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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In the Matter of:	)	
	)	DA00-1141
ALTS Petition	)	
for Declaratory Ruling:	)	CC Docket Nos. 98-147, 96-98,
Loop Provisioning	)	98-141, NSD-L-00-48

REPLY COMMENTS OF WORLDCOM, INC.

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July 10, 2000

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Reply Comments of WorldCom, Inc.

WorldCom, Inc. (WorldCom) files its Reply Comments with regard to the various comments filed in response to the petition of the Association for Local Telecommunications Services (ALTS)[1], filed on May 17, 2000, in the above-referenced proceeding.

II INTRODUCTION

The various parties have expressed considerable interest in, if not support of, many of the issues raised by ALTS in its petition. However, two common themes are present in almost all of the comments filed. First, most parties seek a full and complete resolution of open petitions and issues still pending before the Commission in the Line Sharing[2], UNE Remand[3], and Project

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[1] Petition for Declaratory Ruling on Broadband Provisioning of the Association for Local Telecommunications Services, DA 00-1141, CC Docket Nos. 98-147, 96-98, 98-141, and NSD-L-00-48, dated May 17, 2000 (ALTS Petition).

[2] See In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket Nos. 98-147, 96-98, FCC 99-355 (released Dec. 9, 1999) (Line Sharing Order).

[3] In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, released November 5, 1999 (UNE

Pronto Waiver[4] proceedings. Second, a multitude of parties, including competitive local exchange carriers (CLECs), trade associations, and various members of the telecommunications industry, agree that sanctions are necessary to compel the incumbent local exchange carriers (ILECs) to comply with various FCC rules.

WorldCom fully supports the positions advocated by ALTS in its petition, and urges the Commission to issue orders on these positions as federal rules in the respective proceedings in which the issues were raised. Where possible, any open issues should be decided within the context of the proceeding in which the issue was raised initially, and in the most expeditious manner possible. Any issues left unresolved within the ALTS petition should be addressed in a separate rulemaking proceeding before the Commission.

II. DISCUSSION

A. The Commission should initiate a rulemaking proceeding to implement performance standards for loop provisioning and related issues

In their comments, the ILECs responded to the ALTS petition with three basic arguments:

- The ALTS petition for a declaratory ruling is procedurally improper or illegal. The Commission already is addressing many of these issues in other proceedings and, where new issues have been raised, the Commission can implement the sorts of rules sought by ALTS only through a formal rulemaking proceeding.
- The ALTS claims are based on anecdotal evidence, not systematically collected data and, in any case, if some ILECs are providing inferior loop provisioning, "It ain't me."

Remand Order).

[4] See generally, Application of Ameritech Corporation and SBC Communications Inc. for Authority, Pursuant to Section 214 of the Communications Act of 1934, as Amended, to Transfer Control of Ameritech Corporation, A Company Controlling International Section 214 Authorizations, CC Docket No. 98-141.

- National performance standards would be illegal because the law requires nondiscriminatory access to unbundled network elements and to the extent ILECs' provisioning intervals or other measure vary across states, a single national standard would require some ILECs to meet higher performance standards when provisioning loops for competitive carriers than they meet for their own retail operations.

WorldCom's reaction to the ILEC comments is quite simple: for those issues it is not already addressing in active proceedings, the Commission should indeed initiate a formal rulemaking proceeding because the loop provisioning problems are serious and systemic. Moreover, the potential solutions require the systematic collection of a lot of empirical information that can best be performed at the national level. While WorldCom does not agree with the ILECs' claim that the evidence of inferior loop provisioning is only anecdotal, to the extent the ILECs are correct that only demonstrates the need for collecting data on a nationwide basis through an FCC rulemaking proceeding that would determine what information must be collected, how to collect it, and how to use it to create objective performance standards. Nearly four years after the Commission decided not to implement national performance standards, actual experience indicates that the time has come to carefully reconsider or reconvene that finding.[5] Section 251(c)(3) of the Telecommunications Act requires the ILECs to provide both nondiscriminatory <u>and</u> <u>reasonable</u> access to UNEs and, as discussed below, national rules can and should be implemented that do both.

