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

In the Matter of	)	
	)	
Computer III Further Remand Proceedings:	)	
Bell Operating Company	)	CC Docket No. 95-20
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS OF WORLDCOM, INC.

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March 27, 1998

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SUMMARY

WorldCom believes that the Commission, in revising its Computer III rules, and Open Network Architecture and Comparably Efficient Interconnection requirements, should take a brief step back to assess the true value of those programs, and determine what additional actions are necessary to ensure their success. In WorldCom's view, ONA never became what was originally promised -- a platform for ESPs to use advanced capabilities on an unbundled basis to provide new services to the American consumer. Instead, the program rapidly degenerated into a pretext for the RBOCs to provide enhanced services on an integrated basis. WorldCom believes that two primary problems with ONA -- the lack of fundamental unbundling, and the excessive prices for ONA capabilities -- should be corrected by creating a cost-based, truly unbundled, and entirely optional federal access arrangement designed specifically for ESPs.

WorldCom strenuously objects to a suggestion in the Further Notice that pending CEI matters simply be dismissed without final decision. In particular, WorldCom calls on the Common Carrier Bureau to act promptly on an MFS petition for reconsideration -- languishing for over twenty months now -- that challenges an earlier Bureau order granting Bell Atlantic's CEI plan to provide Internet access service. WorldCom has demonstrated, conclusively and repeatedly, that Bell Atlantic's CEI plan violates the Telecommunications Act of 1996, and FCC rules, by offering bundled, in-region interLATA information services without receiving Section 271 authorization, or utilizing a Section 272 separate subsidiary. The Commission cannot, and should not, simply dismiss this or any other pending CEI proceeding without first issuing a final decision.

Finally, WorldCom urges the Commission to reject the four petitions filed by Bell Atlantic, US West, Ameritech, and the Alliance for Public Technology seeking authority to

provide packet-switched services, technologies, and facilities unfettered by virtually all applicable legal and regulatory mandates. The RBOCs' proposed balance between reducing regulation and preserving safeguards is so hopelessly skewed that it must be rejected out-of-hand as contrary to the law, the public interest, and plain common sense.

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COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files its comments concerning the Further Notice of Proposed Rulemaking ("Further Notice") issued by the Commission in the above-captioned proceeding on January 30, 1998.

I. INTRODUCTION

WorldCom is a leading global telecommunications company, providing its business and residential customers with a full range of facilities-based and integrated local, long distance, and international telecommunications and information services. WorldCom is the nation's fourth largest facilities-based interexchange carrier ("IXC"), as well as a significant facilities-based competitive local exchange carrier ("CLEC") and Internet service provider ("ISP").

In its Further Notice, the Commission asks for parties to address "issues raised by the interplay between the safeguards and terminology established in the 1996 Act and the Computer III regime."[1] The Commission adopts several tentative conclusions, including (1) applying nonstructural safeguards to the provision of intraLATA information services by the

[1] Further Notice at para. 5.

Regional Bell Operating Companies ("RBOCs"), and (2) eliminating the requirement that the RBOCs file Comparably Efficient Interconnection ("CEI") plans in order to provide intraLATA information services.[2] The Further Notice also seeks comments on whether its Open Network Architecture ("ONA") requirements have been successful in providing ISPs with access to needed RBOC services, and whether the Commission should use its general rulemaking authority to extend to ISPs "some or all section 251-type unbundling rights, which the Commission previously concluded was not required by section 251 of the Act."[3]

WorldCom will not attempt here a comprehensive treatment of the FCC's current ONA and CEI requirements. Instead, WorldCom will briefly discuss several aspects of the Commission's rules that should be revised in some fashion in order to achieve the kind of success that has always eluded the ONA regime. In addition, under separate cover, CompuServe Network Services ("CNS"), a wholly-owned subsidiary of WorldCom, will file initial comments on two other discrete issues presented for discussion in the Further Notice.

II. THE COMMISSION, IN REVISING OR ELIMINATING ITS COMPUTER III RULES, AND ONA AND CEI REQUIREMENTS, MUST ENSURE THAT CERTAIN FUNDAMENTALS ARE NOT OVERLOOKED

WorldCom has not been an active player in the Commission's interrelated Computer III, ONA, and CEI proceedings, primarily because it has seen only limited usefulness

[2] Id. at para. 7.

