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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Petitions for Rulemaking	)	
of the Consumer Federation of America,	)	RM-9210
International Communications Association,	)	
and National Retail Federation	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review	)	CC Docket No. 94-1
for Local Exchange Carriers	)	
	)	
Transport Rate Structure	)	CC Docket No. 91-213
and Pricing	)	
	)	
End User Common Line Charges	)	CC Docket No. 95-72

COMMENTS OF WORLDCOM, INC.

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January 30, 1998

SUMMARY

WorldCom strongly supports the CFA/ICA/NRF Petition. The Commission must promptly initiate a rulemaking proceeding to determine what prescriptive measures need to be taken to drive the ILECs' interstate access charges closer to forward-looking economic cost.

WorldCom originally filed detailed comments supporting a market-based approach to access reform, an approach similar to the one that was ultimately selected by the FCC in its Access Charge Reform Order. However, the Commission's adoption of a market-based approach was explicitly premised on the availability of near-term, widespread competition in the local exchange that would incent the ILECs to lower their interstate access rates. Unfortunately, the ILECs' continuing aggressive resistance to opening their markets to competition has rendered the market-based approach all but worthless. Over the past year alone, the ILECs have: (1) challenged numerous state arbitration decisions; (2) refused to pay reciprocal compensation for terminating traffic to the CLECs' ISP customers; (3) appealed major aspects of most FCC decisions setting competition policy; (4) waged a political "war of attrition" by filing patently-deficient Section 271 applications and then complaining about the only rational result; (5) sought the 8th Circuit's assistance in destroying Congress' Section 251(c)(3) entry vehicle; (6) found a judge willing to declare Sections 271 through 274 of the 1996 Act unconstitutional; and (7) generally slow-rolled the implementation of local competition, including failing to provide OSS, UNEs, and rates for interconnection in accordance with the 1996 Act.

Because the ILECs have succeeded thus far in eviscerating the very foundation of the market-based approach adopted in the Access Charge Reform Order, WorldCom urges the Commission to initiate a rulemaking proceeding proposing to require the ILECs to establish their interstate access charges based on forward-looking economic cost. Enough is enough.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files in support of the petition for rulemaking ("Petition") filed on December 9, 1997 by Consumer Federation of America, International Communications Association, and National Retail Federation.[1] As requested by the petitioners, WorldCom urges the Commission to "initiate a rulemaking addressing the immediate prescription of interstate access rates to cost-based levels."[2]

I. INTRODUCTION

WorldCom, Inc. is a premier global telecommunications company. Through its wholly-owned operations WorldCom Technologies, Inc., MFS Telecom, Inc., WorldCom

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[1] On December 31, 1997, the Commission placed the Petition on public notice for comments. Public Notice, Report No. 2246, released December 31, 1997.

[2] Petition at 2.

Network Services (d/b/a WilTel Network Services), and UUNET Technologies, Inc., the new WorldCom provides its business and residential customers with a full range of facilities-based and fully integrated local, long distance, and international telecommunications and information services. In particular, WorldCom currently is the fourth largest facilities-based interexchange carrier ("IXC") in the United States, as well as a significant facilities-based competitive local exchange carrier ("CLEC") and Internet service provider ("ISP"). As a company situated at the center of the rapidly-developing convergence of these and other communications markets, WorldCom has a truly unique perspective on telecommunications policy issues.

In their Joint Petition, CFA, ICA, and NRF state that the Commission's Access Charge Reform Order[3] recognized that interstate access charges are excessive, and are harming telephone consumers, but that the anticipated development of local competition would be sufficient to drive those rates down. The Petition explains, however, that, for a variety of reasons, "meaningful levels of local telephone service competition will not develop in the foreseeable future."[4] As a result, the petitioners ask the Commission to revisit its original decision by initiating a rulemaking "to establish the proper method for accomplishing a swift prescription of interstate access charges to cost-based levels which eventually should be based on forward-looking economic cost."[5]

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[3] See In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 97-158, released May 16, 1997 review pending sub nom. Southwestern Bell Telephone Co. v. FCC, Nos. 97-2866 et al. (8th Cir.) ("Access Charge Reform Order").

