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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 17, 1999

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: Ex Parte in CC Docket Nos. 80-286, 96-98, 96-262

Dear Ms. Salas:

Attached please find an ex parte letter sent today from Mary L. Brown, Senior Policy Counsel, MCI WorldCom, to Lawrence E. Strickling, Chief, Common Carrier Bureau. Please include this letter in the record of the above-captioned proceedings.

Six copies of this letter are being submitted pursuant to Section 1.1206(b)(1) of the Commission's Rules.

Respectfully submitted,

Alan Buzacott

Enclosure

No. of Copies rec'd 0+5
List ABCDE

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Mary L. Brown
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

February 17, 1999

Mr. Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 500
Washington, DC 20554

Re: Ex Parte in CC Docket Nos. 80-286, 96-98, 96-262

Dear Mr. Strickling:

I am writing to ask that the Common Carrier Bureau (Bureau) take steps to ensure that the utility of the ILECs' upcoming April 1, 1999 ARMIS and rate of return report filings is not undermined by inconsistent and incorrect separations treatment of dial-up traffic between Internet Service Providers (ISPs) and other end users.

At least one ILEC, SBC, has announced its intention to change how it classifies dial-up traffic between ISPs and other end users for separations purposes. SBC, like all other ILECs, had previously classified this traffic as intrastate when developing its separations allocators. But in a January 20, 1998 letter to the Chief of the Accounting and Audits Division, SBC indicated that it would begin treating dial-up traffic to ISPs as interstate for separations purposes. MCI WorldCom assumes, therefore, that the SBC companies' April 1, 1999 ARMIS reports and Form 492A rate of return report will reflect the classification of ISP-related local traffic as interstate.

The classification of ISP-related local traffic as interstate may have a significant impact on the results shown in the SBC companies' ARMIS and rate of return reports. In a February 23, 1998 letter to the Accounting and Audits Division, SBC estimated that treating ISP dial-up minutes as interstate would increase Pacific Bell's reported interstate costs by $29.2 million, at 1997 traffic levels.[1] Given the continued growth in ISP-related local calling minutes, it would be expected that application of SBC's methodology to its 1998 results would have an even greater impact on the SBC companies' ARMIS and rate of return reports.

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[1] Letter from B. Jeannie Fry, SBC, to Chuck Needy, FCC, Attachment 1, CC Docket No. 96-98, February 23, 1998.

MCI WorldCom respectfully requests that the Bureau issue instructions to SBC and the other ILECs concerning the treatment of ISP-related local traffic for ARMIS and rate of return reporting purposes. The Bureau should make clear to SBC and the other ILECs that the upcoming April 1, 1999 ARMIS and rate of return reports should continue to treat dial-up traffic to ISPs as intrastate for separations purposes. At a minimum, the Bureau should require any large ILEC (RBOC or GTE) that proposes to treat ISP-related local traffic as interstate for separations purposes to file a second set of ARMIS and rate of return reports in which the results are computed by treating ISP-related local traffic as intrastate for separations purposes.

Even if the Commission finds, in its upcoming decision on ISP-related reciprocal compensation issues, that calls between ISPs and other end users are interstate communications, there would be no basis for changing the separations treatment of these calls at this time. The reciprocal compensation decision will not disturb the so-called "ESP exemption," under which ISPs are treated as end users and permitted to purchase local business lines from the ILECs' intrastate tariffs. Given that ISPs will continue to purchase local business line service from the ILECs' intrastate tariffs, the traffic sensitive costs incurred in the provision of local business lines to ISPs should also continue to be assigned to the states. The states can then take these costs into account when regulating the local business line rates that are paid by ISPs.

The Commission has consistently recognized that ISP-related local traffic should be treated as intrastate for separations purposes. In 1989, the Commission made clear that "ESP traffic over local business lines is treated as local traffic for separations purposes, with the result that the TS costs associated with ESP traffic are apportioned to the intrastate jurisdiction . . . ."[2] More recently, in the Access Reform Order, the Commission emphasized that it is the states that are responsible for the costs associated with the provision of local business line service to ISPs. In its discussion of the ESP exemption in the Access Reform Order, the Commission stated that "[t]o the extent that some intrastate rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators."[3]

Under SBC's plan to treat local calls to ISPs as interstate for separations purposes, cost allocations would be disconnected from the ratemaking process: the states would continue to regulate the local business line rates paid by ISPs, but the traffic sensitive

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[2] In the Matter of Amendment of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Notice of Proposed Rulemaking, 4 FCC Rcd 3983, 3987 (1989) (emphasis added).

[3] Access Reform Order at ¶346 (emphasis added).

costs of providing local business line service to ISPs would be assigned to the interstate jurisdiction. The ILECs would then try to recover these costs from a completely separate group of customers -- purchasers of the ILECs' interstate access services. In particular, an increase in the costs reported as interstate could lead some ILECs to claim a low-end adjustment, opening the door to an increase in already-inflated interstate access charges.

SBC's proposal to treat dial-up traffic to ISPs as interstate would also undermine the utility of the SBC companies' 1998 ARMIS and rate of return reports. The SBC companies' 1998 results could not be compared to those of prior years, in which the SBC companies treated ISP-related dial-up traffic as intrastate, or compared to the results reported by ILECs that continue to treat ISP-related traffic as intrastate. This inconsistent reporting would be contrary to the purpose of the ARMIS reports -- "to facilitate the timely and efficient analysis of revenue requirements and rates of return, to provide an improved basis for audit and other oversight functions, and to enhance [the Commission's] ability to quantify the effects of alternative policy proposals."[4]

Accordingly, to ensure correct and consistent ARMIS and rate of return reporting, the Bureau should instruct SBC and the other ILECs to continue treating ISP-related traffic as intrastate for ARMIS and rate of return reporting purposes. At a minimum, the Bureau should ensure that SBC's incorrect separations treatment does not undermine the ARMIS reports' monitoring function. If SBC (or any other large ILEC) proposes to treat local traffic to ISPs as interstate for separations purposes, the Bureau should require that carrier to file a second set of ARMIS and rate of return reports in which the results are computed by treating ISP-related local traffic as intrastate for separations purposes. This second set of reports will provide a consistent basis for comparing various ILECs' results, and for comparing 1998 results to prior years' results. The second set of reports will also allow the Bureau to quantify the effects of the ILEC's incorrect separations treatment of ISP-related local traffic.

The Bureau should also require any ILEC that treats dial-up traffic to ISPs as interstate for separations purposes to (1) notify the Bureau of that fact; (2) explain how it identified and measured ISP-related minutes (and distinguished these minutes from other local calling minutes); (3) explain how it determined that the ISP-related minutes constituted interstate usage; and (4) quantify the effect of reclassifying ISP-related minutes as

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[4] In the Matter of Automated Reporting Requirements for Certain Class A and Tier 1 Telephone Companies, Report and Order, 2 FCC Rcd 5770 (1987) (ARMIS Order).

interstate on 1998 measurements of local switching DEM, tandem switching MOU, exchange trunk MOU, interexchange trunk MOU-kilometers, and any other affected jurisdictional allocation factor.

If you have any questions concerning this matter, please contact me at (202) 887-2551.

Sincerely,

Mary L. Brown

cc: Irene Flannery
Ken Moran
Jane Jackson