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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
1998 Biennial Regulatory Review -- Review of the International Settlements Policy and Associated Filing Requirements	)	IB Docket No. 98-148
	)	
Regulation of International Accounting Rates	)	CC Docket No. 90-337

REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WorldCom, Inc. ("MCI WorldCom") hereby submits its reply comments in response to the comments filed regarding the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceedings. MCI WorldCom supports the Commission's efforts to modify its rules regarding the application of the International Settlements Policy ("ISP") to permit maximum flexibility where market conditions warrant.

Contrary to the suggestions of some of the commenters in this proceeding, however, the ISP must be retained as a safeguard in certain circumstances. Specifically, on routes where there is a lack of effective competition in the foreign destination market or cost-based settlement rates have not yet been implemented, removing the ISP would significantly increase the risk of harm in the U.S. market by facilitating one-way bypass into the United States. MCI WorldCom thus encourages adoption of the Commission's proposals, with the modifications proposed in MCI WorldCom's comments and in these reply comments.

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A. *Premature Removal of the ISP for Arrangements With Foreign Carriers With Market Power Will Significantly Increase the Opportunity For One-Way Inbound Bypass.*

In its initial comments, MCI WorldCom supported the Commission's efforts to identify routes for which the ISP may be lifted with respect to arrangements with *all* foreign carriers. MCI WorldCom believes that it is appropriate to lift the ISP when competitive conditions exist in the relevant foreign market or cost-based settlement rates exist so as to ensure that there is little potential for one-way inbound bypass that will increase net U.S. settlement rates.[1] As a means to accomplish this result, MCI WorldCom proposed that, with respect to arrangements with dominant foreign carriers from WTO Member countries, the ISP should apply unless: (1) at least 50 percent of the traffic on the route is settled within 2 cents of the best practices rate; *or* (2) the foreign destination market affords U.S. carriers equivalent international simple resale ("ISR") opportunities.

As MCI WorldCom explained in its initial comments, the use of a rate within 2 cents of the best practices rate will significantly reduce the opportunity for one-way bypass. Similarly, if U.S. carriers have equivalent opportunities to provide ISR in the relevant foreign market, they will be able to bypass high settlement rates for terminating their traffic in the foreign market, thereby eliminating the one-way bypass problem.

[1] For example, MCI WorldCom supported the Commission's tentative conclusion that it should not continue to apply the ISP and related filing requirements to U.S. carrier arrangements with foreign carriers that lack market power in the relevant foreign destination market. MCI WorldCom also concurred with the Commission's proposed standard for determining whether a foreign carrier lacks market power in a relevant foreign destination market: a foreign carrier with less than 50 percent market share in a relevant destination market is presumed to lack sufficient market power to affect competition adversely in the United States. *See* MCI WorldCom Comments at 2-4.

Like MCI WorldCom, a number of other commenters support lifting the ISP when there is minimal incentive or opportunity for one-way inbound bypass.[2] On the other hand, GTE Service Corporation ("GTE"), Telefonica International, S.A. ("TISA"), ntta.com, inc. ("ntta.com") and Deutsche Telekom ("DT"), all of which are affiliated with dominant overseas carriers, argue that the ISP should be lifted in nearly all cases, regardless of the risk of harm in the U.S. market. For example, GTE and ntta.com argue that the ISP should be lifted with respect to arrangements with *all* carriers from WTO Member countries, regardless of market share.[3] Similarly, DT asks the Commission to remove the ISP in cases in which the foreign carrier has market power, but is not a monopoly.[4] TISA asks the Commission to lift the ISP for all foreign carriers on a route once a U.S. carrier enters into an arrangement with a nondominant foreign carrier.[5]

The Commission should reject these proposals. First, WTO membership is no guarantee of low settlement rates or foreign market liberalization. The level and timing of WTO market liberalization commitments, *if any*, vary widely. Thus, the Commission should reject the proposals of GTE and ntta.com. Second, contrary to the assertions of DT and TISA, the mere presence of a competitor in the foreign market does not ensure competition. For example, while there may be competition in a foreign market, if interconnection or leased line rates remain high, the competitor will not be able to terminate U.S.-originated

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[2] *See, e.g.,* AT&T Comments at 6-15; Sprint Comments at 6-8; GSA Comments at 7.

[3] GTE Comments at 4-10; ntta.com Comments at 5-11.

[4] DT Comments at 3.

