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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Bell Atlantic Telephone Companies	)	**CC Docket No. 98-168**
Tariff FCC No. 1	)	
Transmittal No. 1076	)	
	)	

MCI WORLDCOM COMMENTS ON DIRECT CASE

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its Comments on the Direct Case filed by Bell Atlantic on October 6, 1998 in the above-captioned docket.

The ADSL offering that is the subject of this investigation is similar to the ADSL offerings that were filed by GTE, BellSouth, and Pacific Bell, and which are currently the subject of ongoing investigations in CC Dockets No. 98-79, No. 98-103, No. 98-161, No. 98-167. On September 18, 1998, MCI WorldCom filed Comments on the Direct Cases filed by GTE, BellSouth, and Pacific Bell in CC Dockets No. 98-79, 98-103, and 98-161. On October 5, 1998, MCI WorldCom filed Comments on the Direct Case filed by GTE in CC Docket No. 98-167.

Because the issue that is the subject of this investigation is identical to the issue that is the subject of the GTOC, BellSouth, and Pacific Bell investigations, and because

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the arguments advanced by Bell Atlantic in its Direct Case are for similar to the arguments advanced by GTE, BellSouth, and Pacific Bell in their Direct Cases, MCI WorldCom provides a copy of its Comments on the GTOC, BellSouth, and Pacific Bell Direct Cases as an attachment and formally incorporates by reference these Comments into the above-captioned docket.

Respectfully submitted,
MCI WORLDCOM, INC.

Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-2779

Cathy R. Sloan
David N. Porter
Richard L. Fruchterman III
Richard S. Whitt
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036
(202) 776-1550

October 15, 1998

ATTACHMENT

MCI WORLDCOM COMMENTS ON GTE DIRECT CASE, CC DOCKET NO. 98-79

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
GTE Telephone Operating Companies	)	**CC Docket No. 98-79**
GTOC Tariff No. 1	)	
GTOC Transmittal No. 1148	)	
	)	
Pacific Bell Telephone Company	)	**CC Docket No. 98-103**
Pacific Bell Tariff FCC No. 128	)	
Pacific Transmittal No. 1986	)	
	)	
BellSouth Telecommunications, Inc.	)	**CC Docket No. 98-161**
BellSouth Tariff FCC No. 1	)	
BellSouth Transmittal No. 476	)	
	)	

MCI WORLDCOM COMMENTS ON DIRECT CASES

MCI WORLDCOM, INC.

Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-2779

Cathy R. Sloan
David N. Porter
Richard L. Fruchterman III
Richard S. Whitt
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036
(202) 776-1550

September 18, 1998

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SUMMARY

The Commission should conclude this investigation by finding that the ILECs' ADSL service offerings are properly tariffed at both the federal and state levels. The Commission can reach this conclusion without needing to address the wholly separate issue of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature.

ADSL, like any other transmission technology, has a wide range of uses. While one of the uses of ADSL is to connect Internet Service Provider (ISP) end users to other end users, this is by no means the only use of the ILECs' ADSL services. Of the many other uses of the ILECs' ADSL services, some are clearly interstate and therefore subject to the Commission's jurisdiction, while others are clearly intrastate and therefore subject to state jurisdiction. The ILECs' ADSL tariffs are therefore properly filed at both the state and federal levels, regardless of the jurisdiction of Internet-related uses of ADSL.

The Commission should not reach beyond the narrow question presented for investigation -- whether ILEC ADSL service tariffs are properly filed with the Commission -- to address Internet-related jurisdictional issues in this proceeding. Not only is there no need to address these issues in order to conclude this investigation, but a tariff investigation is the wrong place to consider the complex jurisdictional issues associated with Internet traffic. Tariff investigations are conducted under an accelerated schedule and with significantly less public involvement than a notice and comment

rulemaking proceeding. Of particular concern in this proceeding is the fact that the accelerated schedule may preclude state commissions -- which have an obvious interest in the outcome -- from participating or from filing extensive comments.

Should the Commission decide to reach the Internet-related jurisdictional issue in this proceeding, which it need not and should not, the Commission should confirm that the relevant endpoints for analyzing the jurisdiction of an ADSL service are the ADSL-based telecommunications service's end users -- the ISP's subscriber and the point of presence of the ISP itself. The jurisdiction of a telecommunications service is determined by end-to-end analysis of the telecommunications service; the location of Internet servers accessed as part of the information service provided by the ISP is irrelevant to determining the jurisdiction of an ADSL service or any other telecommunications service. Because it is well-established that information service providers are "end users" for the purpose of determining the jurisdiction of a telecommunications service such as ADSL, the jurisdiction of an ADSL service used to connect ISP subscriber end users to an ISP POP depends on the relative locations of the ISP subscribers and the ISP POP.