[4] Petition at 2.

[5] Petition at 9 (emphasis in original).

WorldCom supports the prompt initiation of a rulemaking proceeding to determine what prescriptive measures must be taken to drive interstate access charges closer to forward-looking economic cost. While WorldCom filed comments in CC Docket No 96-262 supporting a market-based approach similar to the one ultimately adopted by the Commission in its Access Charge Reform Order, both WorldCom's support and the Commission's order were premised on the availability of near-term, widespread competition in the local exchange that would incent the ILECs to lower their interstate access rates. As the Petition points out, however, such competition has been dealt a serious blow by two decisions of the U.S. Court of Appeals for the Eighth Circuit. Other intervening events, such as the (so-far successful) constitutional challenge by several RBOCs, and evidence of continuing resistance by the ILECs in opening up their markets to competition, have made it obvious that the very foundation of the market-based approach adopted in the Access Reform Order is no longer valid. WorldCom urges the Commission to initiate expeditiously a rulemaking proceeding to mandate a process whereby ILEC access charges must be established based on forward-looking economic cost.

II. THE COMMISSION MUST REVISIT ITS NOW-BASELESS "MARKET-BASED" APPROACH TO REDUCING INTERSTATE ACCESS RATES

A. The Commission's Market-Based Access Reform Approach, And WorldCom's Original Support For That Approach, Were Predicated On Competitive Forces Exerting Downward Pressure On The ILECs' Access Rates

In the relatively few months since the Commission issued its Access Charge Reform Order, much has happened in the industry to fundamentally challenge the relatively optimistic assumptions and predictions that provided the order with much of its logical underpinning. To understand how those rosy assumptions and predictions have all but vanished,

it is helpful to briefly review the key events leading up to the filing of the Petition.

In December 1996, on the heels of its groundbreaking but legally enjoined Local Competition Order,[6] the Commission issued a Notice of Proposed Rulemaking seeking comments on a wide range of issues concerning substantial reform of the interstate access charge regime.[7] In particular, the Commission proposed two possible approaches for "addressing claims that existing access charges are excessive," and "establishing a transition to access charges that more closely reflect economic costs...."[8] One approach, the so-called "market-based approach," would rely on "potential and actual competition from new facilities-based providers and entrants purchasing unbundled elements to drive prices for interstate access services toward economic cost."[9] The second, prescriptive approach, would require the ILECs to lower access rates where "[m]arketplace forces alone may not be sufficient to drive access rates to forward-looking costs."[10] The Commission discussed at some length the many reasons why access reform was necessary to move access rates to forward-looking economic cost,[11]

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[6] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, FCC 96-325, issued August 8, 1996 ("Local Competition Order").

[7] In the Matter of Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, FCC 97-158, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, released May 16, 1997 ("Access Charge Reform Notice").

[8] Access Charge Reform Notice at para. 14.

[9] Id.

[10] Id. at para. 16.

[11] Id. at paras. 41-49.

observing in particular that "the availability of unbundled network elements at their forward-looking economic cost" would allow IXCs to avoid paying access charges and "appear to reduce the risk of a price squeeze" by the ILECs.[12]

WorldCom filed initial and reply comments endorsing the Commission's proposed long-term goal of "a future in which competitive market forces may replace regulation of interstate access services."[13] That support for a market-based approach was tempered, however, by concerns that the NPRM overstated the potential for access competition, and underappreciated the fact that the ILECs' dominance will continue until local competition is well established. WorldCom observed that "if the ILECs can stall local competition, they can block the only means by which their access monopoly can be reduced."[14]

In particular, WorldCom showed how the unfettered availability of unbundled network elements ("UNEs") under Section 251(c)(3) of the Telecommunications Act of 1996, including the ability to combine those UNEs in the manner laid out in the Local Competition Order, is a crucial means of creating local exchange and exchange access competition that will incent the ILECs to lower their access charges closer to economic cost. WorldCom's comments pointed out that the resale of ILEC retail services alone does not create any incentives to reduce access charges; in particular, the reselling carrier "is still required to pay access charges to the ILEC for long distance."[15] As WorldCom summarized its views:

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[12] Id. at para. 48.

