriers and, instead, implement its proposed safeguard framework as a guideline that the Commission can refer to in tailoring the appropriate regulatory protections on a case-by-case basis. This more flexible approach will allow the Commission to apply the most appropriate set of safeguards without unduly burdening foreign affiliated carriers.

WorldCom specifically supports the requirement that affiliated carriers must obtain prior approval to add circuits on affiliated routes,[13] in order to allow the Commission to monitor a carrier's traffic and circuit growth for a particular country and respond promptly to any sign of anticompetitive behavior. WorldCom also supports the proposed requirement that carriers specify the facility on which each circuit is activated or idle.[14] This requirement is important because, among other reasons, it will allow the Commission and competitors to determine if foreign carriers with market power are warehousing capacity to the detriment of competing carriers, or unreasonably denying access to U.S. carriers by claiming a lack of corresponding facilities.

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[13] Id. at ¶ 107.

[14] Id.

CONCLUSION

WorldCom supports the Commission's efforts to revise its rules to comport with the WTO Agreement, and WorldCom supports many of the specific proposals made by the Commission. However, WorldCom is deeply concerned that the Commission has underestimated the ability and incentive, even in the post-WTO environment, of foreign carriers with market power, and their affiliates, to leverage control over bottleneck facilities to the detriment of U.S. competition. Consequently, WorldCom urges the Commission to adopt certain modifications that would preserve the Commission's public interest authority to review and condition applications by affiliates of foreign carriers so as to minimize the risk of anti-competitive behavior.

Respectfully submitted,

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