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

In the Matter of	)	
	)	
Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
	)	
Petition of US WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-32
	)	

CONSOLIDATED OPPOSITION OF WORLDCOM, INC.

Catherine R. Sloan
Richard L. Fruchterman III
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Its Attorneys

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April 6, 1998

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SUMMARY

WorldCom strongly and unequivocally opposes the Bell Atlantic, US WEST, and Ameritech petitions to radically deregulate their provision of packet-switched services, networks, and facilities. The RBOCs seek the removal of nearly all important statutory and regulatory safeguards -- the interLATA restriction, full structural separation, requirements to unbundle network elements and allow resale of retail services, pricing controls, and nondiscriminatory conduct -- that govern the RBOCs' provision of "data" facilities and services. By deliberately conflating the packet-switched facilities used with the types of services provided, however, the RBOCs hope to achieve the complete deregulation of all packet-switched services -- voice, data, video, or otherwise -- thereby blowing a gaping hole in the center of the 1996 Act. The Commission should not allow the RBOCs to get away with their "Trojan horse" gambit.

First, the petitions are entirely premature because the RBOCs currently are failing to meet their fundamental obligations to competitors, consumers, and policymakers. In effect, granting the petitions would only reward the RBOCs for their outright refusal to implement the 1996 Act. Among other things, the RBOCs continue to fail to provide essential network facilities, and pay reciprocal compensation, to CLECs. Bell Atlantic and other RBOCs also have been providing bundled interLATA Internet access services in violation of the Act.

Second, contrary to the RBOCs' empty assertions, nothing in pertinent provisions of the 1996 Act treats packet-switching facilities any differently than circuit-switching facilities, or data bits separately from voice bits. The Act also prohibits any forbearance from application of Section 271 (the interLATA restriction), Section 272 (the separate subsidiary requirement), and Section 251(c) (the interconnection provisions, including UNEs and resale), all of which are key components of the RBOCs' radical deregulation proposals.

Third, Section 706 of the 1996 Act cannot bear the broad, sweeping authority claimed by the RBOCs. The RBOCs fail to explain why Section 706 was placed by Congress in an obscure "Miscellaneous" section at the back end of the Act, and codified as a mere note to another provision. Nor do they discuss why the text of the provision: (1) does not specifically apply to packet-switched facilities or services; (2) requires only that the FCC "encourage" deployment of advanced capability; (3) calls for "reasonable and timely" deployment; (4) requires that any FCC action be consistent with the public interest; (5) specifies promotion of local competition and the use of regulating measures; (6) does not refer expressly to the RBOCs; and (7) is not independent of the limitations contained in Section 10 (the forbearance provision).

Fourth, factual support for the three petitions is virtually nonexistent. Bell Atlantic claims that it needs greater "incentives" (i.e., removal of regulatory safeguards) to deploy advanced data services such as xDSL. The RBOCs' quarrel is with Congress, however, and how the safeguards provisions were drafted to cover all RBOC bottleneck facilities and services. Moreover, US WEST is already deploying xDSL across its region without regulatory "relief," likely because xDSL is its own best reason for deployment. Indeed, even beyond the promise of tremendous profits, xDSL also reduces local switch congestion by taking data traffic off the RBOCs' circuit-switched networks. In short, the RBOCs' "incentives" argument is only a front for extending their local monopolies to the competitive interLATA data market.

Bell Atlantic also argues that the RBOCs must be allowed to provide interLATA Internet backbone facilities because that portion of the Internet is highly congested at average speeds of 40 kbps. Aside from other obvious infirmities of its position, Bell Atlantic offers little actual proof for this claim. In reality, as the RBOCs have admitted, Internet congestion centers

largely on the local exchange network. Due to the RBOCs' own failure to deploy adequate local facilities, the RBOCs' end user customers and CLECs alike suffer accordingly. Moreover, the sole study cited by Bell Atlantic actually blames culprits such as the local exchange networks, modems, servers, individual web sites, web browsers, Domain Name Service, and NAPs. Further, and whatever else its flaws, the study has been updated recently to show a 60 percent improvement in 1998 Internet performance. It is also more than disingenuous for Bell Atlantic to allege in its petition backbone speeds of 40 kbps, at the same time that it hawks ISDN service to its own customers with promises of speeds up to 128 kbps. Bell Atlantic's alternative argument -- that a WorldCom/MCI combination supposedly will create market power for Internet backbone -- is nonsensical, especially coming from a confirmed monopolist; as Bell Atlantic well knows (and unlike conditions in the local exchange market), there is overwhelming evidence of intense backbone competition between many well-funded and highly successful providers.