[13] WorldCom Initial Comments at 9.

[14] Id. at 11.

[15] Id. at 3.

> Thus, this proceeding is heavily dependent on successful implementation of Section 251 and 252 of the 1996 Act. Through use of unbundled elements in either disaggregated or combined "platform" configurations, ILEC competitors have the possibility to reduce their dependence on ILEC access services ... [so that] competitive pressure on most access service revenue is possible. Conversely, if ILECs deny competitors economically efficient use of their network elements -- through discrimination, excessive pricing, inadequate operational support, or sheer resistance to offering elements in a combined "platform" configuration -- then "access reform" will fail, and the ILEC access monopoly will remain whole.[16]

WorldCom elaborated that the ILECs' attempt in the 8th Circuit to contest the ability of new entrants to use the UNE platform "goes to the heart of the access reform issue, for if competitors cannot use combined ILEC elements to provide both end user and carrier access services, the basic predicate for market-based access reform is eliminated."[17] For that reason, WorldCom suggested a prescriptive "backstop" which would require the Commission to prescribe access rates based on forward-looking costs should an ILEC fail to fully satisfy the local competition requirements of the 1996 Act.[18]

In its reply comments, WorldCom reiterated that "the possibility, let alone existence, of local competition is inextricably related to a market-based access reform system."[19] While continuing to support a market-based approach to access reform, WorldCom indicated that a re-initialization of access rates at cost-based levels "would be necessary if the

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[16] Id. at 5-6.

[17] Id. at 6 n.3.

[18] Id. at 74.

[19] WorldCom Reply Comments at 2.

promise of the 1996 Act is broken through ILEC resistance or unexpected court action."[20]

The Commission's Access Charge Reform Order adopted much of WorldCom's reasoning on the need for cost-based access rates, acknowledging that, "[t]o fulfill Congress' pro-competitive mandate, access charges should ultimately reflect rates that would exist in a competitive market," and that such rates "best serve the public interest."[21] Specifically, the Commission endorsed "a market-based approach that relies on competition itself to drive access charges down to forward-looking costs" and "economically efficient levels."[22] The Commission declined to require cost-based rates immediately because "accurate forward-looking cost models are not available at the present time to determine the economic cost of providing access service."[23] The Commission also stated concerns that "any attempt to move immediately to competitive prices for the remaining services would require dramatic cuts in access charges for some carriers," which ostensibly could disrupt some ILECs' business operations.[24]

The Commission indicated it was "confident" that its new policies would develop "workable competition over the next several years in many cases," and "we would then expect that access price levels to be driven to competitive levels."[25] Where competition has not emerged, however, "we reserve the right to adjust rates in the future to bring them into line with

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[20] Id. at 3.

[21] Access Charge Reform Order at para. 42.

[22] Id. at para. 44.

[23] Id. at 45.

[24] Id. at para. 46.

[25] Id. at para. 48.

forward-looking costs."[26] To support this prescriptive "backstop," the Commission required the price-cap ILECs to submit forward-looking cost studies of their services no later than February 8, 2001, "and sooner if we determine that competition is not developing sufficiently for the market-based approach to work."[27]

Thus, in agreement with WorldCom and other commenting parties, the Access Charge Reform Order stipulated that access rates currently are too high and should be driven down toward their forward-looking cost. Further, the Commission chose the market-based approach only with the express expectation that competition would develop in the short-term to drive access rates down; should such competition fail to develop, the Commission indicated it would not hesitate to prescribe a means of compelling the ILECs to lower their rates to forward-looking cost.

B. The Commission's Market-Based Approach, And Promises Of Local Competition, Have Been Thoroughly Undermined By The ILECs

Even while the Commission was debating the merits of the market-based approach, its factual underpinning was already in considerable trouble. At the time the order was issued, the 8th Circuit had issued a stay temporarily preventing the Commission from implementing crucial regulations, including its pricing and most-favored-nation rules.[28] Subsequently, the 8th Circuit issued its decision permanently removing the pricing of UNEs,

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[26] Id.