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In the Matter of	)	
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GTE Telephone Operating Companies	)	**CC Docket No. 98-79**
GTOC Tariff No. 1	)	
GTOC Transmittal No. 1148	)	
	)	
Pacific Bell Telephone Company	)	**CC Docket No. 98-103**
Pacific Bell Tariff FCC No. 128	)	
Pacific Transmittal No. 1986	)	
	)	
BellSouth Telecommunications, Inc.	)	**CC Docket No. 98-161**
BellSouth Tariff FCC No. 1	)	
BellSouth Transmittal No. 476	)	
	)	

MCI WORLDCOM COMMENTS ON DIRECT CASES

I. Introduction

MCI WorldCom, Inc. (MCI WorldCom) hereby submits its comments on the Direct Cases filed by the GTE Telephone Operating Companies (GTE), Pacific Bell Telephone Company (Pacific), and BellSouth Telecommunications, Inc. (BellSouth) in the above-captioned dockets.

The Commission need not, and should not, address in this proceeding the question of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate. ADSL services have a range of other uses, some of which clearly involve the origination or termination of interstate

telecommunications services. The ILECs' ADSL services are therefore properly tariffed at the federal level.

It is equally clear, however, that ADSL services should not be tariffed exclusively at the federal level; many uses of ADSL services, such as "work at home" applications, obviously are intrastate in nature. Consequently, the Commission should conclude this investigation by finding that ILEC ADSL services have a range of uses, both interstate and intrastate, and are therefore properly tariffed at both the federal and state levels.

Should the Commission decide to reach the Internet-related jurisdictional issue -- which is unnecessary in this narrowly-tailored tariff review proceeding -- it should confirm that the jurisdiction of a telecommunications service connecting an ISP to other end users depends on the relative locations of the ISP POP and the ISP's subscriber. It is well-established that ISPs are end users, and that any information services provided by the ISP are separate from the telecommunications service and therefore not relevant to determining the jurisdiction of the telecommunications service.

II. Background

GTE introduced its ADSL service in Transmittal No. 1148, filed on May 15, 1998. According to the Description and Justification (D&J) provided with GTOC Transmittal No. 1148, "GTE's ADSL offering is an interstate data access service that provides high speed access connection between an end user subscriber and an Internet Service Provider (ISP) network by utilizing a combination of the subscriber's existing

local exchange physical plant (i.e. copper facility), a specialized ADSL-equipped wire center, and transport to the frame relay switch where the ISP connects to GTE's network."[1]

On May 22, 1998, several parties, including the Association for Local Telecommunications Services (ALTS), filed petitions to reject or to suspend and investigate Transmittal No. 1148. In its petition, ALTS challenged GTE's decision to file its ADSL tariff with the Commission. Focusing on the language in Transmittal No. 1148's D&J that describes GTE's ADSL service as providing interstate access to ISPs, ALTS contended that GTE's ADSL service in fact carries only intrastate traffic. ALTS argued that "the telecommunications portion of the DSL call terminates at the point where the call reaches an ISP interconnected to GTE because ISPs are end users, and any subsequent information services provided by the ISP are irrelevant in determining jurisdictional end points."[2]

In its reply, GTE disputed ALTS's jurisdictional analysis. GTE argued (incorrectly, in MCI WorldCom's view) that its ADSL service, if used to connect end users to an ISP, would be part of "one continuous transmission path" originating at the end user's location and terminating at the Internet servers accessed.[3] In GTE's view, this "continuous transmission path" would be interstate because, GTE believes, the Internet

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[1]GTOC Transmittal No. 1148, D&J at 1.

[2]ALTS Petition to Reject or to Suspend and Investigate, May 22, 1998, at 3.

[3]GTOC Transmittal No. 1148, GTE Reply at 9.

servers accessed are typically in states other than the one in which the ISP's subscriber is located.

The Commission suspended GTOC Transmittal No. 1148 on May 29, 1998, and instituted an investigation. In the GTE Designation Order, issued on August 20, 1998, the Commission states that "[t]he threshold issue raised by GTE's tariff and the petitioners is whether GTE's DSL service offering is an interstate service, properly tariffed at the federal level, or an intrastate service that should be tariffed at the state level."[4] The Commission designates for investigation the question whether GTE's DSL service offering is a jurisdictionally interstate service, and solicits comments on the jurisdictional issues raised by GTE's DSL service offering and whether it should be tariffed at the state or federal level.[5]

After GTE filed its ADSL service tariff with the Commission, similar ADSL tariffs were filed by Pacific, in Transmittal No. 1986, and BellSouth, in Transmittal No. 476. The Commission suspended both transmittals, and designated for investigation the same jurisdictional issue that it designated for investigation in the GTE Designation Order.[6]

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[4]In the Matter of GTE Telephone Operators, GTOC Tariff No. 1, GTOC Transmittal No. 1148, Order Designating Issues for Investigation, CC Docket No. 98-79, released August 20, 1998, at ¶12 (GTE Designation Order).