Finally, it would be terrible public policy for the Commission to grant the RBOC petitions. The best solution to create greater bandwidth to the home is greater competition in the local market, not the extension of RBOC monopoly-based power to the Internet. Despite the obvious enticement of interLATA entry, the RBOCs to date have not opened their local markets to full and unfettered competition. Now suddenly, the RBOCs are inundating the FCC with petitions seeking immediate, carte blanche entry into the interLATA data services and facilities markets. At last, the Commission has discovered something the RBOCs really want, which should create the perfect incentive for their compliance with the Act to garner Section 271 authority. Rather than simply giving away for free the radical relief the RBOCs desire, the Commission should stand firm unless and until the RBOCs have earned it, fair and square.

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CONSOLIDATED OPPOSITION OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom"), by its attorneys, hereby files in vigorous opposition to (1) the petition filed by Bell Atlantic Corporation ("Bell Atlantic") on January 26, 1998, (2) the petition filed by US WEST Communications, Inc. ("US WEST") on February 25, 1998, and (3) the petition filed by Ameritech Corporation ("Ameritech") on March 5, 1998, in the above-captioned proceedings.[1] Despite Bell Atlantic's protestations that its petition "is not a Trojan horse for circumventing the requirements of Section 271"[2] and other pro-competitive legal and regulatory safeguards, the analogy is quite apt. In this case, unlike the unfortunate citizens of ancient Troy, the Commission should promptly return each of the petitioners' unsolicited and dangerous "gifts" unopened.

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[1] The Common Carrier Bureau recently issued an order revising and consolidating the pleading cycles for the three petitions. Order, DA 98-513, released March 16, 1998.

[2] "Bells Seek Advanced Data Networks, As Entry Into Long-Distance Business," The Wall Street Journal, Stephanie N. Mehta, February 19, 1998, at B22, quoting Edward D. Young III, Associate General Counsel, Bell Atlantic ("Mehta February 19 Article").

I. INTRODUCTION AND BACKGROUND

WorldCom, Inc. is a leading global telecommunications company. Through its wholly-owned operations WorldCom Technologies, Inc., MFS Telecom, Inc., Brooks Fiber Properties, Inc., WorldCom Network Services (d/b/a WilTel Network Services), and UUNET Technologies, Inc., 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").

The three Regional Bell Operating Companies ("RBOCs") seek different forms of "relief" in their respective petitions. Bell Atlantic claims that "existing regulatory restrictions have slowed investment in the necessary advanced services," and "[e]xisting [Internet] backbone suppliers have not upgraded their networks fast enough to meet the demand."[3] The solution, Bell Atlantic claims, is to "fully deregulate packet-switched networks" by granting Bell Atlantic "relief from restrictions impeding its expansion and offering of high-speed, packet-switched data services, including Internet, 'Intranet,' and 'Extranet' services."[4] Bell Atlantic seeks "relief" from (elimination of) "restrictions" (standing law and regulation) concerning (1) RBOC provision of in-region interLATA services, (2) structural separation, (3) unbundling network elements, (4) resale of retail services, (5) pricing, (6) separations, and (7) nondiscrimination.[5] Bell Atlantic

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[3] Bell Atlantic Petition at 1.

[4] Bell Atlantic Petition at 3.