[27] Id.

[28] Iowa Utilities Board v. FCC, 109 F.3d 418 (8th Cir. Oct. 15, 1996).

resale, transport, and termination from the FCC's jurisdiction.[29] The Court also found that the FCC's rules implementing Section 251 were not binding on the states, and vacated six separate rule provisions. Further, the Court invalidated what it termed the FCC's "pick and choose" rule, which allows new entrants to obtain interconnection, network elements, or wholesale services under the terms and conditions set forth in any approved agreement, without subscribing to the agreement as a whole.

The 8th Circuit's rehearing decision was equally damaging.[30] The court vacated the FCC rule that provides that "an incumbent LEC shall not separate requested network elements" that are already combined within the ILEC's network for the ILEC's use.[31] The 8th Circuit held that the ILECs would not be required to provide the elements on an unbundled basis unless the ILECs ripped apart the existing combinations. Over three months after that rehearing decision was issued, the damaging fall-out is still being experienced in the local market. As only one example, following the 8th Circuit's decision, New York Telephone promptly withdrew a prior tariff filing that purportedly provided UNEs in a platform configuration.[32] Other ILECs quickly made similar recisions of tariff and contract provisions concerning the UNE platform.

As indicated in its previous comments in this proceeding, WorldCom strongly supported nearly every aspect of the Commission's Local Competition Order. In particular,

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[29] See, e.g., Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir. July 18, 1997).

[30] Iowa Utilities Board v. FCC, order on rehearing, No. 96-3321 (8th Cir. Oct. 14, 1997).

[31] 47 C.F.R. Section 51.315(b).

[32] See N.Y.P.S.C. No. 97-C-1963, Ordinary Tariff Filing of New York Telephone Co. to Effect the Withdrawal of Certain Combinations of Unbundled Network Elements, P.S.C. Tariff 916 (October 29, 1997).

WorldCom long has viewed the FCC's eminently reasonable interpretation and implementation of Section 251(c)(3) of the Act as a critical linchpin to the development of full-scale competition in the local exchange and exchange access markets. With the 8th Circuit's evisceration of the FCC's implementing rules, however, the promise of such competition has been snuffed out. Not surprisingly, the Commission itself does not disagree with this bleak assessment. In its initial brief in the 8th Circuit's pending review of the Access Charge Reform Order, the Commission stated that the 8th Circuit's two decisions were erroneous "and may significantly inhibit the development of local competition...."[33]

The 8th Circuit's interconnection decisions currently are subject to review by the Supreme Court.[34] Although the Supreme Court has agreed to hear the case during its next term (with resolution perhaps a year or more away), it is unclear whether it ultimately will overturn some or all of the 8th Circuit's interconnection decision. Whatever the outcome of the High Court's review, however, there are other compelling reasons for the FCC to adopt a prescriptive approach to setting interstate access rates.

Armed with rows of lawyers and reams of paper, the ILECs are now busy in virtually every venue in the country attempting to undo many critical components of the 1996 Act. As a newly-released paper by the Consumer Federation of America demonstrates, the ILECs are using all conceivable tools at their disposal -- legal, regulatory, or otherwise -- to

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[33] Brief for Federal Communications Commission, Southwestern Bell Telephone Co. et al v. FCC, No. 97-2618 (8th Cir.), filed December 16, 1997, at 98 ("FCC Access Reform Brief").

[34] Iowa Utilities Board v. FCC, petitions for writ of certiorari pending, AT&T et al v. Iowa Utilities Board, Nos. 97-826 et al.

prevent the onset of local competition.[35] After thoroughly reviewing analyses by numerous federal and state agencies, CFA concludes that "currently there is virtually no meaningful competition for local telephone service, especially residential service, because the Baby Bells have created barriers to local competition."[36] CFA elaborates that "the RBOCs simply have refused to implement policies which would allow potential competitors to have access to the local network on rates, terms, and conditions that are just, reasonable and non-discriminatory."[37] This ILEC intransigence is evidenced in several different fora.