More than 25 competitive local exchange carriers (CLECs), data CLECs, and Internet

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[5] The question before the FCC is not whether to adopt national performance standards, but rather whether there are sufficient grounds to initiate a rulemaking to address that issue. The answer to the latter question clearly is yes. The possibility that the Commission may determine after all the comments are in that it should not act at this time should not cause it not to initiate the proceeding.

service providers (ISPs) filed comments on the ALTS petition and, despite their disparate business plans, each and every one of them described how their ability to serve customers has been harmed by ILECs denying, delaying, or degrading their access to loops. Whether offering traditional telephone services, advanced services, or integrated services -- whether requiring conventional loops, high-capacity loops, DSL-capable loops, sub-loops, or special access circuits that they are forced to use, rather than UNE loops and transport -- all requesting carriers continue to be placed at a competitive disadvantage by the ILECs' pervasive practice of provisioning loops in an inferior fashion to requesting carriers. What Covad so clearly articulates for its DSL business can be generalized to all competitors, regardless of product offering:

> A loop provisioned a month late is no better than a loop never provisioned at all. No customer is going to await service for so long, especially when another option – retail broadband service from the very same incumbent LEC that denied Covad a timely wholesale loop – is usually available in a matter of days.[6]

Loops and subloops remain a bottleneck under the control of the ILECs and competitive provision of telecommunications services will develop or not depending on whether competitive carriers have access to all types of loops on parity with the ILECs. Uncertainty about when a loop will be available, what its technical characteristics will be, or even whether the loop will be available at all, all add to the risk of any business plan. When promised service cannot be delivered because an ILEC fails to provide the competitive carrier a loop in a timely fashion, the customer blames the competitive carrier, not the ILEC.

In this situation, the ILECs have no incentive to provision loops on reasonable terms and

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[6] Comments of Covad Communications Company, CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 2.

at "parity"[7] and they therefore are not doing so. The only way to change this situation is to change ILEC incentives. This can only be accomplished by creating a timely and effective enforcement (complaint) process that penalizes an ILEC and compensates the competitive carrier when there is a finding that the ILEC has failed to provision loops in a reasonable and nondiscriminatory fashion. Such a complaint process requires the implementation of objective performance standards covering all the relevant parameters and the on-going collection and maintenance of ILEC performance data needed to determine whether the ILEC has met the standards.

Although the states share responsibility with the Commission for implementation and enforcement of the local competition provisions of the Act, it hardly makes sense for 50 states and the District of Columbia each to undertake the detailed analysis needed to identify all the relevant performance parameters. Indeed, if one or more states were to fail to identify and set standards for all the relevant parameters, then ultimately the issue is likely to land at the Commission anyway.[8] Moreover, there almost certainly would be advantages, when working

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[7] In these reply comments, WorldCom uses the term "parity" as a measure of nondiscriminatory access that includes not just activities or parameters that can be directly measured for comparison, but also activities that cannot be directly measured. For example, there are a lot of different types of equipment in an ILEC network. Given a particular ILEC's network architecture, business plan, and intended product rollout, that ILEC may have the incentive to maintain up-to-date databases and generate frequent reports for its retail operations on some types of equipment that it will need to meet its objectives, but not to maintain up-to-date databases or generate frequent reports on other types of equipment that are not important for its plans but are important for competitors who intend to interconnect with the ILEC's network and use its facilities. Thus, if an ILEC makes available to competitive carriers the exact same databases and reports that are available to its own retail operations, it is not providing equally useful information to those carriers and is not necessarily meeting the parity requirement.

[8] If a state were to make the determination that additional or stricter performance standards are needed to foster local competition than the FCC chose to implement, the Act allows

within a potentially litigious environment, to have a neutral third party collect much of the data, and it would be far easier for the FCC to select one or a small number of neutral entities to collect the data than to require each state to enter into separate contracts.

National standards are needed because the experience over the last 4+ years demonstrates that some states, for lack of resources or other reasons, will not adopt state-specific standards. The absence of such standards is a serious problem that will not be fixed at the state level. To the extent the FCC expected in 1996 that action by individual states would make national standards unnecessary, its expectation has turned out to be incorrect. All of the reasons that the Commission so eloquently articulated in the 1996 Local Competition Order[9] and in the recent UNE Remand Order[10] for national rules, apply to loop provisioning standards.[11] That being said, WorldCom endorses individual states undertaking the implementation of performance standards where they have the resources and desire to do so.

The ILECs make the simplistic argument that a single nationwide performance standard for each parameter would be inconsistent with the statutory requirement of nondiscrimination because ILEC performance levels for provisioning loops for their own retail operations will vary

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states to set stricter standards.