[5] Bell Atlantic Petition at 3-4.

claims that these "impediments" are preventing it from building a regional backbone network and deploying Digital Subscriber Line ("xDSL") and fiber-based services to the home.[6]

US WEST's petition claims that current legal and regulatory restrictions are frustrating the deployment of advanced data services to rural America. Insisting that it seeks only "targeted and limited" relief, US WEST asks the Commission to (1) allow it to build and operate data networks across LATA boundaries, (2) allow it to carry data traffic across LATA boundaries as part of xDSL service, (3) forbear from requiring it to unbundle its network elements used to provide data services, and (4) forbear from requiring it to provide data services for resale.[7] US WEST expressly reserves the right to seek forbearance from "many other Commission rules" that it claims are unnecessary to ensure reasonable and nondiscriminatory pricing and practices in the data services market.[8]

Ameritech's petition argues that the RBOCs require additional incentives to invest in and deploy advanced telecommunications capability, such as high-speed backbone networks, and advanced access capabilities such as xDSL, on a widespread basis.[9] Ameritech urges the Commission to modify, or forbear from enforcing, the current interLATA restriction for data services, and to apply to the RBOCs less stringent structural separation than is currently required by law.[10] Ameritech also asks the Commission not to treat the resulting data affiliate as an

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[6] Bell Atlantic Petition at 4.

[7] US WEST Petition at 4.

[8] US WEST Petition at 4-5.

[9] Ameritech Petition at 2.

[10] Ameritech Petition at 2-4.

incumbent LEC that otherwise would be subject to unbundling and resale requirements, and to classify the affiliate as nondominant for regulatory purposes.[11]

WorldCom strongly and unequivocally opposes the three RBOC petitions. Although the factual premises differ, ranging from allegations about Internet backbone congestion (Bell Atlantic) to underserved rural areas (US WEST) to the need for greater investment incentives (Ameritech), the script essentially is the same. The RBOCs' surface argument is that, where the competitive market is attempting to keep up with unprecedented demand for data delivery facilities and services, the local telephone monopolies should be unleashed from a few inconsequential impediments in order to offer their needed assistance. The true story, however, is that the RBOCs are pouncing on, and exaggerating, the inevitable transitional growing pains of a vibrantly competitive Internet market, in hopes that this can be used as an excuse for sweeping removal of nearly all important statutory and regulatory safeguards that govern the RBOCs' provision of telecommunications facilities and services. Indeed, it is the RBOCs' continuing violations of the very laws and rules that they seek to eliminate that pose the central impediment to Congress' vision of fully competitive telecommunications markets.

The RBOCs' results-driven attitude is amply expressed in the words of one RBOC CEO who recently asserted, "We want a share of the Internet pie; <u>we expect to get it</u>."[12] Rather than earning their slices of that pie, however, by endeavoring to meet their obligations

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[11] Ameritech Petition at 2-4.

[12] Remarks by Duane Ackerman, Chairman and Chief Executive Officer, BellSouth Corporation, As Delivered to Economic Strategy Institute, Washington, D.C., March 3, 1998, at 3 (emphasis in original) ("Ackerman March 3 Speech").

under Sections 251 and 271 of the 1996 Act, the RBOCs want to simply tunnel beneath them completely. The RBOCs can try to point the finger of blame for their "plight" elsewhere, but in reality they have no ones to blame but themselves.

Aside from the numerous legal and factual flaws and fallacies contained in the three RBOC petitions, it also would be entirely bad public policy for the Commission to accede to the RBOCs' demands. Over two years after passage of the 1996 Act, local competition remains stillborn, and no RBOC has yet mustered a satisfactory Section 271 application. Despite the obvious enticement of interLATA entry, the RBOCs do not appear incented to take forceful actions to finally open their local markets to full and unfettered competition. Now suddenly (and certainly not coincidentally), the RBOCs are flooding the Commission with petitions seeking immediate, carte blanche entry into the interLATA data services and facilities markets. At last, it appears, the Commission has discovered something that the RBOCs really want, something which should create the perfect incentive for the RBOCs to comply with the requirements of the Act in order to garner interLATA entry under Section 271. The absolute worst thing the Commission could do at this point is to give the RBOCs what they want -- for free.[13]

While WorldCom assumes that the Commission will see through the RBOCs' petitions for what they are -- yet another cynical, self-serving ploy -- the numerous arguments raised in the petitions cannot go unrefuted. Through the use of distortions, half-truths, and outright falsehoods, the RBOCs have managed to cajole and threaten and plead their way into

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[13] This error would be compounded by the fact that astounding technological change and vibrant competition is already taking place in the information service marketplace. As is discussed below, Congress has directed the Commission to allow this market to continue its astonishing achievements unimpeded; premature RBOC entry would contradict this mandate, and seriously jeopardize current and future competitive successes.

extracting numerous unfounded concessions from policymakers over the years. In WorldCom's view, the line must be drawn here.