First, the ILECs are challenging numerous state arbitration decisions, and seeking to reopen current ones.[38] Among the issues the ILECs contest is the applicability of interconnection agreements generally, and reciprocal compensation fees specifically, to local traffic terminating to the CLEC's customer where that customer happens to be an information service provider. SBC's wholly unsupported views -- that traffic to ISPs is wholly interstate in nature, and therefore not subject to reciprocal compensation -- have been rejected in about a dozen different jurisdictions, but unfortunately were adopted recently in a single anomalous

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[35] Consumer Federation of America, Stonewalling Local Competition: The Baby Bell Strategy To Subvert the Telecommunications Act of 1996 (January 1998) ("CFA Competition Paper").

[36] CFA Competition Paper at ii.

[37] Id. at iii.

[38] These actions can be monitored in a regular column in X-change magazine entitled "Status of State Local Competition Proceedings." The November issue focuses on the eastern half of the country, and shows that ILECs so far have appealed state decisions in Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Pennsylvania, Virginia, and Wisconsin. X-Change, November 1997 (vol. 2, no. 13), at pp. 92-103.

ruling by an arbitrator in Texas.[39] Of course, this type of decision, if allowed to stand, will only further lessen the CLECs' ability to compete head-on with the ILECs to serve local customers.

Second, the ILECs are challenging many of the FCC's major policymaking decisions, from access charge reform to shared transport, from price caps to universal service, from non-accounting safeguards to local number portability.[40] While some IXCs and CLECs have appealed discrete portions of the FCC's decisions, only the ILECs have sought to overturn the fundamental elements of those decisions.

Third, another tactic employed by the RBOCs is to file patently deficient Section 271 applications, and then challenge the Commission's denials, both in court and in the press. SBC has already appealed the Commission's denial of its Oklahoma application, while BellSouth recently announced its own appeal of the Commission's decision concerning South Carolina.[41] Other similarly flawed filings are sure to follow, in a thinly-veiled and politicized "war of attrition" against the Commission's limited resources.

Relatedly, several ILECs filed a mandamus action with the 8th Circuit in an attempt to prevent the Commission from considering the RBOCs' pricing of interconnection in

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[39] Petition of Waller Creek Communications, Inc., for Arbitration with Southwestern Bell Telephone Company, Docket No. 17922, Public Utility Commission of Texas, Arbitration Award Relating to ISP Compensation Issues, issued January 7, 1998.

[40] See, e.g., SBC v. FCC (8th Cir. 97-2618) (access charge reform); SBC v. FCC (8th Cir. 97-3389) (shared transport); USTA v. FCC (D.C. Cir. 97-1469) (price caps); Texas OPUC v. FCC (5th Cir. 97-60421) (universal service); Bell Atlantic v. FCC, No. 97-1432 (D.C. Cir. Dec. 23, 1997) (non-accounting safeguards); US West v. FCC (10th Cir. 97-9518) (local number portability).

[41] SBC v. FCC (D.C. Cir. 97-1425) (Oklahoma Section 271), filed July 3 1997; BellSouth v. FCC (D.C. Cir. 98-___) (South Carolina Section 271), filed January 13, 1998.

its Section 271 decisions. On January 22, the 8th Circuit issued a writ of mandamus forbidding the Commission from applying its vacated pricing rules in any proceeding, including future consideration of Section 271 applications.[42] Obviously this decision, if not overturned, will profoundly affect the FCC's ability to condition the RBOCs' long distance entry on their provision of interconnection, unbundled elements, resale, and transport and termination of local services at nondiscriminatory, cost-based rates.

Fourth, the ILECs are challenging the very constitutionality of the 1996 Act itself. On New Year's Eve, at the behest of SBC, District Court Judge Joe Kendall issued a decision striking down Sections 271 through 275 of the Act as an unconstitutional "bill of attainder" against the RBOCs.[43] While a stay request is pending, and further action in the 5th Circuit a certainty, the finality of this latest ILEC assault on the Act is not yet decided. Nonetheless, at the very least, SBC has succeeded in shifting the terms of debate in its favor, and at most has succeeded in destroying the only significant incentive for the RBOCs to comply with the other pro-competitive provisions of the Act.