[9] In the Matter of Local Competition Provisions In the Telecommunications Act of 1996 and Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket Nos. 96-98, 95-185, August 8, 1996 (Local Competition First Report and Order), at paras. 53-62, 66-68.

[10] UNE Remand Order, at paras. 120-143.

[11] If any ILEC can prove that it cannot meet standards that other ILECs in fact meet at least for retail customers, then the ILEC can always seek a waiver. The Commission could seek comment on this point in its NPRM.

from state to state and from ILEC to ILEC. But that represents a rather narrow view of discrimination that implicitly assumes that performance differences represent differences in underlying conditions that affect performance. In some cases, differences in performance simply represents inefficiencies that the ILECs will have no incentive to address if performance standards are based on those vary inefficiencies.

Moreover, Section 251(c)(3) of the Act requires ILECs to provide both nondiscriminatory and reasonable access to UNEs. ILECs that are so inefficient that they are unable to provision loops in a reasonable period of time cannot fall back on the defense that they are equally inefficient when provisioning loops for their own retail operations. The Commission emphasized in its recent Bell Atlantic-GTE Merger Order[12] the importance of comparative practices analysis, often referred to as "bench marking." The ability to make comparisons is important because it enables the Commission to identify the standard that underachieving ILECs should meet. The fact that an ILEC provides poor service to its own retail customers does not mean that it should be allowed to provide unreasonable service to its wholesale local customers. Enforcing reasonable standards for service to CLECs should result in improved retail performance as well -- which is clearly in the public interest.

A rulemaking proceeding would provide an effective procedural means for determining a single national performance standard floor for each performance parameter to meet the "reasonableness" requirement in the Act. It also would provide an effective procedural means

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[12] See In re Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, CC Docket No. 98-184 (June 16, 2000).

for determining "parity" standards that meet the nondiscrimination requirement, set state-by-state or ILEC-by-ILEC, to be implemented where ILECs already are provisioning loops for their retail operations at performance levels that exceed the national performance standard floor.

The ALTS petition and the comments and reply comments filed by interested parties should provide the basis for the Commission to identify issues and propose tentative rules relating to performance standards and penalties and compensation for ILECs' failure to meet those standards.

B. The Commission must require ILECs to provide access to subloops or copper loops as unbundled network elements without conditions

1. Access to Subloops

As the Commission noted in the UNE Remand Order, CLECs are entitled to access the subloop as an unbundled network element, at any technically feasible point. The UNE Remand Order did not condition a CLEC's right to access the subloop.[13] Instead, the Commission ordered that CLECs are entitled to "unbundled access to the inside wire subloop element, in cases where the incumbent owns and controls wire inside the customer premises."[14] The only condition placed on subloop access in the Order states that CLECs have the right to access the subloop at any "technically feasible point."[15]

As many other parties have pointed out, ILECs have placed numerous conditions and

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[13] UNE Remand Order, at para. 209.

[14] Id., at para. 210.

[15] Id.

restrictions on the right to access the subloop.[16] GTE's comments are an example of yet another attempt by the ILECs to restrict CLECs' access to the unbundled subloop, and why the Commission must now remind ILECs that they are required to provide unconditional access to subloops at any technically feasible point. GTE claims that ALTS' request for the Commission to require ILECs to provide subloop access for the purposes of line sharing is analogous to its request for access to the entire loop for the provision of integrated voice and data services over a shared line and should be similarly denied.[17] However, the UNE Remand Order did not restrict the CLECs' right to unbundled access to the subloop in the event that the ILEC does not provide the customer's voice service. Accordingly, the Commission must state affirmatively, in the context of the UNE Remand proceeding or in response to ALTS' petition, that ILECs must provide unconditional access to subloops at any technically feasible point, regardless of the services provided over that subloop by the requesting carrier.

2. Access to Copper Loops

As discussed at great length in the Line Sharing proceeding, ILECs have restricted CLECs right to access the copper loop facility when a CLEC seeks to provide voice and data

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[16] Comments of Rhythms NetConnections Inc., CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000) at 15-16, n.55, (noting that "the Bell Atlantic UNE Remand implementation tariff in New York defines only the available 'subloop' as metallic distribution pairs or facilities between the feeder distribution interface and the end user location"); Comments of Allegiance Telecom, CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 9 (noting that SBC's Project Pronto attempts to blur the distinction between the subloop as a UNE, and the subloop as a "telecommunications service" available for resale). These actions are far more restrictive than the expansive unbundling language used by the Commission in the UNE Remand Order.

