1801 Pennsylvania Avenue, N.W.
4th Floor
Washington, D.C. 20006

MCI WORLDCOM

EX PARTE OR LATE FILED

November 4, 1998

EX PARTE

VIA HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: MCI WorldCom's Top 10 Practical Impacts Of An FCC Decision Finding Dial-Up, Circuit Switched Calls To ISPs Are Inherently Jurisdictionally Interstate (CC Docket Nos. 96-98; 98-79; 98-103; 98-161; CCB/CPD 97-30)

Dear Ms. Salas:

This letter is submitted ex parte on behalf of MCI WorldCom, Inc. ("MCI WorldCom") in the above-referenced proceedings. Last Friday, the Commission issued an order concluding that GTE's ADSL service, which permits information service providers ("ISPs") to provide their end user customers with high-speed access to (among other destinations) the Internet, is an interstate service that is properly tariffed at the federal level.[1]

As MCI WorldCom has explained repeatedly,[2] pertinent case law and factual analysis inevitably lead to the conclusion that locally dialed calls terminating

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[1] In the Matter of GTE Telephone Operating Cos., GTOC Tariff No. 1, GTOC Transmittal No. 1148, Memorandum Opinion and Order, CC Docket No. 98-79, issued October 30, 1998 ("GTE ADSL Order").

[2] See MCI WorldCom Comments on Direct Cases, CC Docket Nos. 98-79; 98-103; 98-161, filed September 18, 1998; MCI WorldCom Ex parte presentation on ADSL Tariffs, CC Docket Nos. 98-79; 98-103; 98-161, presented October 16, 1998; Ex parte letter from Richard S. Whitt, MCI WorldCom, to Magalie Roman Salas, FCC, CC Docket Nos. 96-98; 98-79; 98-103; 98-161; CCB/CPD 97-30, filed October 19, 1998; Ex parte letter from Mary Brown, MCI WorldCom, to Katherine C. Brown, FCC, CC Docket Nos. 96-98; 98-79; 98-103; 98-161, filed October 27, 1998; Ex parte letter from Richard S. Whitt, MCI WorldCom, to Magalie Roman Salas, FCC, CC Docket Nos. 96-98; 98-79; 98-103; 98-161; CCB/CPD 97-30, filed October 27, 1998.

to an information service provider's ("ISP's") point of presence ("POP"), such as a server or modem pool, within a local exchange area inherently are jurisdictionally local. To the extent the GTE DSL Order has determined otherwise for GTE's ADSL service, MCI WorldCom disagrees with that conclusion, but will not revisit that particular issue in this letter. Instead, MCI WorldCom will focus on why dial-up, circuit-switched calls to ISPs are jurisdictionally local, and what practical, real-world implications must be dealt with should the Commission determine (incorrectly) that such calls are jurisdictionally interstate.

A Dial-Up Call Is A Local Call

Prior to considering whether a dial-up, circuit-switched call to an ISP enhanced service platform is jurisdictionally local or interstate, the Commission must have a complete understanding of how such calls are established. In the GTE ADSL Order, the FCC focused on the fact that the tariff in question provided only a dedicated, packet-switched, high-speed connection through an ILEC's frame relay to an ISP as part of the ISP's Internet access service. See GTE ADSL Order at paras. 1 n.1, 2, 11, 21, 29. In contrast, dial-up calls are placed and paid for by end user customers to reach one or more ISPs of their choice, utilizing the public circuit-switched network as part and parcel of the end user customer's local residential or business telecommunications service.

Unlike the Commission's view of the GTE-provided ADSL service -- where GTE's DSL-equipped local loop and frame relay switching equipment were considered an integral component of an ISP's single dedicated, "always on," high-speed connection to the Internet -- dial-up calls do not provide dedicated capabilities, but merely function exactly like any other circuit-switched telephone call. As such a call, the end points correspond to the place where the communications service begins and ends -- in this case, with two end users: the calling party and the called ISP. The ISP receives the calling party's request for information, locates and retrieved that information, and provides it to the calling party. The calling party does not know from which source the ISP has retrieve the requested information, and the end user is never connected to that source.

Top Ten Reasons Not To Declare ISP Calls To Be Jurisdictionally Interstate

If the Commission ignores these important factual differences between DSL traffic and dial-up traffic, and decides instead that all locally-dialed calls terminating to ISP enhanced service platforms inherently are interstate, there are numerous practical consequences that must be successfully dealt with before the Commission takes the additional step of asserting jurisdiction.