[5]Id.

[6]In the Matter of Pacific Bell Telephone Company, Pacific Bell Tariff F.C.C. No. 128, Pacific Transmittal No. 1986, Order Designating Issues for Investigation, CC Docket No. 98-103, released September 2, 1998 (Pacific Designation Order); In the Matter of BellSouth Telecommunications, Inc., BellSouth Tariff FCC No. 1, BellSouth Transmittal No. 476, Order Suspending Tariff and Designating Issues for Investigation, CC Docket

In their Direct Cases, the ILECs argue that the use of their ADSL services to connect end users to ISPs is an interstate application subject to the Commission's jurisdiction. They contend (1) that jurisdictional analysis must be performed on an end-to-end basis; (2) the relevant endpoints are not the subscriber end user and the ISP end user POP, but the subscriber end user and any Internet servers accessed as part of the information service provided by the ISP; (3) when analyzed on this basis, the use of ADSL service to connect to the Internet may involve intrastate, interstate, and international communications; and (4) because it is not technologically possible to distinguish interstate and intrastate Internet communications, the "inseparability doctrine" requires interstate treatment.

As discussed in more detail below, MCI WorldCom agrees with the ILECs that jurisdictional analysis must be performed on an end-to-end basis. But jurisdiction over a telecommunications service such as ADSL is determined by the endpoints of the telecommunications service, that is, from one end user to another end user. With respect to ISPs, the endpoints are the ISP customer and the end user ISP; any information services provided by the ISP end user are irrelevant to determining the jurisdiction of the ADSL-based telecommunications service. In this instance, the ILECs do not even provide a close case, but instead attempt to bootstrap all information services into their novel definition of "telecommunications". MCI WorldCom urges the Commission to reject that unsubtle approach.

No. 98-161, released September 1, 1998 (BellSouth Designation Order).

Before addressing the jurisdictional questions raised in the Designation Orders, MCI WorldCom briefly outlines the characteristics of ADSL and describes the ADSL services that the ILECs have tariffed.

A. ADSL

ADSL is a local loop transmission technology. Much like the T1 standard or any other digital transmission standard, the ADSL specification simply defines how a stream of digital bits is to be sent over some transmission medium -- a copper loop, in the case of ADSL. In particular, the ADSL specification describes (1) the actual electrical signal sent over the loop -- how the digital 1's and 0's are represented as electrical signals; and (2) the sequence in which user and network overhead bits are to be sent over the loop. The ADSL specification defines, for example, options for dividing the available bandwidth into upstream and downstream channels.

Because ADSL is just a transmission technology, its use is not limited to any single type of communication. An ADSL-equipped loop can be used for packet data communications, conventional "circuit-switched" communications, or video distribution. In fact, ADSL first came to the attention of the Commission when several ILECs proposed its use as a video dialtone technology.[7] In the ADSL services that are the subject of this investigation, however, the ILECs are using the ADSL-equipped loops to provide a packet data service. Depending on the ILEC, data travels over the ADSL-

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[7]See, e.g., In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Second Annual Report, 11 FCC Rcd 2060, 2149-2150 (1995).

equipped loop either in Frame Relay packets ("frames") or Asynchronous Transfer Mode packets ("cells").

An ADSL-equipped loop, by itself, cannot provide an end-to-end service between two end users. The ADSL-equipped loop must be interconnected at the central office to some type of transport service.[8] In the "ADSL services" that the ILECs have tariffed, transport services to and from the central office are provided using conventional transmission standards and data communications protocols. For example, the transport network could use SONET or DS3 transmission and ATM switching. An end-to-end service might then consist of the transmission of ATM cells over an ADSL-equipped loop from the end user to the central office, multiplexing of ATM cells from several end users onto an outgoing DS3 or SONET link by the Digital Subscriber Line Access Multiplexer (DSLAM) at the central office,[9] and finally transmission through an ATM-based transport network to an end user or another packet-switched network.

User data is carried in the ATM cells or frame relay packets. For example, if the ADSL-based service is used to connect an ISP end user to another end user, the user data consists of "Internet Protocol" (IP) packets. The IP packets are "encapsulated" in frame relay packets or "segmented" into ATM cells for transmission across the ADSL-

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[8]The Commission has recognized that in a typical service configuration, xDSL is "coupled with packet-switched networks. . . ." Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 98-147, released August 7, 1998, at ¶29-30 (Advanced Services Notice).

