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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Federal State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	(Report to Congress)
	)	
	)	

**COMMENTS OF WORLDCOM, INC.**

WorldCom, Inc. ("WorldCom"), by its attorneys, respectively submits these comments in response to the Commission's Public Notice, issued January 5, 1998. In that Public Notice, the Common Carrier Bureau requested comments to assist the Commission in drafting a Report to Congress regarding the Commission's implementation of the universal service provisions of the Telecommunications Act of 1996 ("1996 Act"), as required by H.R. 2296, the 1998 appropriations legislation for the Departments of Commerce, Justice and State. Pursuant to the Notice, this report is to provide a "detailed description of the extent to which the Commission's interpretations . . . are consistent with the plain language of the Communications Act of 1934, 47 U.S.C. 151 et seq. ("Act"), as amended by the 1996 Act.

WorldCom is one of the world's leading providers of both telecommunications and information services. WorldCom owns and operates both local and interexchange fiber optic networks over which it provides basic telecommunications services as a telecommunications carrier. WorldCom also provides information services, and Internet access and transmission, through several wholly owned affiliates, UUNET, MFS Datanet,

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Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

and Gridnet. These affiliates purchase basic telecommunications services from WorldCom and other telecommunications carriers in order to provide enhanced information services to their customers.

For the reasons set forth below, WorldCom believes that the Commission interpreted the provisions of the Act that are subject to reporting requirements of H.R. 2267 in a manner that is entirely consistent with the plain language of the Act as amended.

**I. INFORMATION SERVICE PROVIDERS DO NOT PROVIDE TELECOMMUNICATIONS SERVICE AND THEREFORE ARE NOT REQUIRED BY THE ACT TO CONTRIBUTE DIRECTLY TO THE UNIVERSAL SERVICE FUNDS**

Consistent with the plain language of the Act, the Commission found that information service providers are not required to contribute directly to the universal service funds established by section 254 of the Act. Section 254(d) provides that:

Every telecommunications carrier that provides interstate telecommunications shall contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service . . . Any other provider of interstate telecommunications may be required to contribute to the preservation and advancement of universal service if the public interest so requires.<sup>1</sup>

Thus, the only entities that must contribute directly to the universal service funds are "telecommunications carriers" and the only additional entities that may be required to contribute are "other providers of interstate telecommunications."

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<sup>1</sup> 47 U.S.C. §254(d)(emphasis added).

Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

It is clear from both the definitions contained in section 3 of the Act and from the provisions of section 254 itself that the term "telecommunications" does not include "information services." Thus, the Commission correctly determined that an information service provider is not a "telecommunications carrier" or "other provider of interstate telecommunications" that is required, or that could be required, to contribute directly into the universal service funds.

The relevant terms -- information service, telecommunications, telecommunications carrier, and telecommunications service -- are defined in section 3 of the Act. In their entirety, the definitions are as follows:

- (20) **INFORMATION SERVICE.**--The term "information service" means the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing, but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.<sup>2</sup>
- (43) **TELECOMMUNICATIONS.**--The term "telecommunications" means the transmission, between or among point specified by the user, of information of the user's choosing without change in the form or content of the information as sent or received.<sup>3</sup>
- (44) **TELECOMMUNICATIONS CARRIER.**--The term "telecommunications carrier" means any provider of telecommunications services, except the term does not include aggregators of telecommunications services (as defined in section 226). A telecommunications carrier shall be treated as a common carrier under the Act only to the extent that it is

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<sup>2</sup> 47 U.S.C. §153(20).

<sup>3</sup> 47 U.S.C. §153(43).

engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.<sup>4</sup>

- (46) TELECOMMUNICATIONS SERVICE.--The term "telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.<sup>5</sup>

From these definitions the Commission agreed with the Joint Board that "information service providers (ISP) and enhanced service providers are not required to contribute to support mechanisms to the extent they provide such services."<sup>6</sup> The Commission correctly observed that "ISPs alter the format of information through computer processing applications such as protocol conversion and interaction with stored data, while the statutory definition of telecommunications only includes transmissions that do not alter the form or content of the information sent."<sup>7</sup>

Although the Commission is absolutely correct that the nature of information services necessarily alters the form or content of the information transmitted thus removing information service from the definition of telecommunications, there are two additional elements of the statutory definition of telecommunications that distinguish information

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<sup>4</sup> 47 U.S.C. §153(44).

<sup>5</sup> 47 U.S.C. §153(46).

<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, at ¶788 (1997)(Universal Service Order).

<sup>7</sup> Universal Service Order at ¶789.

Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

services from telecommunications services. In order to be telecommunications, the service must transmit information "between or among points specified by the user" and the information transmitted must be of the user's choosing." With respect to information services, neither of these elements apply.

The user of an information service cannot be said to specify the points "between or among" to transmit information. Although the user initiates an on-line session, and thus specifies one point, all other points in an information service transmission are subject to the control of the information service provider or content provider. Similarly, the information transmitted by an information service provider may not be of the user's choosing. This is obviously the case with information retrieval services and interactive on-line games where information is supplied by host computers. It also occurs with the Internet where the owners of Web-sites determine the information to be transmitted to the users, including the transmission of "cookies" to assist the user's computer to better interact with the Web-site. In a similar vein, there is a growing popularity and availability of subscription services on the Web, where, once subscribed to, the information transmitted, and the schedule for transmission, is chosen by the site provider and not the end user.

The user of an information service does not specify the points between or among which the information is transmitted, does not choose the information to be transmitted, and the information is not transmitted without change in the form or content as sent and received. Pursuant to the plain language of the Act, information service is not telecommunications. Thus, the Commission was clearly correct in the Universal Service

Order when, applying that plain language, the Commission determined that information service providers are not "telecommunications carriers" or "other providers of interstate telecommunications" and therefore could not be required to contribute directly to the universal service fund.