Finally, even aside from the endless legal and regulatory wrangling, the ILECs have become adept at slow-rolling their implementation of those policies and requirements they decide to obey. As one example, over one full year after the FCC's mandatory deadline for the ILECs to provide nondiscriminatory access to their operational support systems ("OSS"),[44] no ILEC has yet formally complied with that mandate. Further, as described above, following the

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[42] Iowa Utilities Board v. FCC, No. 96-3321 (8th Cir. January 22, 1998).

[43] SBC v. FCC, Civil No. 7-97-CV-163-X) (N.D. Texas Dec. 31, 1997) (constitutionality of Sections 271-275 of 1996 Act).

[44] 47 C.F.R. Section 51.319(f)(2); see Local Competition Order at para. 525.

8th Circuit's rehearing decision vacating Rule 51.315(b), the ILECs pulled back from their previous commitments to establish the UNE platform. Moreover, final, cost-based interconnection rates remain a rarity. Indeed, even where Bell Atlantic voluntarily agreed to abide by certain procompetitive conditions as set forth in the FCC's order approving the Bell Atlantic-NYNEX merger, there is considerable evidence that Bell Atlantic already has reneged on its commitments.[45]

In short, the record shows unequivocally that the ILECs are trying to get away with doing as little as possible to let go of their monopolies and promote competition. While this is a natural business reaction, and should not be entirely unexpected, most parties -- including the Commission -- undoubtedly were unprepared for the relative success of the ILECs' various legal and regulatory challenges, not to mention the ferocity of their resistance to assisting the growth of competition. With Judge Kendall's controversial decision in particular, the "carrot and stick" approach envisioned by Congress when it enacted Sections 271 through 275 of the Act is in serious jeopardy. In short, by successfully gaming the system, the ILECs have preserved their monopolies and thwarted would-be competitors.

Given the continuing, and accelerating, challenges by the ILECs, in concert with their slow-roll approach to dealing with would-be new competitors, there is no competitive pressure available now to force down access rates. In particular, there is no realistic wide scale competitive entry strategy available under the Act to place market-based pressure on access rates. Facilities-based competition requires enormous amounts of time and resources, and is in

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[45] See Formal Complaint of MCI Communications Corp. v. Bell Atlantic Corp. (File No. E-98-12), filed December 22, 1997; Formal Complaint of AT&T Corp. v. Bell Atlantic Corp. (File No. E-98-05), filed November 5, 1997.

any event not a viable near-term means of serving most residential consumers. As indicated above, the use of UNEs as an entry vehicle has been severely damaged by the 8th Circuit's decision. The final option, resale, also offers no opportunity for true competition. First, there is little room for true local competition where the reseller essentially must mirror the retail rates, terms, conditions, and service and geographic configurations of the incumbent LEC. Moreover, there is no exchange access competition possible where the new entrant's end user customers are forced to pay interstate access charges to the ILEC. These two infirmities, together with the relatively low wholesale discounts, makes it truly impossible for resale to generate genuine local and access competition.

Thus, despite initial hopes for the "market-based" approach to setting interstate access charges, the harsh reality is that ILEC challenges and intransigence have completely undercut the effectiveness of that approach. With the resulting apparent failure of all three of the Act's entry vehicles to promote near-term competition in the local market, the Commission must move now to set access rates at levels approaching their forward-looking economic cost.

III. THE COMMISSION MUST TAKE IMMEDIATE ACTION TO PRESCRIBE SIGNIFICANT DECREASES IN INTERSTATE ACCESS CHARGES, BASED ON THEIR FORWARD-LOOKING ECONOMIC COST

As indicated above, the ILECs' varying attacks on the 1996 Act and the FCC's implementation rules threaten to undercut the core of the Act, and this Commission's concomitant policymaking authority. Should the ILECs succeed in even a few of those legal, regulatory, and political challenges, local competition will only be further delayed and denied, to the ultimate detriment of consumers across the country. Whatever the outcome of those

challenges, however, the FCC's various regulatory tools under Title II of the Communications Act of 1934, as amended, remain untarnished. WorldCom urges the Commission to do all that is necessary -- including prescribing interstate access rates -- to protect and advance the competitive promises inherent in the 1996 Act.