[9]The primary function of the DSLAM is to route the packets or cells arriving from the transport network to the correct loop or, in the user-network direction, to concentrate packets or cells from several users onto a single transport facility.

equipped loop and through the transport network. The service provider offering the ADSL-based service does not perform any Internet Protocol-related functions: the contents of the frame or cell, and the fact that the frame or cell may contain an Internet packet, are invisible to the ADSL service provider. The ADSL service and transport service work together to provide an end-to-end permanent "virtual circuit," transparently carrying the IP packet from between the ISP end user and other end users.

B. ILEC ADSL Services

As MCI WorldCom understands GTE's service configuration, GTE's ADSL service combines ADSL-equipped loops with a frame relay-capable DSLAM and frame relay transport. User data is encapsulated in frame relay frames and transmitted over the ADSL-equipped loop to the DSLAM, which then multiplexes frames from several users together for transmission over GTE's frame relay transport network. GTE's frame relay network then delivers frames from multiple end offices to an "ADSL connection point." From the "ADSL connection point," further transport is provided by GTE's frame relay service, purchased separately from GTE's interstate frame relay access tariff.

GTE's tariff defines its ADSL service in general terms. According to GTE's tariff, its ADSL Service is "provisioned over existing Telephone Company copper facilities and transported to the Telephone Company's backbone network" and "provides a connection from the customer's designated location (CDL) to the ADSL connection point."[10] The "ADSL connection point" is not defined as a physical location; it acts as a

[10]GTOC Tariff F.C.C. No. 1, Section 16.6(B).

demarcation point between the "ADSL service" and the separately-tariffed frame relay transport service. According to GTE's tariff, "the [ADSL] connection point is the aggregation point designated by the Telephone Company for connecting multiple Telephone Company serving wire centers of ADSL terminations to other network interface services."[11] By "network interface services," GTE appears to be referring to transport services, which "may include, but are not limited to, Frame Relay, ATM, DS1 and/or DS3 facilities."[12] At present, however, GTE's DSLAM supports only frame relay transport.

The ADSL services tariffed by Pacific and BellSouth are similar to GTE's ADSL service, but provide an ATM-based, not a frame relay-based, service. These ILECs' ADSL services use ATM transmission over an ADSL-equipped loop between the end user and the DSLAM, ATM-based multiplexing at the DSLAM, and ATM-based transport between the DSLAM and a "connection point."[13] Customers are then required to purchase ATM service from these ILECs' interstate access tariffs to provide the remainder of the transmission path from the connection point to the ISP POP or other customer designated location.[14]

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[11]Id., Section 16.6(A).

[12]Id.

[13]See, e.g., Pacific Bell Tariff F.C.C. No. 128, Section 17.5.1(B).

[14]Id.

III. Regardless of the Jurisdiction of Internet-Related Uses of ADSL Services, It is Clear that ADSL Services Have Both Interstate and Intrastate Uses; ADSL Services are Therefore Properly Tariffed Both with the Commission and with State Commissions

The Commission need not, and should not, decide in this proceeding whether one particular use of the ILECs' ADSL services -- connecting an ISP end user to other end users -- is interstate or intrastate. Of the many other uses of the ILECs' ADSL services, some are clearly interstate and therefore subject to the Commission's jurisdiction. The existence of these interstate uses of ADSL service is, by itself, sufficient to justify the filing of ADSL service tariffs with the Commission. ADSL services should not, however, be tariffed exclusively at the federal level; it is equally clear that ADSL services have intrastate uses and should therefore be tariffed at the state, as well as federal, level.

A. The ILECs' ADSL Services Have Uses Other than Internet Access

While the ADSL services that the ILECs have deployed may be used to connect ISP end users to other end users, this is by no means the only possible use of the ILECs' ADSL services.[15] The ILECs' ADSL services, when used together with the ILECs' transport services, simply provide for the transmission of frame relay frames or ATM cells between two locations. Just as the ILECs' ADSL/transport services may be used to connect an end user to an ISP POP, they may also be used to connect an end user to a

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[15]The Commission recognized in the Advanced Services Notice that xDSL technologies are not used exclusively to connect to ISPs. Advanced Services Notice at ¶31.

corporate headquarters location in order to provide a "work at home" service. Similarly, just as the ILECs' ADSL/transport services may be used to connect an end user to an ISP POP, they may also be used to connect an end user to an interexchange carrier (IXC) POP. For example, an IXC could interconnect its frame relay service with GTE's ADSL/frame relay service in order to link branch offices in various cities to a headquarters location.[16] This service would replace either slow dial-up links or expensive dedicated 56 kbps or T1 private lines.