In crafting section 254 of the Act, the Congress also recognized the distinction between telecommunications and information services. In setting out the "Universal Service Principles" upon which the Congress required the Joint Board and the Commission to base their policies for the "preservation and advancement of universal service," the Congress twice refers to "access to advanced telecommunications and information services."<sup>8</sup> Later, while discussing advanced services for schools, libraries, and health care providers, the Congress directs the Commission to "enhance . . . access to advanced telecommunications and information services."<sup>9</sup> In the Universal Service order, the Commission notes the significance of Congress referring to telecommunications and information services separately, stating that "[i]f information services were a subset of advanced telecommunications, it would be repetitive to list specifically information services."<sup>10</sup> The Commission correctly concludes that this language "indicates that information services are not inherently telecommunications services."<sup>11</sup>

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<sup>8</sup> 47 U.S.C. §154(b)(2) and (b)(3).

<sup>9</sup> 47 U.S.C. §154(h)(2).

<sup>10</sup> Universal Service Order at ¶789.

<sup>11</sup> Id.

Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

The Commission's interpretation is also consistent with the legislative history of the 1996 Act. The Committee on Conference accepted the Senate's definitions of "telecommunications" and "telecommunications services."<sup>12</sup> The report of the Senate Commerce Committee emphasized that information services are not included within the definition of telecommunications or telecommunications service. With respect to "telecommunications," the Committee Report states that "[t]his definition excludes those services, such as interactive games or shopping services involving interaction with stored information, that are defined as information services."<sup>13</sup> The Committee Report went on to say that the definition of telecommunications services "does not include information services, cable services, or 'wireless' cable services, but does include the transmission, without change in the form or content, of such service."<sup>14</sup> The Senate's explanations of the definitions included in the 1996 Act reinforces the conclusion that the Commission's interpretation of these definitions is wholly consistent with the plain language of the Act.

Information service providers are not "telecommunications carriers," nor are they "other providers of interstate telecommunications services." The Commission acted consistent with the provision of the 1996 Act when it did not include information service providers among those required to contribute directly to the universal service funds.

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<sup>12</sup> S.Conf.Rep. 104-230, 104th Cong. 2d Sess. 116 (1996).

<sup>13</sup> S.Rep. No. 23, 104th Cong. 1st Sess. 17-18 (1995).

<sup>14</sup> Id. at 18.

## II. INFORMATION SERVICE PROVIDERS DO CONTRIBUTE TO UNIVERSAL SERVICE

Although information service providers are not among those that are required to contribute directly to universal service (i.e., telecommunications carriers) or those that may be required to contribute directly to universal service (i.e., other providers of interstate telecommunications services), information providers do contribute to universal service. Information service providers are users of telecommunications services -- heavy users. In order to provide their product, information service providers purchase basic telecommunications services from telecommunications carriers. Those telecommunications carriers are required to report the revenues earned from information service providers and all end users to the Universal Service Administrative Company ("USAC"). These revenues are used to determine the amount of a telecommunications carriers contribution into the universal service funds. Thus, the amount of a telecommunications carrier's direct contribution into the universal service fund is based in part on the amount of revenues earned from information service providers. Telecommunications carriers will recover the cost of their universal service contributions, either through increases in rates or through separate charges, from their end users, including information service providers.<sup>15</sup> Thus, even though they do

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<sup>15</sup> Thus, for example, when UUNET purchases network capacity, a basic telecommunications service, from WorldCom Technologies, Inc., WorldCom reports those to the USAC as revenues earned from an end user. The Commission and USAC use WorldCom's total end user revenues to determine the amount of WorldCom's universal service contribution. WorldCom, in turn, assesses its end users, including UUNET, a charge to recover its universal service costs. For the first quarter of 1998, this charge is 4.41% of an end user's gross invoice amount derived from interstate or international telecommunications service.

Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

not contribute directly into the universal funds, information service providers will make substantial indirect contributions.

If, contrary to the Act, information service providers were required to contribute directly to universal service, telecommunications carriers would remove the revenues earned from ISPs from the non-contributor revenues they report to the Universal Service Fund Administrator. Telecommunications carriers would no longer contribute to universal service based on these revenues. All that really would have changed would be the collection agent for the federally-mandated fund.

The Commission's decision not to include information service providers as direct contributors to the universal service funds will have no impact on the sufficiency of universal service funding. Under current procedures, the total size of the universal service fund is established by the Commission and the USAC. As this amount is adjusted on a quarterly basis, the contributions required from telecommunications carriers and designated other providers of telecommunications may change but will always be sufficient for universal service needs. In turn, the amounts recovered by direct contributors from end users will vary from quarter to quarter but will not affect the sufficiency of universal service funding.

### **III. CONCLUSION**

The Commission correctly interpreted the plain language of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, with respect to universal service contributions from information service providers, including the providers of Internet services. Information service providers are not "telecommunications

Comments of WorldCom, Inc., CC Docket No. 96-45 (Report to Congress), January 26, 1998

carriers" nor are they "other providers of interstate telecommunications." The Commission appropriately did not require information service providers to contribute directly to universal service.

As a consequence of this Commission decision, however, information service providers are to be treated, for universal service purposes, as an end user of telecommunications services. As such, information service providers will be contributing to universal service indirectly as direct contributors pass their universal costs through to end users. Information service providers will be contributing to universal service.

The sufficiency of universal service funding is in no way threatened by the Commission's application of the plain language of the Act.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Bruce A. Bartolain, hereby certify that on this 26th day of January, 1998, true copies of the foregoing "COMMENTS OF WORLDCOM, INC." were hand delivered to each of the parties listed below.



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