[3] Id.

in the way those regulatory programs have developed. Nonetheless, given the scope of the issues presented for comment in the Further Notice, WorldCom is compelled to briefly offer its views on several important issues now facing the Commission.

A. The Commission Should Explore Why ONA Has Not Been A Greater Success

Despite the great fanfare and drama that accompanied the Commission's Computer III proceeding, and then the subsequent ONA and CEI proceedings, it is apparent to WorldCom that these programs have not met with resounding success. From WorldCom's perspective, very few ESPs are even bothering to utilize the federal ONA program at all, or at most do so in a very limited way. Indeed, it is apparent now that ONA, rather than offering diverse ways for ESPs to use advanced capabilities on an unbundled basis to provide exciting new services to the American consumer, instead has degenerated into a poor excuse for the RBOCs to provide enhanced services on an integrated basis.

WorldCom believes that much of the problem lies with the way the Commission allowed the RBOCs to implement ONA. Between the lack of fundamental unbundling, and the excessive prices for ONA capabilities, ESPs find little in ONA that is attractive or useful. In particular, the Basic Serving Arrangement ("BSA") was established as a supposedly unbundled substitute for Feature Group service. Unfortunately, the Commission largely retained the bundled aspect of Feature Group service when it adopted the RBOCs' ONA proposals. In the early 1990s, ESPs asked the Commission to allow them to take federally-tariffed access

arrangements that were cost-based and designed for the unique needs of ESPs. By agreeing to consider taking interstate access arrangements for the first time, ESPs were hoping to be able to take advantage of advanced federally-tariffed network functionalities being offered by the RBOCs under the rubric of ONA. In a 1991 decision, the Commission decided otherwise, finding that a cost-based interstate access arrangement designed for ESPs would be "inconsistent with our current rate structure," and that there was no reason to deviate from that rate structure "for one group of access users."[4] As a result, the so-called ESP "exemption" from interstate access charges remains in place to this day.

The Further Notice correctly observes that the unbundling requirements imposed by Section 251 of the 1996 Act, and the Commission's own implementing rules, "are essentially equivalent" to the "fundamental unbundling" requirements proposed by a number of parties in the early phases of the ONA proceeding.[5] These parties sought permission to receive unbundled loops, switching functions, interoffice transmission, and signalling. Again, as in the case of BSA pricing, the Commission rejected these proposals, calling them "premature" in 1988. The important precedent of Section 251 of the 1996 Act gives the Commission an opportunity, a full ten years later, to determine that fundamental unbundling now is necessary.

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[4] Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, 6 FCC Rcd 4524, 4535 (1991).

[5] Further Notice at para. 31.

Thus, in WorldCom's view, when the Commission adopted ONA, it mistakenly retained both the bundled aspect of Feature Group service and all the costs associated with the bundled features. In essence, a BSA became synonymous with Feature Group service, and would cost just as much. Obviously no ESP with any business sense would willingly abandon its use of state-tariffed business lines in order to pay the excessive access charge rates that came with using a bundled federal access arrangement.

In its comments to the Commission last year in another proceeding, WorldCom described how ESPs need a new, cost-based ONA regime designed specifically for ESPs.[6] WorldCom observed there that, rather than imposing on ESPs interstate access charges in their current, subsidy-ridden form, the Commission should bring those charges down to their economic cost.[7] As part of this process, WorldCom urged the Commission to create a cost-based federal interconnection arrangement that ESPs could choose to utilize. This would allow ESPs, for the first time, to gain access to an array of advanced, federally-tariffed network features and functionalities that they have sought for many years. Any federal access arrangement that is created for data services must be unbundled to the maximum extent possible, stripped of all superfluous features and functionalities not desired or used by ESPs.[8] It also

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[6] Comments of WorldCom, CC Docket No. 96-263, filed March 24, 1997 ("WorldCom ISP NOI Comments").

[7] WorldCom ISP NOI Comments at 11-13.