The following discussion primarily addresses the legal, policy, and factual arguments common to the three petitions. Where appropriate, and in keeping with the Bureau's scheduling order, WorldCom's comments will expressly identify and discuss any specific points unique to any one of the petitioners.

II. THE RBOCS SEEK NOTHING LESS THAN A RADICAL AND COMPLETELY UNPRECEDENTED EVISCERATION OF CRITICAL COMPETITIVE AND CONSUMER SAFEGUARDS

Given the sizable length (if not depth) of each of the three petitions, it is rather surprising that the RBOCs largely gloss over the very relief they seek. The RBOCs have not carried their burden of explaining exactly how their proposals would change or eliminate provisions of the 1996 Act and the Commission's rules. This refusal to face up to the enormity of their request is reason enough to reject the petitions. The Commission should not be left to guess at precisely how the RBOCs propose to provide their services and facilities to end user customers and carriers alike; such a result would amount to handing the RBOCs a blank check to do -- or not do -- whatever they desire.

WorldCom believes that a fuller exposition of the statutory and regulatory requirements that the RBOCs desire to eliminate is necessary in order to understand the sheer audacity of their collective position. Obviously the RBOCs' strategy is to ask for the outrageous in order to receive the merely unlawful. In contrast, WorldCom believes that the three monopolies' claimed "barriers to investment" actually constitute critically-important competitive

and consumer safeguards enshrined in federal statute and FCC policy.

A. The RBOCs Appear To Demand The Removal Of Nearly All Critical Consumer And Competition Safeguards

Bell Atlantic's petition is representative in that it seeks to overturn nearly every major statutory and regulatory safeguard applicable to its local exchange and exchange access business. For packet-switched facilities, and all telecommunications voice, video, and data services provided over those facilities, Bell Atlantic asks the FCC to eliminate the following:

- In-region InterLATA Services Restriction -- Bell Atlantic seeks elimination of Section 271 of the 1996 Act, which prohibits the RBOCs from providing in-region interLATA telecommunications and information services until they have satisfied a 14-point competitive checklist and met a public interest standard.

- Structural Separation -- Bell Atlantic seeks elimination of Section 272, which requires the RBOCs to provide in-region interLATA services via a structurally separate subsidiary for at least three years after receiving Section 271 authorization. In particular, Section 272(e)(4) prohibits the RBOCs from using their local facilities to provide interLATA services.[14]

- Unbundling of Network Elements -- Bell Atlantic seeks elimination of the Section 251 requirement that the RBOCs provide unbundled network elements -- including elements provided over packet-switched facilities -- to competitors at cost-based rates under Section 252.

- Resale of Retail Services -- Bell Atlantic seeks elimination of the Section 251 requirement that the RBOCs provide retail services -- including services provided over packet-switched facilities -- to competitors at wholesale rates under Section 252.

- Pricing Controls -- Bell Atlantic seeks elimination of any federal and state pricing controls -- including interstate price cap regulation under Part 69 of the FCC's

[14] Bell Atlantic in particular is well acquainted with Section 272(e)(4), as it vigorously, and unsuccessfully, contested the Commission's interpretation of this provision. See Bell Atlantic v. FCC, -- F.3d --, 1997 WL 783993 (D.C. Cir. 97-1432), slip op., December 23, 1997.

rules, and (presumably) USOA requirements under Part 32 of the FCC's rules -- over its packet-switched facilities, or any of the telecommunications and information services it would offer over those facilities.[15]

- o Separations -- Bell Atlantic seeks elimination of the Part 36 requirement that the ILECs separate their interstate and intrastate services for regulatory purposes.

- o Nondiscriminatory Access -- Bell Atlantic seeks elimination of the statutory and regulatory requirement, replete throughout the 1996 Act, that the RBOCs act in a nondiscriminatory fashion in its dealings with its competitors.

- o Merger Conditions -- Bell Atlantic's request could be read to seek elimination of a number of the express conditions it agreed to as part of its merger with NYNEX, including Operational Support Systems ("OSS"), forward-looking pricing, and other Section 251 obligations.