The ILECs' Direct Cases, while focusing on the use of ADSL service to connect ISP end users to other end users, recognize that there are other uses for the ILEC ADSL services. BellSouth, for example, states that its ADSL service may be used in "wide range of data and information service applications that [network service providers] offer directly to end users."[17] In their direct cases, Pacific and GTE discuss the fact that ADSL services could be used to provide a work at home service.[18]

Just as there are no technical constraints limiting the ILECs' ADSL services to Internet-related applications, the ILECs' tariff language does not limit their ADSL services to Internet-related applications. Both Pacific and BellSouth's tariffs state that their ADSL/transport service can be used to connect to any "Network Service

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[16]Given the "asymmetric" nature of ADSL transmission, with greater bandwidth in the network-customer premises direction than in the customer premises-network direction, such a service would be suited for applications in which the flow of data is generally from the headquarters location to the branch offices.

[17]BellSouth Direct Case at 2.

[18]Pacific Bell Direct Case at 2; GTE Direct Case at 4 n.10.

Provider."[19] GTE's D&J states that GTE "will be providing access to the necessary network functions and equipment, on a nondiscriminatory basis, to enable an ISP, CLEC, IXC or any other entity to market and provide commercial ADSL service to their customers."[20] Pacific and BellSouth make similar statements in their Direct Cases.[21]

B. The ILECs' ADSL Services Have Both Interstate and Intrastate Uses

In the Designation Orders, the Commission asks whether ADSL services are interstate or intrastate in nature. In answering this question, the Commission need not address the wholly separate question of whether Internet-related uses of ADSL are interstate or intrastate in nature. By simply examining the many other uses of ADSL services, it becomes clear that ADSL services have both interstate and intrastate uses.

One example of an ADSL-based telecommunications service that is not Internet-related was described above -- a packet-switched data service that would link branch offices in various cities to a corporate headquarters location. This service could be provided by an IXC, which would interconnect its frame relay service with GTE's ADSL/frame relay service in order to provide an end-to-end service. This service is

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[19]Pacific Tariff F.C.C. No. 128, Section 5.1.1; BellSouth Tariff F.C.C. No.1, Section 7.2.17 (A).

[20]GTOC Transmittal No. 1148, D&J at 2.

[21]See, e.g., BellSouth Direct Case at 2 n.2 ("While ISPs are expected to be the primary customers of BellSouth ADSL service, there is nothing in BellSouth's tariff that precludes interexchange carriers, CLECs or other customers from ordering and obtaining the service.").

purely a telecommunications service; the Commission has found that both ADSL and frame relay are telecommunications services.[22]

It is well-established that jurisdiction over a telecommunications service is determined by the origination and termination points of the telecommunications service.[23] Thus, to the extent that the end users of the ADSL/frame relay telecommunications service -- the headquarters location and branch offices -- are in different states, the telecommunications service would be interstate and subject to the Commission's jurisdiction. GTE's ADSL service would then be providing "origination or termination" of an interstate telecommunications service and would therefore be considered an interstate "access service" under Section 69.2(b) of the Commission's rules.[24]

On the other hand, ADSL may be used in the provision of intrastate telecommunications services. In the IXC frame relay service example, the end-to-end telecommunications service would be considered intrastate if the branch office and headquarters locations were in the same state; under these circumstances, GTE's ADSL service would be considered an intrastate access service. If the GTE ADSL/frame relay

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[22]See Advanced Services Notice at ¶35 and n.57. See also Advanced Services Notice at ¶36 ("Incumbent LECs have proposed, and are currently offering, a variety of services in which they use xDSL technology and packet switching to provide members of the public with a transparent, unenhanced, transmission path. Neither the petitioners, nor any commenter, disagree with our conclusion that a carrier offering such a service is offering a 'telecommunications service'").

[23]NARUC v. FCC, 746 F.2d 1492, 1498-1499 (1984).

[24]47 C.F.R. §69.2(b).

service were used in a work at home application, connecting homes to a corporate office in the same local calling area, then GTE's service would be considered a local telecommunications service.

It is clear, therefore, that the ILECs' ADSL services can have local, intrastate access, and interstate access uses. MCI WorldCom agrees with Pacific that "[l]ike other transmission services and technologies, jurisdiction over ADSL service does not inherently reside within one jurisdiction or the other."[25] ADSL is just a transmission technology; of its many uses, some will be interstate while others will be intrastate. As Pacific states, "the interstate or intrastate use of Pacific's ADSL service will dictate jurisdiction."[26]

The conclusion that ADSL services have local, intrastate access, and interstate access uses is reinforced by the fact that ADSL's cousin, HDSL, has been used by the ILECs for many years to provide local, intrastate access, and interstate access services.[27] While HDSL is not tariffed as a distinct "HDSL service" because its performance characteristics appear to the user to be identical to those of T1 services, many of the "T1

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[25]Pacific Direct Case at 2.