[17] Comments of GTE, CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000) at 12, citing Petition of ALTS, at 14, 19.

service in a shared configuration. Several ILECs continue to maintain that CLEC to CLEC line sharing is not required under the Commission's present rules.[18] To remove any doubt, the Commission must clarify in response to the petitions submitted in the Line Sharing proceeding, that CLEC to CLEC line sharing is permitted, in a non-discriminatory and timely basis.[19] In the context of the Line Sharing proceeding the Commission should clarify that ILECs cannot condition the CLECs' right to access the local loop, and that anything less than full unbundled access to the local loop is a violation of federal regulations, and subject to penalties.

C. Penalties are an appropriate and necessary requirement to motivate ILECs to comply with both statutory unbundling obligations and FCC rules.

Each and every one of the more than 25 competitive carriers commenting on the ALTS petition cited ILEC failures to meet their obligations under the FCC's rules and the 1996 Act regarding provisioning guidelines, and loop and subloop access.[20] Monetary penalties should be paid to the CLECs as compensation for the harm caused by provisioning delays and lack of access to unbundled elements.[21]

In the context of the Bell Atlantic - NYNEX merger, the Commission recognized that

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[18] See Comments of US West, CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 7.

[19] See Petition for Clarification of MCIWorldCom, Inc., CC Docket Nos. 98-147, 96-98, February 9, 2000.

[20] See, e.g., Comments of CoreComm Incorporated, et al., CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 43; Comments of Focal Communications Corp., CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 7; Comments of JATO Communications, CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 7.

[21] Comments of @Link Networks, et al., CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 29.

"the combination of reporting requirements and negotiated performance standards subject to enforcement mechanism will help to provide competing carriers with enforceable means to ensure they will consistently receive nondiscriminatory access and interconnection."[22] As a result, the Commission should, as part of the rulemaking proceeding to implement national performance standards, promulgate a rule that establishes self-executing penalties for ILECs that fail to comply with their existing obligations.[23] In order to be effective, the penalty should increase with reported violations to serve as a deterrent for future ILEC noncompliance.[24]

Additionally, enforcement of interconnection agreements by state commissions that have increasing day-to-day business is not as effective as self-executing penalties in compelling ILECs to satisfy their regulatory requirements.[25] State administrative proceedings[26] are burdensome and arbitration of disputes under interconnection agreements are lengthy and contentions proceedings. Unless the Commission devises an alternative remedy that motivates ILECs to remain in compliance with regulatory and statutory requirements on a timely basis, self-executing penalties remain the most effective means of ensuring that CLECs can access the elements they

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[22] Memorandum Opinion and Order, In the Applications of NYNEX Corp. Transferor, and Bell Atlantic Corp. Transferee, For Consent to Transfer Control of NYNEX Corp. and Its Subsidiaries, 12 F.C.C.R. 19985 (1997) (Bell Atlantic - NYNEX Merger Order).

[23] Bell Atlantic - NYNEX Merger Order, at Appendix C, item 7 (recognizing the availability of self-executing penalties as an option).

[24] See, e.g., Comments of Network Access Solutions Corp., CC Docket Nos. 98-147, 96-98, and 98-141, NSD-L-00-48, DA 00-891, (June 23, 2000), at 14 (recommending the maximum statutory penalties, a base forfeiture penalty of $110,000 for a "one time violation" and a $1.1 million penalty for continuing violations).

[25] Comments of GTE, at 16.

[26] See Comments of Rhythms, at 12.

need, and in a timely and non-discriminatory manner.

III. CONCLUSION

WorldCom respectfully requests that the Commission expeditiously render decisions in the UNE Remand, Line Sharing, and SBC-Ameritech Request for Waiver of Merger Conditions proceedings on the open issues that are relevant to the issues raised here by ALTS. Moreover, WorldCom requests that the Commission initiate an expedited rulemaking proceeding to identify ILEC loop provisioning performance standards and to establish the penalties and other remedies to be imposed when ILECs fail to comply with Commission rules.

Respectfully submitted,

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July 10, 2000

CERTIFICATE OF SERVICE

I, L. Elizabeth Bryant, hereby certify that I have this 10th day of July, 2000 caused a true copy of the Reply Comments of WorldCom, Inc. on the ALTS Petition for Declaratory Ruling Loop Provisioning to be served on the parties listed below via first class mail postage pre-paid:

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