US WEST's petition does not explicitly address the pricing issue, while Ameritech's petition seeks to retain a "modified" version of structural separation that would avoid any unbundling or resale requirements, and carry automatic nondominant status.

The RBOCs obviously have good reason not to dwell on their claimed "impediments" to investment, for they represent most of the consumer and competition safeguards enshrined in both the Communications Act of 1934 and the Telecommunications Act of 1996. Needless to say, there are numerous problems with the RBOCs' proposed approach, a few of which will be touched on here.

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[15] It is more than ironic that Bell Atlantic seeks to remove data services from the very same price cap regime that the RBOCs have fought for so hard over the years. The RBOCs have made numerous pronouncements in the past on the supposed virtues of the price caps policy, including its flexibility, its creation of investment incentives, and its correlation to market-based prices. See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313, Notice of Proposed Rulemaking, 2 FCC Rcd 5208 (1987). Ameritech's petition even acknowledges the positive effects of price caps, and includes a study lauding the benefits of price caps. Ameritech Petition at 19; Attachment B, "The Effects of Regulation on the Innovation and Introduction of New Telecommunications Services," at 11, 16-18. Now, apparently, even price caps have become too restrictive for Bell Atlantic's taste.

Fundamentally, there is no suggestion in the 1996 Act that packet-switched facilities, or any telecommunications or information services provided using such facilities, are in any way exempt from the requirements of Sections 271, 272, 251, or 252. The statutory definitions of "telecommunications" and "telecommunications service," and of "information service," make no distinctions between circuit-switched and packet-switched facilities or services.[16] Indeed, even the definition of "advanced telecommunications" plainly labels it as a telecommunications service, which makes it subject to the provisions of the 1996 Act.[17] US WEST in particular argues that the text of the 1996 Act "suggests" that the ILECs are required only to unbundle the elements of, and offer for resale the services derived from, the traditional circuit-switched telephone exchange network.[18] In support of this view, US WEST can only offer what it calls a "procompetitive" reading of the statute -- namely, that data services are not part of telephone exchange service, and that Internet backbones are not provided via interLATA services.[19] This is sheer nonsense. There is absolutely no textual basis in the Act or legislative history for making these distinctions. Even US WEST is compelled to admit that the Commission's implementing regulations include packet-switched services.[20] Thus, despite the RBOCs' insistence that Congress somehow intended or required different treatment (i.e., complete deregulation) of packet-switched facilities and derived services, their petitions do not

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[16] 47 U.S.C. Sections 153 (48), (51), (41) (1997).

[17] 47 U.S.C. Section 157 nt.

[18] US WEST Petition at 45.

[19] US WEST Petition at 45-46 n.24.

[20] US WEST Petition at 45-46.

point to a single provision of the Act to support this claim.

Indeed, as far as WorldCom is aware, none of the RBOCs filed comments advocating the reclassification or deregulation of packet-switched facilities and networks, or all services derived from those facilities and networks, in any of the FCC's proceedings implementing the 1996 Act. Nor did the RBOCs file petitions to reconsider the FCC's orders on that basis. Nor did the RBOCs file appeals in the federal courts on that basis. Seen in this light, each of the petitions is a late-filed pleading, reconsideration petition, and court appeal all in one. The RBOCs cannot be allowed to contest now what they have left entirely uncontested both before and after the 1996 Act was signed into law.

In addition, the 1996 Act expressly states that the very heart of the "impediments" that the RBOCs seek to strike down cannot be eliminated by Commission forbearance action. Among the "regulating measures" listed in Section 706(a) is "regulatory forbearance," which is governed by Section 10 of the Act.[21] However, Section 10(d) plainly states that the Commission "may not forbear from applying the requirements of section 251(c) or 271 under subsection (a)."[22] Thus, forbearance cannot reach the local competition and interLATA entry provisions of the Act. Further, the Commission recently held that "prior to their full implementation we lack authority to forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3)."[23]

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[21] 47 U.S.C. Section 160.

[22] 47 U.S.C. Section 160(d).

[23] Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as Amended, to Certain Activities, CC Docket No. 96-149, Memorandum Opinion and Order (Common Carrier Bureau, February 6, 1998) at para. 22.