[26]Id.

[27]The Fiber Deployment Update - End of Year 1997 report notes that "most surveyed companies apparently have been using HDSL equipment for some time to provide T1 service. . . ." Fiber Deployment Update - End of Year 1997 at 20. One estimate is that 75 percent of all new T1 lines are provisioned using HDSL. Kathleen Cholekwa, "Behind the Scenes, HDSL Makes T1 Service Cheap," Inter@active Week, April 27, 1997, http://www.zdnet.com/intweek/print/980427/310736.html.

services" that are sold from local private line, intrastate special access, and interstate special access tariffs use HDSL transmission.

C. ADSL Services are Properly Tariffed With the Commission and With the States

In the Designation Orders, the Commission asks whether the ILECs' ADSL service offerings are properly tariffed at the federal or state level. The Commission should conclude this investigation by finding that the ILECs' ADSL service offerings are properly tariffed at both the federal and state levels. The Commission can reach this conclusion without needing to address the wholly separate issue of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature.

As discussed above, even without addressing the question of whether the use of ADSL to connect ISPs to other end users is interstate or intrastate, it is clear that the ILECs' ADSL services have local, intrastate access, and interstate access uses. To the extent that the ILECs are offering their ADSL services for these interstate uses, Section 203 of the Act requires that their ADSL services be tariffed with the Commission. Thus, regardless of whether the Internet-related uses of the ILECs' ADSL services are interstate or intrastate, ADSL service tariffs are properly filed with the Commission.

To the extent that the ILECs are offering ADSL services for intrastate applications (such as "work at home" applications), the ILEC ADSL services are subject to the states' jurisdiction and should be filed in the ILECs' intrastate tariffs. MCI

WorldCom notes that Pacific Bell has filed a tariff for its ADSL service with the California Public Utilities Commission, citing work at home applications.[28] and U S West has filed ADSL tariffs with state commissions in its region.[29]

IV. The Commission Should Not Address in this Proceeding the Wholly Separate Issue of Whether Internet-Related Uses of ADSL Services are Interstate or Intrastate

As discussed above, the Commission need not address the question of whether one particular use of the ILECs' ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature in order to decide the issue designated for investigation. Nor, for the reasons outlined below, should the Commission reach beyond the issue designated for investigation to address Internet-related jurisdictional issues in this proceeding. However, if the Commission does decide to address the Internet related jurisdictional issues in this proceeding, it should reject the ILEC argument that Internet servers accessed as part of the information service provided by the ISP are relevant endpoints for the purpose of jurisdictional analysis.

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[28]Pacific Bell Direct Case at 2.

[29]See, e.g., U S West Communications, Arizona Competitive Communications Services Tariff, Section 8.

A. The Commission Should Not Address the Jurisdictional Issues Associated with Internet Traffic in a Tariff Proceeding

The Commission should not address jurisdictional issues associated with Internet traffic in this proceeding. In the past, when parties have raised the issue of whether a particular service should be purchased from the interstate or intrastate tariff, the Commission has addressed the issue in a rulemaking, a declaratory ruling, or a complaint proceeding.[30] There is no need for the Commission to determine, at the time that a tariff is filed, whether a particular use of the ILEC's service would require that customers purchase service from the interstate tariff. That issue is wholly separate from the question asked in the Designation Orders -- whether ADSL is properly tariffed at the federal or state level -- and can therefore be addressed, if necessary, in a separate proceeding.

The complex jurisdictional issues associated with Internet traffic are best addressed in a full notice and comment proceeding, such as the Commission's Internet inquiry,[31] or in response to a petition for declaratory ruling, not in a tariff investigation. A tariff investigation is conducted under an accelerated schedule and with significantly less public involvement, and thus a less complete record, than a notice and comment

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[30]In the Matter of MTS and WATS Market Structure Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Recommended Decision and Order, 4 FCC Rcd 1352 (1989); In the Matter of the Petition of the New York Telephone Company for a Declaratory Ruling with Respect to the Physically Intrastate Private Line and Special Access Channels Utilized for Sales Agents to Computer New York State Lottery Communications, Memorandum Opinion and Order, 5 FCC Rcd 1080 (1990).

[31]Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Inquiry, 11 FCC Rcd 21354 (1996).

rulemaking proceeding. The pleading cycle in this tariff proceeding has been especially short, with the Commission allowing only ten days between the filing of GTE's Direct Case and the due date for comments and oppositions.