[5] TISA Comments at 1-2.

traffic at low enough rates to drive down the settlement rate. Indeed, wholesale removal of the ISP on routes with high above-cost settlement rates would almost certainly result in significantly increased one-way bypass with little or no offsetting decrease in settlement rates. Thus, the Commission must continue to ensure that such incentives are sufficiently reduced before allowing the ISP to be lifted for foreign carriers with market power.

In addition, certain commenters[6] propose that the Commission decline to apply the ISP with respect to all foreign carriers on routes where the Commission has already authorized ISR.[7] These commenters, however, fail to recognize that the Commission's settlement rate benchmarks are well above the cost of terminating international traffic.[8] The use of the current ISR standard as the standard for removal of the ISP for a particular route will result in significantly increased one-way bypass. If the ISP is lifted on a particular route when the benchmark is reached, the dominant foreign carrier would find it highly profitable to engage in one-way bypass, with no resulting downward pressure on settlement rates. In addition, there would be no incentive for a dominant overseas carrier to reduce its settlement rate below the benchmark. Moreover, such a policy would eviscerate the current ISR policy, which has safeguards against one-way bypass and traffic distortion.[9] Thus, the Commission

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[6] *See, e.g.,* BellSouth Comments at 3; SBC Comments at 8-9; BTNA Comments at 7-8; C&W Comments at 4-7.

[7] Under the Commission's current rules, ISR will be authorized for a particular route where the destination country is found by the Commission to offer equivalent resale opportunities, or where 50 percent of the traffic on the route is settled at or below benchmark rates.

[8] *See, e.g., International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, 19807 (1997), ("*Benchmarks Order*") *recon. pending, appeal filed; Cable & Wireless et al. v. FCC*, No. 97-1612 (D.C. Cir. filed Sept. 26, 1997).

[9] For a more detailed discussion of this issue, *see* MCI WorldCom Comments at 5-6.

should remove the ISP for all carriers only on routes where the settlement rate is near cost or U.S. carriers have equivalent ISR opportunities on the foreign end.

B. *The Commission Should Retain Limited Safeguards for Certain Arrangements After the ISP Has Been Removed for a Particular Route.*

In its initial comments, MCI WorldCom recommended that, when the ISP is removed or waived on a particular route, the Commission should retain a modified version of its publication and nondiscrimination safeguards that currently apply under the Commission's Flexibility Policy.[10] Specifically, arrangements between U.S. carriers and dominant foreign carriers affecting more than 25 percent of the traffic should be filed confidentially with the Commission and should not contain unreasonably discriminatory terms and conditions. Arrangements between U.S. carriers and dominant foreign carrier affiliates and non-equity joint venture partners should be publicly filed with the Commission and should not contain unreasonably discriminatory terms and conditions.

Most commenters support retention of safeguards similar to those proposed by MCI WorldCom. GTE, however, generally opposes any filing requirements for agreements with any foreign carriers from WTO Member countries. As MCI WorldCom indicated earlier, the commitments among WTO Member countries vary greatly, and safeguards remain

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[10] Currently, there are two safeguards applied to alternative arrangements between carriers regardless of whether there is a dominant foreign carrier involved. First, any alternative arrangement affecting more than 25 percent of the outbound or inbound traffic on a route may not contain unreasonably discriminatory terms and conditions and must be publicly filed. Second, all alternative arrangements between affiliated carriers and carriers involved in non-equity joint ventures must be publicly filed. *See Regulation of International Accounting Rates*, Fourth Report and Order, 11 FCC Rcd 20,063, 20,078-84 (1996).

necessary in many cases.[11]

C&W and AmericaTel oppose any different filing requirements for arrangements with dominant foreign carriers versus nondominant foreign carriers. These parties ignore the fact, however, that arrangements with dominant foreign carriers that exceed the 25 percent threshold may have a distorting effect on competition on a particular route. The carefully tailored filing requirements proposed by MCI WorldCom permit U.S. carriers maximum flexibility to enter into arrangements that are not unreasonably discriminatory without any prior approval and without unduly burdensome filing requirements.

C. *The Commission Should Retain Its Current ISR Rules Without Modification.*

In its comments, MCI WorldCom supported the Commission's goal of encouraging ISR to put downward pressure on international settlement rates, but strongly opposed any changes to the Commission's current ISR rules.[12] A number of parties filed comments agreeing with MCI WorldCom.[13] These parties recognize that the current ISR rules have been carefully crafted to prevent one-way bypass, while putting downward pressure on settlement rates.