First, the Commission must consider the impact on residential consumers. In particular, if the FCC's action leads to flat-rated local calls becoming usage-sensitive

long distance calls virtually overnight, consumers will end up paying significantly more money just to be able to reach their local ISP. Internet usage generally, and prospects for e-commerce specifically, will suffer accordingly.

Second, any Commission action perceived to be inviting federal common carrier-type regulation of ISPs, and denying them competitive choices for local service, risks alienating many members of the ISP community.

Third, the Commission also must consider the enormous competitive impact of its decision on CLECs. For example, if the Commission asserts interstate jurisdiction over traffic terminating to ISPs, this action alone could have a major impact on current interconnection agreements, not to mention eliminating any leverage the CLECs might have in ongoing and upcoming negotiations over agreements that are set to expire soon. Further, if the Commission assigns an arbitrary future cut-off date to current reciprocal compensation arrangements, this action would have a disparate competitive equities impact on different CLECs.

Fourth, if reciprocal compensation is eliminated altogether, whether inadvertently or deliberately, CLECs no longer would be able to recover compensation from the ILECs for the legitimate costs of terminating traffic destined to CLEC end user customers. That lost compensation will translate into the loss of millions of dollars in valuable earnings and subsequent new capital investment in switches and facilities to provide competitive local service.

Fifth, in the absence of state commission-administered reciprocal compensation, CLECs still must be allowed to recover their legitimate costs of terminating traffic to their customers. As a result, the Commission might be compelled to develop a new federal rate scheme that governs in situations when one LEC passes traffic to another LEC that ultimately is bound for an ISP. This scheme also might affect all existing relationships when two carriers (a BOC and an independent LEC) provide any joint service including either originating or terminating access.

Sixth, Commission jurisdiction over traffic terminating to ISPs will require a massive shift of costs from the intrastate to the interstate jurisdiction. With a possible shift of some 300-400 billion annual minutes of ISP-bound traffic -- nearly the current level of interstate minutes -- from the state to federal jurisdiction, the Commission must consider the consequences for ratemaking in both jurisdictions. Further, under Section 410(c) of the Communications Act of 1934, as amended, the Commission is required to refer such a separations matter to a Federal-State Joint Board on Separations for full input, leading eventually to a recommended decision.[3]

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[3] 47 U.S.C. Section 410(c).

Seventh, the only way MCI WorldCom believes the Commission could declare the terminating point of the end user's call to be a distant point, rather than the ISP's local POP, is to include that ISP's non-regulated activity within the classification of the "end to end" communications service. This result would be unprecedented and, if applied in a non-discriminatory manner, would appear to mean that any business engaged in interstate commerce may only subscribe to interstate services -- services which the states cannot regulate and the BOCs cannot provide. MCI WorldCom does not believe this to be the Commission's intent.

Eighth, finding dial-up traffic to ISPs to be inherently interstate would ignore how that traffic has been viewed over the past several years. In particular, independent decisions by twenty-three state public service commissions, and three U.S. District Courts, have concluded that dial-up traffic is local and/or covered by carrier-to-carrier interconnection agreements.

Ninth, declaring interstate jurisdiction over ISPs would appear to violate Congress' direction not to embroil ISPs in a regulatory morass. In particular, Section 230(b)(2) of the Communications Act of 1934, as amended, directs the federal government to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. Section 230(b)(2).

Tenth, if the Commission were to classify all calls to ISPs as interstate, it must carefully consider the likely negative reaction from state public service commissions. In a world where the final outcome of the Iowa Utilities Board case is still very much in doubt, the Commission should not take action that could threaten to trigger another unnecessary and potentially costly turf war with the states.

Given these critical consequences of any Commission decision asserting federal jurisdiction over locally dialed calls terminating to an ISP's enhanced services platform within a local exchange area, MCI WorldCom urges the Commission to carefully evaluate the perceived necessity of making such a jurisdictional assertion at this time. At minimum, in the interests of preserving comity with the states, and avoiding significant negative impacts on consumers and competition alike, the Commission should decline to assert federal jurisdiction unless and until it has fully addressed each of these policymaking concerns.

An original and one copy of this letter are hereby submitted to your office for each of the above-referenced proceedings. If you have any questions, please contact the undersigned at 202-776-1553.

Respectfully submitted,

Richard S. Whitt
Director, Federal Affairs/Counsel

cc: Kathy Brown
Larry Strickling
Jane Jackson
Tom Power
Jim Casserly
Kevin Martin
Paul Misener
Kyle Dixon
Paul Gallant