Of particular concern in this tariff proceeding, given its jurisdictional implications, is the fact that the accelerated schedule may preclude state commissions -- which have an obvious direct interest in the outcome -- from participating or from filing extensive comments.[32] The complex jurisdictional questions concerning Internet traffic should be addressed in a proceeding in which state commissions have a full opportunity to participate.

B. If the Commission Reaches the Internet-Related Jurisdictional Issue, It Should Confirm that the Relevant Endpoint for Jurisdictional Analysis is the ISP End User POP

Should the Commission decide to reach the Internet-related jurisdictional issue in this proceeding, which it need not and should not, the Commission should confirm that the relevant endpoints for analyzing the jurisdiction of an ADSL service are the ADSL-based telecommunications service's end users -- the ISP's subscriber and the point of presence of the ISP itself.

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[32]California's Comments on GTE Direct Case, CC Docket No. 98-79, filed September 11, 1998 ("Because of the pendency of cases before the CPUC in which the same or closely similar jurisdictional issues are raised, the CPUC is unable to comment before the FCC without prejudging these cases."); Motion to Extend the Time for Response or Motion to Accept Late-Filed Response by the Public Utility Commission of Texas, CC Docket No. 98-79, filed September 10, 1998 ("Our Open Meeting schedule precludes us from providing the response of the Public Utility Commission of Texas to the FCC's Order before September 25, 1998.").

MCI WorldCom agrees with the ILECs that jurisdiction is determined by end-to-end analysis. However, the precedents cited by the ILECs stand only for the principle that the jurisdiction of a telecommunications service is determined by end-to-end analysis of the telecommunications service; they do not support the ILECs' assertion that a wholly separate information service should be considered in analyzing the jurisdiction of the telecommunications service. Indeed, the Commission has consistently stated that when a telecommunications service is used together with an information service, as in the case of Internet access, "we treat the two services separately: the first service is a telecommunications service (e.g., the xDSL-enabled transmission path), and the second service is an information service, in this case Internet access."[33] Thus, contrary to the ILECs' assertions, the location of the Internet servers accessed as part of the information service provided by the ISP is irrelevant to determining the jurisdiction of ADSL or any other telecommunications service.

As ALTS and numerous other commenters pointed out in their petitions to reject or suspend and investigate the ILECs' ADSL tariffs, it is well-established that information service providers such as ISPs are "end users" for the purpose of determining the jurisdiction of a telecommunications service such as ADSL.[34] The jurisdiction of an ADSL service used to connect ISP subscriber end users to an ISP POP thus depends on the relative locations of the ISP subscribers and the ISP POP. For

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[33] Advanced Services Notice at ¶36 (emphasis added).

[34] See, e.g., GTOC Transmittal No. 1148, Petition to Reject, or to Suspend and Investigate, by the Association for Local Telecommunications Services, May 22, 1998 at 3.

example, if an ISP POP and the ISP subscriber are in the same local calling area, the connecting ADSL service would be classified as a local service. On the other hand, if the ISP subscriber and the ISP POP are in different states, then the ADSL-based telecommunications service provided between the ISP subscriber and the ISP POP would be interstate in nature.

C. Because ISPs are End Users, the State Commissions Will Have a Substantial Role in Evaluating ILEC ADSL Rates

The Commission asks in the Designation Orders whether it should defer to the states the tariffing of retail DSL services.[35] In comments to suspend and investigate the ILECs' ADSL tariffs, several parties had stated that the ILECs' ADSL prices were below the costs that competing providers would incur to obtain unbundled loops, cross-connects, collocation space and other facilities from the ILEC, permitting the ILEC to engage in a price squeeze. Northpoint had suggested that the Commission defer to the states the tariffing of ADSL services, arguing that states would be in a better position to evaluate any price squeeze.

MCI WorldCom agrees with Northpoint that inflated ILEC pricing of unbundled elements and collocation space creates a substantial risk of a price squeeze in the market for xDSL services or, for that matter, any telecommunications service. However, the Commission should not defer tariffing of DSL services to the states. To the extent that DSL services are used to provide interstate access services, the Commission should

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[35] GTE Designation Order at ¶12; Pacific Designation Order at ¶10; BellSouth Designation Order at ¶10.

continue to require that DSL services be tariffed at the federal level. As discussed above, HDSL is widely used today to provide special access T1 circuits that IXCs and end users purchase from interstate special access tariffs. The Commission should certainly not relinquish its oversight of HDSL or other interstate access rates without consideration in a full notice and comment rulemaking proceeding.