Contrary to the RBOCs' claims, Section 706 is not independent of Section 10 of the 1996 Act; rather, the Commission's forbearance authority does not exist except as set forth in Section 10. Bell Atlantic and Ameritech try to argue that the phrase "under subsection (a) of this section" somehow limits the applicability of subsection (d) only to Section 10, and does not include Section 706,[24] but this is plainly a game of semantics. The phrase in question is merely a convenient and common device used in statutes to refer back to a main provision. The RBOCs' strained reading of a mere reference phrase proves too much.

As the remainder of these comments will demonstrate, there is no legal, policy, or factual basis for granting any of the relief sought in the three petitions.

B. The RBOCs' Petitions Would Blow A Gaping Hole In The Telecommunications Act For Voice Services As Well

The RBOCs' petitions extend much further than just certain data services; their request to "fully deregulate packet-switched networks" would not only affect Internet and data business, but all telecommunications services. Packet-switched networks are being used increasingly to carry voice traffic as well as data and video. As Bell Atlantic's own white paper points out, the Internet, via packet-switched networks, "moves information of any kind, including voice, graphics, and video...."[25] The RBOCs could easily use this enormous loophole to move voice traffic to packet-switched networks and evade altogether their Section 271

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[24] Bell Atlantic Petition at 10-11; Ameritech Petition at 14 n.23.

[25] Bell Atlantic Petition, Attachment 2, "White Paper Supporting Petition Under Section 706 of the Telecommunications Act of 1996," January 26, 1998 ("Bell Atlantic White Paper") at 3.

obligations, and other pricing and nondiscrimination safeguards.

Even the trade and general press have picked up on the obvious intention of the RBOCs' petitions. An article in The Wall Street Journal states that Bell Atlantic's proposed "deregulation" of packet-switched networks offers the RBOCs "a new route" and "a back door" into "the long-distance communications business they have long coveted."[26] The article explains that such networks "could carry a tremendous amount of phone calls as well as data." Internet Week carried an article entitled "A Back Door to Voice? New Bell Tactic -- Long Distance Data," which indicates that the RBOCs seek to use long distance data as "a new tactic" to "bypass[ ] regulatory restrictions."[27] The article cites analysts observing that the RBOCs could use voice-over-IP technology as "an obvious way" to create "a back door into the long-distance voice market."[28] Business Week states that the RBOCs believe that packet-switching technology "could jump-start their push into the long-distance business,"[29] while The New York Times indicates that US WEST's petition was "joining a new attack" by the RBOCs on Section 271.[30] The counterclaim by one high-ranking Bell Atlantic attorney that "it is conceivable that there would be incidental voice usage," but that "this is not a Trojan horse for circumventing the

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[26] Mehta February 19 Article, at B22.

[27] "A Back Door to Voice? New Bell Tactic -- Long-Distance Data," Internet Week, March 2, 1998, at PGT01.

[28] Id.

[29] "The New Trailblazers," Business Week, April 6, 1998, at 97.

[30] "US West to Ask F.C.C. Permission to Build Big Data Network," The New York Times, Seth Schiesel, February 18, 1998, at D4.

requirements of Section 271,"[31] is laughable.

Certainly most impartial observers agree that data traffic is rapidly displacing voice traffic on the telephone network, and that voice traffic increasingly is migrating to packet-switched networks. In a recent speech to the WashingtonWeb Internet Policy Forum, FCC Commissioner Susan Ness noted that data usage in the U.S. will exceed voice usage "within the next several years," and that within a decade, voice traffic will be carried in digitized packets on the network and represent only ten percent of total telecommunications traffic.[32] The Wall Street Journal cites a Yankee Group estimate that local carrier revenues from data traffic is expected to surpass voice-traffic revenue by the year 2011.[33] Analysts quoted by Newsweek predict that "up to 30 percent of all phone calls may go over the Internet within five years," culminating in "marrying the voice and data networks...."[34] Another expert estimates that all voice calls could be provided over packet-switched networks within 10 years, leading one analysts to proclaim that "five years from now, data is going to be the dog, and voice is going to be the tail."[35]

Even the RBOCs seem to agree that data traffic is fast overtaking voice traffic. The CEO of US WEST has noted that "by the next decade, data will represent fully 80% of the

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[31] Mehta February 19 Article, at B22.