Under Title II of the Communications Act, the Commission has unassailable jurisdiction over the ILECs' interstate access charges, and the authority to prescribe those rates. Section 201(b) of the Act requires that all interstate rates charged by common carriers under the Commission's jurisdiction must be "just and reasonable."[46] In its access reform brief, the Commission, while disagreeing that Section 201(b) necessarily requires TSLRIC-based access rates, acknowledged that this provision "is sufficiently elastic to authorize the agency to adopt the forward-looking economic cost standard...."[47] Relevant caselaw certainly supports the view that the Commission has "broad discretion" in "'selecting methods ... to make and oversee rates.'"[48] Indeed, the D.C. Circuit has indicated that they it will show "considerable deference" to the "FCC's judgment about the best regulatory tools to employ in a particular situation...."[49] Thus, the Commission's jurisdiction and authority to prescribe interstate access rates is unquestioned.

The Commission must move now to set access rates at levels that will approach

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[46] 47 U.S.C. Section 201(b) (1996).

[47] FCC Access Reform Appeal Brief at 87.

[48] MCI Telecommunications Corp. v. FCC, 675 F.2d 408, 413 (D.C. Cir. 1982) (quoting Aeronautical Radio v. FCC, 642 F.2d 1221, 1228 (D.C. Cir. 1980), cert. denied, 451 U.S. 920 (1981)).

[49] See Western Union International v. FCC, 804 F.2d 1280, 1292 (D.C. Cir. 1986).

TSLRIC. The Commission's access reform brief claimed that "a prescriptive plan would not be feasible at the present time, even if the agency believed such a plan were preferable," solely because of "the current absence of reliable forward-looking cost models for interstate access services...."[50] WorldCom does not believe that the Commission, and the public interest, need wait for the development of final costing models for interstate access. In one possible approach, the Commission could require the ILECs to develop such cost studies and present them with their July 1, 1998 interstate access tariffs. Those tariff filings could reflect a certain defined rate decrease -- say, of 15 percent -- that target specific areas, such as shared transport, tandem switching, and the Transport Interconnection Charge ("TIC"), which currently are set far above actual cost.[51] When the cost models are completed, parties would be given an opportunity to review and comment on them, before another round of decreases is mandated beginning January 1, 1999.

The Commission cannot afford to wait. Every day that the ILECs' outrageous access charges remain in effect, long distance prices are artificially inflated and consumers are prevented from making efficient use of the telecommunications infrastructure. From the standpoint of developing local competition, excessive access rates only erect a roadblock that prevents consumers from enjoying competitive local choices, and also guarantee the ILECs large amounts of access revenue protected from even the theoretical possibility of competitive pressure.[52] In the absence of viable entry vehicles, above-cost access rates only stifle local and

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[50] FCC Access Reform Brief at 98.

[51] WorldCom Initial Comments at 48-56, 59-72.

[52] WorldCom Initial Comments at 4.

integrated full service competition.

The Commission's access reform brief informed the 8th Circuit that, choosing between a market-based approach and a prescriptive approach to reducing access rates, it believed that "prescribing rates is a second best solution."[53] WorldCom does not necessarily disagree with that assessment. However, with the first best solution -- a market-based approach -- now seriously disabled, and Congress' vision of vigorous local competition unfulfilled, the Commission should not hesitate to revisit the unsolved access charge problem. There is still time to act in the best interests of all American consumers.

IV. CONCLUSION

The Commission should act immediately on the Petition by initiating a rulemaking proceeding that proposes to prescribe interstate access rates to cost-based levels.

Respectfully submitted,

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[53] FCC Access Reform Brief at 97.

CERTIFICATE OF SERVICE

I, Richard S. Whitt, hereby certify that I have this 30th day of January, 1998, sent a copy of the foregoing "Comments of WorldCom, Inc." by first-class mail, postage prepaid, or hand delivery, to the following:

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