It is clear, however, that the states will have a significant role in evaluating the ILECs' ADSL rates. Because ISPs and other information service providers are end users, they have the right to purchase telecommunications services, including ADSL, from local, intrastate tariffs. Thus, state oversight of ILEC intrastate ADSL tariffs will be of considerable importance to ISPs, one of the primary customers for the ILECs' ADSL services. MCI WorldCom notes that U S West has acknowledged that its intrastate ADSL services are targeted to ISPs.[36]

V. Once the Commission Has Found That ADSL Services are Properly Tariffed at the Federal Level, It Should Focus on the Other Issues Outlined in the GTE Suspension Order

In its order suspending GTOC Transmittal No. 1148, the Commission found that several issues raised by commenters in support of their petitions to reject or suspend and investigate raised substantial questions of lawfulness.[37] These issues included (1)

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[36]See http://www.uswest.com/com/customers/interprise/dsl/fast_facts.html ("Several Internet Service Providers (ISPs) are offering or will soon be offering their customers high-speed access to the Internet using MegaBit Services.")

[37]In the Matter of GTE Telephone Operations, GTOC Tariff No. 1, GTOC Transmittal No. 1148, Order, CC Docket No. 98-79, released May 29, 1998, at ¶3 (GTE Suspension Order).

whether ADSL constitutes an interstate access service; (2) whether ADSL should be unbundled from GTE's frame relay service pursuant to the Commission's expanded interconnection rules; (3) whether GTE's tariff raises questions regarding the reasonableness and the clarity of the tariff terms and conditions; and (4) whether the rate levels were reasonable.

Of these issues, the Commission designated only the jurisdictional question for investigation. While it is perhaps reasonable for the Commission to defer consideration of the other issues outlined in the GTE Suspension Order until it determines whether it has jurisdiction over ADSL services, the Commission should not allow these "substantial questions of lawfulness" to simply fall by the wayside. Once the Commission has decided the "threshold issue" of whether the ILECs' ADSL tariffs are properly tariffed at the federal level, the Commission should return to the issues listed in the GTE Suspension Order either in the Advanced Services proceeding or in a separate proceeding focused on the terms and conditions under which ILEC ADSL services may be offered.

In addition to the issues raised in petitions to suspend and investigate the ILEC ADSL tariffs, there appear to be price cap and separations issues that are implicated by ADSL and that should be examined by the Commission. First, while the ILECs characterize their ADSL services as "analogous" to special access services, it is not clear whether the ILECs intend to treat their ADSL services as special access services for price cap purposes or whether it is appropriate to treat ADSL services in this manner.

Nor is it clear in which "High Cap & DDS" subcategory the ILECs plan to include ADSL services.

Second, there may be separations-related issues implicated by ADSL. The ILECs have characterized the high-speed data service that they will provide using ADSL as "analogous" to special access services subject to the "10 percent rule."[38] Yet, the same ADSL-equipped loop that is being used to provide this service can continue to be used for ordinary voice local exchange and exchange access services.[39] Given that private lines and common lines are distinct separations categories subject to different separations rules,[40] it is not clear how the ILECs plan to treat ADSL-equipped loops for separations purposes.

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[38]See, e.g., Pacific Bell Direct Case at 13.

[39]Advanced Services Notice at ¶29.

[40]See 47 C.F.R. §36.154(a) - (c).

VI. Conclusion

The Commission should conclude this investigation by finding that the ILECs' ADSL service offerings are properly tariffed at both the federal and state levels. The Commission can reach this conclusion without needing to address the wholly separate issue of whether one particular use of ADSL services -- connecting ISP end users to other end users -- is interstate or intrastate in nature. The Commission should not reach beyond the question presented for investigation to address Internet-related jurisdictional issues in this proceeding.

Respectfully submitted,
MCI WORLDCOM, INC.

Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, DC 20006
(202) 887-2779

Cathy R. Sloan
David N. Porter
Richard L. Fruchterman III
Richard S. Whitt
1120 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036
(202) 776-1550

September 18, 1998

STATEMENT OF VERIFICATION

I have read the foregoing, and to the best of my knowledge, information, and belief there is good ground to support it, and that it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on October 15, 1998.

Alan Buzacott
Regulatory Analyst
1801 Pennsylvania Ave. NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Vivian I. Lee, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 15th day of October, 1998.

International Transcription Services**
1231 20th Street, N.W.,
Washington, DC 20036

Jane Jackson**
Chief, Competitive Pricing Division
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Competitive Pricing Division** (2 copies)
Federal Communications Commission
Room 518
1919 M Street, N.W.
Washington, D.C. 20554

Lawrence W. Katz
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

**HAND DELIVERED

Vivian I. Lee

Vivian I. Lee