[32] Remarks of Commissioner Susan Ness before the WashingtonWeb Internet Policy Forum, Washington D.C., February 9, 1998 (as prepared for delivery) (text version) at 3 ("Ness February 9 Speech").

[33] Mehta February 19 Article, at B22.

[34] "A Cheaper Way to Phone," Deborah Branscom, Newsweek, March 16, 1998, at 80.

[35] Business Week at 91, 94.

traffic on our network, and voice only 20%."[36] Ameritech's own petition states that "the common experience of LECs" is that "data services now provide the predominant share of traffic growth" on the circuit-switched networks.[37] Even in joint comments filed last year, Bell Atlantic and NYNEX announced that "Internet minutes could overtake minutes from interexchange carriers in just a few years."[38]

This coming convergence of data and voice traffic demonstrates how one fundamental premise behind the RBOCs' three petitions is fatally flawed. As a factual matter, the RBOCs attempt to separate circuit-switched from packet-switched facilities, and then urge complete deregulation not only of the latter facilities, but all services provided over those facilities. As WorldCom pointed out in recent comments, however, backbone networks use many of the very same network facilities, including long-haul transmission facilities and ILEC loop connections, that traditional voice services use.[39] More importantly, the simple truth is that there is no clear-cut dichotomy between services provided over circuit-switched networks and services provided over packet-switched networks. Both types of networks move a variety of communications around; circuit-switched networks route electronic signals on the basis of selected circuits, while packet-switched networks move packets of bits in a more efficient, free-

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[36] "Digital Revolution Transforming Telco Industry From Voice to 'Data-Centric' Network," PR Newswire via First!, March 5, 1998.

[37] Ameritech Petition at 6.

[38] Joint Comments of Bell Atlantic and NYNEX on Notice of Inquiry, CC Docket No. 960262, filed March 24, 1997, at 9 ("BA/NYNEX 96-263 Comments").

[39] Joint Reply of WorldCom, Inc. and MCI Communications Corporation to Petitions to Deny and Comments, CC Docket No. 97-211, filed January 26, 1998, at 69, 71-72 ("WorldCom/MCI 97-211 Joint Reply").

form manner. Moreover, from the perspective of a packet-switched network, a bit is a bit, and does not carry a marker labeling it as a piece of "voice" or "data" or "video." As one recent article points out, "[o]nce the sound of a voice is broken into packets, it looks just like a packet carrying data, fax, or video clip;" as a result, "[t]he same network that carries voice can carry everything else."[40] This unassailable fact alone would make it impossible to distinguish between data traffic and voice traffic for purposes of policing legal and regulatory distinctions. By deliberately mixing up the facilities with the services they provide, the RBOCs apparently hope to confuse the issue, and thereby receive authority to provide all types of services -- voice, data, and video -- that packet-switching networks can support. However, the true distinction is between the types of services being provided, not the underlying telecommunications facilities being used. The medium is not the message; the message itself is.

Obviously the RBOCs' requests are so out of bounds that they should not even be considered seriously, at least under current circumstances. Commissioner Ness has observed that "Congress did not embrace the notion that the best way to encourage competition and investment was to eliminate all rules on everyone, before competition appears on the scene."[41] WorldCom agrees. If the RBOCs would either meet the requirements of Sections 271 and 272, or remove the basis of their monopoly power by agreeing to divest themselves completely of their local bottleneck facilities,[42] WorldCom would have less problem supporting the type of

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[40] Business Week at 96.

[41] "Why Investment Matters," Prepared Remarks of Commissioner Susan Ness Before the Economic Strategy Conference, Washington, D.C., March 3, 1998, at 6 ("Ness March 3 Speech").

[42] See Comments of WorldCom, Inc., CC Docket No. 98-5, filed March 23, 1998 (LCI "fast-track" petition).

sweeping deregulation being proposed in the petitions. Unless and until that day comes, however, the RBOCs' petitions remain a non-starter.