[8] In fact, rather than maintain separate unbundling requirements for CLECs and ESPs, the Commission should utilize Section 251(c)(3) of the 1996 Act as the conceptual and practical basis for unbundling federal access arrangements for ESPs.

must include flat-rated charges for all non-traffic sensitive facilities. Nothing in WorldCom's proposal would require ESPs to alter their current network arrangements, or abandon their use of state-tariffed business lines.[9]

WorldCom urges the Commission to reopen the record on ONA to determine how and why it is not the success it can and should be. WorldCom believes that, by establishing the proper pricing and level of unbundling, based on the singular example of Section 251(c)(3) of the 1996 Act, the Commission can create a federal interconnection alternative that ESPs will flock to use.

B. Pending CEI Proceedings -- Including WorldCom's Petition to Reconsider Bell Atlantic's Illegal Internet Access Offering -- Must Be Decided Immediately, Not Simply Dismissed

The Further Notice tentatively concludes that the Commission should eliminate the requirement that the RBOCs file CEI plans as a condition for providing enhanced services on an integrated basis with their basic services.[10] The Commission reasons that CEI plans were

[9] It is important to understand that most ESPs appear to be paying their full share of the cost of the ILEC services they use. For years, the ILECs have insisted that local business rates are set well above costs to subsidize local residential rates. If this is the case, then ESPs already are paying more than their fair share of cost, in addition to local subsidies. If, on the other hand, business rates are set below cost, then the whole premise of universal service subsides is simply wrong. The ILECs cannot have it both ways, arguing in several venues that ESPs are paying too little, and then arguing in the universal service proceeding that businesses pay too much. The ILECs contradict themselves further by stimulating the demand for their own ESPs' activities.

[10] Further Notice at para. 61.

always intended as an interim measure until ONA plans had been filed and approved, and that the latter have been in place for several years now.[11] Should the Commission adopt this tentative conclusion, the Further Notice asks whether it should dismiss "all CEI matters pending at that time (including pending CEI plans, pending CEI plan amendments, and requests for CEI waivers)...."[12]

While WorldCom continues to see important value in the CEI process, it does not necessarily object to the Commission removing that requirement in favor of the (apparently) more fulsome ONA policy, or Section 251(c)(3) unbundling requirements. However, WorldCom strenuously objects to the Further Notice's follow-on suggestion that pending CEI matters simply be dismissed without final decision. What the Commission proposes would amount, in WorldCom's case, to a prime example of justice deferred until denied.

WorldCom believes that Bell Atlantic currently is providing Internet access service in violation of the 1996 Act. As indicated in a footnote in the Further Notice,[13] pending before the Commission's Common Carrier Bureau since July 1996 is a petition for reconsideration filed by MFS Communications -- now a wholly-owned subsidiary of WorldCom -- challenging the

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[11] Id.

[12] Id. at para. 75.

[13] Further Notice at para. 75 n.196.

Bureau's earlier grant of a CEI plan for Bell Atlantic's Internet access service.[14] MFS explained that, among other infirmities, Bell Atlantic's CEI plan violates the 1996 Act by offering bundled, in-region interLATA information services without receiving Section 271 authorization, or utilizing a Section 272 separate subsidiary. A WorldCom predecessor company, LDDS WorldCom, also filed comments in support of the MFS petition.[15]

The FCC's Non-Accounting Safeguards Order subsequently validated MFS' reading of the 1996 Act as prohibiting the RBOCs from providing interLATA Internet access service on a bundled basis.[16] That order indicated that the specific question of the lawfulness of Bell Atlantic's Internet access service was better considered in the context of Bell Atlantic's CEI proceeding.[17] As a result, WorldCom turned its attention back to the pending CEI proceeding for a final dispositive ruling from the Bureau. Nonetheless, a full twenty months after MFS first filed its petition for reconsideration -- and despite WorldCom's subsequent

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[14] Petition for Reconsideration of MFS Communications Company, Inc. CCBPol 96-09, filed July 3, 1996 ("MFS Petition"); see Bell Atlantic Telephone Companies' Offer of Comparably Efficient Interconnection to Providers of Internet Access Services, Order, 11 FCC Rcd 6919 (CCB June 6, 1996).

[15] Comments of LDDS WorldCom, CCBPol 96-09, filed August 9, 1996.