GTE, C&W, and ntta.com, however, encourage the Commission to permit ISR to all WTO countries without restriction. This proposal is misguided. The liberalization

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[11] *See supra* at 3.

[12] In its *Notice*, the Commission asked whether, consistent with its commitment to prevent one-way bypass, it should permit carriers to provide ISR for a limited amount of traffic on a route. The Commission also requested comment whether it would be feasible to decide in advance to lift the ISP for *all* routes when a certain percentage of international routes have become competitive.

[13] *See* Sprint Comments at 10-12; AT&T Comments at 28-33; GSA Comments at 8-10; SBC Comments at 15-17.

commitments among WTO Member countries vary widely. Thus, in many cases, WTO membership does not translate into low settlement rates or equivalent resale opportunities. As MCI WorldCom described in its comments, allowing ISR on routes that do not meet the settlement rate benchmark or the equivalency test would *not* put downward pressure on settlement rates. Indeed, it would almost certainly result in significantly increased one-way bypass with little or no offsetting decrease in settlement rates, contrary to the Commission's goals of reducing international termination rates. Thus, the Commission should retain its current ISR rules without modification.

D. *The Commission Should Prohibit Grooming Arrangements Between Foreign Carriers With Market Power and the ILECs.*

In its initial comments, MCI WorldCom supported the Commission's tentative conclusion that the "No Special Concessions" rule does not apply to the terms and conditions under which traffic is settled, including allocation of return traffic, by a U.S. carrier on an ISR route. The "No Special Concessions" rule would still prohibit exclusive arrangements with a foreign carrier with market power with respect to the interconnection of international facilities, private line provisioning and maintenance, as well as quality of service.

MCI WorldCom also indicated that certain types of grooming arrangements present the potential for anticompetitive effects, particularly with respect to arrangements between foreign carriers with market power and incumbent local exchange carriers ("ILECs").[14] Thus, these arrangements should be prohibited. In its comments, SBC, an ILEC, urges the Commission to allow ILECs to groom inbound international traffic.

[14] *See* MCI WorldCom Comments at 10-11.

Contrary to SBC's assertions, these grooming arrangements do not benefit consumers in the long run, and in fact, they benefit the carriers that can engage in them – the ILEC and the foreign carrier with market power. It is simply not true that grooming arrangements will only be used to enable inbound traffic to be distributed to U.S. carriers in an economically efficient manner, or that they will necessarily lower U.S. carriers' costs in terminating inbound traffic and result in lower consumer prices. Because ILECs have monopoly control over the local exchange and exchange access market, they have a distinct cost advantage that other carriers cannot match. Grooming would allow the ILECs to negotiate for more lucrative inbound traffic from foreign carriers with market power, while leaving higher cost traffic to its competitors to terminate. While grooming arrangements may increase the ILEC's profits, they hinder the economic efficiencies of the market as a whole.[15] This situation might change in the distant future when effective competition is a reality in the local exchange and exchange access markets. Until that time, however, grooming arrangements between ILECs and foreign carriers with market power should be rejected.

SBC has not provided any evidence that by prohibiting grooming arrangements, the cost of terminating international traffic will increase. Indeed, the evidence points to the opposite conclusion: allowing grooming arrangements will likely increase the overall costs of terminating international traffic. Nor has SBC provided any support for its assertion that grooming arrangements will enhance competition in the foreign market. To the contrary, these arrangements will more than likely hinder competition overseas. Since the dominant

[15] For a detailed summary of the potential harm that grooming may cause, *see* Letter from Kenneth A. Schagrin, MCI Communications Corporation, to Magalie Roman Salas, Federal Communications Commission, IB Docket No. 97-142 (July 20, 1998).

foreign carrier controls most of the overseas traffic, it can use grooming arrangements as an anticompetitive strategy against new entrants in the foreign market, *i.e.*, through pricing deals on traffic volumes that cannot be matched by new entrants. MCI WorldCom believes that grooming arrangements between ILECs and foreign carriers with market power must be prohibited because of the detrimental effect they will have on the U.S. international services market, as well as the detrimental effect they will have on competition overseas.

E. *Conclusion*

In conclusion, MCI WorldCom supports the Commission's efforts to update its rules regarding the application of the ISP. MCI WorldCom urges the Commission to adopt its proposals, with the modifications recommended in its comments and these reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Susanne Deljoubar, hereby certify that I have this 16th day of October, 1998, sent a copy of the foregoing "Reply Comments" by first-class, U.S. mail, postage prepaid to the following:

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