III. THE RBOCS' PETITIONS ESSENTIALLY ARE LATE-FILED COMMENTS IN CC DOCKET NO. 96-263 AND SHOULD BE TREATED AS SUCH

Additionally, the Commission need not commit its limited resources and attention to the RBOCs' petitions at this time. These very same issues already have been teed up in the FCC's Notice of Inquiry in CC Docket No. 96-263.[43] The RBOCs' latest filings are just another round of bellyaching.

In its Internet NOI, the Commission discussed how its rules had been designed for traditional circuit-switched voice networks. The Commission concluded that:

> we must identify what FCC policies would best facilitate the development of the high-bandwidth data networks of the future, while preserving efficient incentives for investment and innovation in the underlying voice network. In particular, better empirical data are needed before we can make informed judgments in this area.[44]

The Commission expressly asked commenters to focus on concerns about ILEC "switch congestion caused by Internet usage," and how its rules "can most effectively create incentives for the deployment of services and facilities to allow more efficient transport of data traffic to and from end users."[45] The Commission sought comments on "regulatory barriers," and

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[43] Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry, CC Docket No. 96-263, 11 FCC Rcd 21354, issued December 24, 1997 ("Internet NOI").

[44] Internet NOI at para. 312.

[45] Internet NOI at para. 313.

queried whether it should "consider using our forbearance or preemption authority to avoid results that would hamper the deployment of new technologies?"[46]

Although the RBOCs filed comments and reply comments in the Internet NOI proceeding,[47] and despite the fact the Commission raised up the issues in exactly the same way as the RBOCs' petitions now do, those comments do not seem to contain any allegations about problems attributable to the Internet backbone. Instead, the RBOCs railed against the so-called ESP "exemption" from paying interstate access charges. Interestingly, the RBOCs did complain about congestion in the local offices (caused by end users), and congestion in central office switches and facilities, and interoffice trunk facilities (caused by ISPs and CLECs).[48] These congestion problems apparently required the RBOCs to engage in emergency network expansion, although service-related problems continue to surface.[49]

The RBOCs' petitions, with their repetitive arguments about current law and regulation impeding incentives to invest in high-speed broadband networks, mirror the same language used in the Internet NOI. The only difference is that, unlike their comments there, the RBOCs' focus now is on the Internet backbone. Frustrated at the Commission's decision to retain the current access charge treatment of ESPs (which the RBOCs have now attacked on another front in the courts), the RBOCs have devised yet another strategy to get what they want.

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[46] Id. at para. 314.

[47] See BA/NYNEX 96-263 Comments; Joint Reply Comments of Bell Atlantic and NYNEX on Notice of Inquiry, CC Docket No. 96-263, filed April 23, 1997 ("BA/NYNEX 96-263 Reply").

[48] BA/NYNEX 96-263 Comments at i, 1-6; BA/NYNEX 96-263 Reply at 7.

[49] BA/NYNEX 96-263 Comments at 8.

The Commission should reject the RBOCs' pleas for expedited consideration of their petitions in a wholly separate proceeding. Obviously the issues presented and the types of relief sought -- as outlandish as they are -- are well within the purview of the Internet NOI proceeding. If the RBOCs did not see fit to even mention in their comments -- filed less than one year ago -- the supposed need to deregulate packet-switching facilities and derived services, such a need must not really exist.

WorldCom also urges the Commission not to attempt to deal with these petitions on an ad hoc basis in separate proceedings. Rather than considering the RBOCs' petitions piecemeal, the Commission should open up a separate Notice of Inquiry proceeding and take comments at one time on all the related issues.

IV. THE PETITIONS ARE ENTIRELY PREMATURE BECAUSE THE RBOCS CURRENTLY ARE FAILING TO MEET THEIR FUNDAMENTAL OBLIGATIONS TO COMPETITORS, CONSUMERS, AND REGULATORS

Beside the fact that the RBOCs seek almost complete deregulation of all their present and future service offerings, and beside the fact that their petitions do not even merit a separate proceeding, the RBOCs are putting the cart before the horse in another way: they are attempting to move into forbidden markets without even meeting their essential obligations under the 1996 Act. Indeed, it is no wonder the RBOCs seek to eliminate the most meaningful provisions of the Telecommunications Act of 1996, because they currently are operating in violation of many of them. In short, the RBOCs should get their own houses in order before trying to tell others how to run theirs.