[16] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, issued December 24, 1996, at paras. 117-121 ("Non-Accounting Safeguards Order").

[17] Non-Accounting Safeguards Order at para. 127.

submission of five separate ex parte filings requesting timely Bureau action[18] -- MFS' original petition remains pending.

Thus, the Further Notice's suggestion that the Commission simply dismiss all pending CEI proceedings is inequitable and, in WorldCom's estimation, singularly unlawful. WorldCom is confident that its legal and factual position is sound, and that the Commission ultimately must enforce the 1996 Act by granting MFS' petition. In that case, Bell Atlantic will be required to immediately cease its unlawful activities. As long as the Bureau continues its inordinate and inexplicable delay in reaching a decision, however, that day continues to recede to the horizon. Any suggestion by the Commission that the MFS petition, and other similar pending matters, should simply disappear without resolution, is entirely out of line and should be rejected.

WorldCom certainly understands, and sympathizes with, chronic problems of resource constraints and staggering workloads, but enough is enough. Once again, WorldCom formally requests that the Common Carrier Bureau live up to its responsibilities and issue a

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[18] See (1) Letter from David N. Porter, Vice President, Government Affairs, WorldCom, Inc., to Joseph Di Scipio, Common Carrier Bureau, FCC, CCBPol 96-09, filed June 23, 1997; (2) Letter from David N. Porter, Vice President, Government Affairs, WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, CCBPol 96-09, filed July 7, 1997; (3) Letter from David N. Porter, Vice President, Government Affairs, WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, CCBPol 96-09, filed August 21, 1997; (4) Letter from David N. Porter, Vice President, Government Affairs, WorldCom, Inc., to William F. Caton, Acting Secretary, FCC, CCBPol 96-09, filed September 4, 1997; (5) Letter from David N. Porter, Vice President, Government Affairs, WorldCom, Inc., to A. Richard Metzger, Acting Chief, Common Carrier Bureau, FCC, CCBPol 96-09, filed September 23, 1997.

decision on the pending MFS petition. At this point, any decision -- even an incorrect one that at least can be appealed to a higher authority -- is far better than no decision at all.

C. The RBOCs' Section 706 Petitions Must Be Rejected

The Further Notice states that the Commission's goal in this proceeding is to strike a reasonable balance between reducing regulatory requirements and retaining necessary safeguards. Such a balance would, the Further Notice suggests, "encourage the BOCs to provide new technologies and innovative information services that will benefit the public, as well as ensure that the BOCs will make their networks available for the use of competitive providers of such services."[19]

WorldCom believes that one of the most important ways for the Commission to preserve and advance the necessary balance between RBOC flexibility and protection of competition and consumers is to reject pending petitions by three RBOCs and an RBOC-funded "public interest" group for sweeping removal of statutory and regulatory safeguards. Under the rubric of Section 706 of the Telecommunications Act of 1996, Bell Atlantic, US West, Ameritech, and the Alliance for Public Technology ("APT") have asked the Commission to permit the RBOCs to provide packet-switched services, technologies, and facilities unfettered

[19] Further Notice at para. 7.

by virtually all salient FCC mandates.[20] These mandates include the interLATA interexchange restriction (Section 271), the separate subsidiary requirement (Section 272), the provision of unbundled network elements ("UNEs"), the offering of services for resale (Section 251), nondiscrimination obligations, controls on pricing, and separations requirements.

WorldCom will be filing comments in each of the four proceedings discussing at greater length the many reasons why the Commission should not buy into the RBOCs' latest well-coordinated campaign to evade their legal and regulatory obligations. For purposes of this proceeding, WorldCom only points out that the RBOCs' proffered vision of a balance between reducing regulation and preserving safeguards is so hopelessly skewed that it must be rejected out-of-hand as contrary to the law, the public interest, and plain common sense.

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[20] See Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-11, filed January 26, 1998; Petition of US WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed February 25, 1998; Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-32, filed March 5, 1998; Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry And Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, CCB/CPD 98-15, filed February 18, 1998.

III. CONCLUSION

The Commission should adopt WorldCom's specific proposals herein.

Respectfully submitted,

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March 27, 1998

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