

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of the Local ) CC Docket No. 96-98  
Competition Provisions of the )  
Telecommunications Act of 1996 )

**OPPOSITION COMMENTS  
OF THE  
UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association ("USTA") hereby files its comments in opposition to the waiver request of WorldCom.<sup>1</sup> The Commission has previously addressed when a competitive carrier may use unbundled network elements to provision special access services. WorldCom seeks a waiver of the Commission's *Supplemental Order Clarification*<sup>2</sup> having failed to meet the requirements set forth by the Commission. In fact, under the Commission's *Supplemental Order Clarification*, WorldCom could simply self-certify that it met one of the three alternatives required to provision special access services through the use of unbundled network elements. Yet, WorldCom seeks a waiver of the Commission's requirement that a competitive carrier provide significant local exchange carrier service consistent with one of the three alternatives measurements described in the Commission's *Supplemental Clarification Order*. WorldCom's waiver request is simply an attempted end-run around the

<sup>1</sup> FCC Public Notice DA 00-2131 released September 18, 2000 referencing WorldCom's September 12, 2000 Petition for Waiver.

<sup>2</sup> See *Supplemental Order*, 15 FCC Rcd 1760 (November 24, 1999), *Supplemental Order Clarification*, 15 FCC Rcd 9587 (June 2, 2000).

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Commission's *Supplemental Order Clarification*. USTA urges the Commission to deny the WorldCom waiver request.

WorldCom's seeks a waiver of the Commissions "restriction on the commingling of loops or loop-transport combinations with tariffed special access services, ... the customer usage restrictions, the collocation requirements, ... and a rebuttable presumption that any circuit that terminates at one of its Class 5 local switches is a local circuit subject to the terms of this waiver."<sup>3</sup> According to WorldCom, the waiver request "covers loop-transport combinations ... that carry only exclusively local traffic."<sup>4</sup>

WorldCom argues that a waiver is necessary because, in part, "many of WorldCom's local circuits arguably either do not qualify, or cannot be shown to qualify, under any of the three options for conversion included in the *Supplemental Order Clarification*."<sup>5</sup>

The Commission's *Supplemental Order Clarification* established specific circumstances under which a requesting carrier may convert the use of unbundled network elements and provision special access services. At the heart of the Commission's decision is that a requesting carrier met one of three "safe harbor" alternatives in which the carrier self-certifies that it provides a "significant amount of local exchange service" as a condition for using unbundled network elements to provide special access services.<sup>6</sup>

The Commission's reasons for requiring requesting carriers to provide a significant amount of local exchange service before using combinations of unbundled

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<sup>3</sup> WorldCom Petition for Waiver at 1.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Supplemental Order Clarification* at 15 FCC Rcd at 9598-9600, ¶¶ 21-22.

network elements to provision special access services included the potential for “substantial market distortions” that would occur if requesting carriers could use combinations of unbundled network elements in lieu of special access services.<sup>7</sup> According to the Commission in “the absence of completed implementation of access charge reform, allowing the use of combinations of unbundled network elements for special access could undercut universal service by inducing IXCs to abandon switched access for unbundled network element-based special access on an enormous scale.”<sup>8</sup> In addition, the Commission concluded “[a]n immediate transition to unbundled network element-based special access could undercut the market position of many facilities-based competitive access providers.... We are reluctant to adopt a flashcut approach with potentially severe consequences for the competitive access market....”<sup>9</sup>

The Commission’s *Supplemental Order Clarification* does provide for a waiver. Requesting carriers seeking a waiver of the “safe harbor” provisions for determining the minimum amount of local exchange service that a requesting carrier must provide in order for it to be deemed significant” must establish that they are in fact providing significant local exchange carrier services before unbundled network elements can be used to provide special access services.<sup>10</sup> Under the Commission’s *Supplemental Order Clarification*, WorldCom must either self-certify that it meets the obligation to provide significant local exchange service under one of the three safe harbor alternatives or,

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<sup>7</sup> *Supplemental Order Clarification* at 9592, ¶7.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 9597, ¶18.

<sup>10</sup> *Id.* at 9600, ¶23.

pursuant to a waiver request, establish an alternative means of ensuring that WorldCom is meeting the significant local service obligation.

What WorldCom has filed is a petition to waive the obligation to meet the requirement to provide significant local exchange service as a condition precedent to providing special access services through the use of unbundled network elements. WorldCom admits that it cannot establish that it provides significant local exchange service.<sup>11</sup> WorldCom's Petition simply reargues claims previously rejected by the Commission in the *Supplemental Order Clarification*.

For example, WorldCom acknowledges that the Commission "rejected WorldCom's proposal that local be defined as a line that terminates in a Class 5 switch as a rule of general applicability...."<sup>12</sup> Yet, WorldCom nevertheless requests that the Commission ignore its prior findings and grant a presumption to the effect that local traffic be defined as a line that terminates in a Class 5 switch based upon the argument that WorldCom's network features and functions are unique. Clearly, there is nothing unique about WorldCom's network, or its waiver arguments, that could remotely justify the Commission granting the relief sought by WorldCom. As the Commission concluded in the *Supplemental Order Clarification* "There is no basis to assume that every circuit that terminates in a certain type of switch is being used exclusively for local traffic, and

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<sup>11</sup> WorldCom Petition for Waiver at 2

<sup>12</sup> *Id.* at 14. WorldCom argues that because of its network configuration, "it frequently is not possible for it to either easily identify or predict individual customers' usage patterns in a way that would enable it to make use of the [safe harbor] options." *Id.* See *Supplemental Order Clarification* at 9601, ¶25 ("We do not adopt MCI WorldCom's proposal that incumbent LECs should presume that any circuit that a requesting carrier connects to a port on a "Class 5" switch or its equivalent is used exclusively to provide local service.").

for circuits that are multiplexed into larger capacity facilities, which are often the circuits that carriers seek to convert to unbundled loop-transport combinations, there may be no way to determine whether an individual line actually terminates into a particular switch.”<sup>13</sup> The Commission should deny the request for waiver sought by WorldCom to redefine the customer usage restrictions.

WorldCom’s request to combine loops or loop-transport with tariffed special access service (“commingling”) was rejected by the Commission.<sup>14</sup> There are no new, independent, reasons provided by WorldCom that justify granting its waiver request. As the Commission explained in the *Supplemental Order Clarification*, “We are not persuaded ... that removing this prohibition would not lead to the use of unbundled network elements by IXCs solely or primarily to bypass special access services.”<sup>15</sup> In addition, the Commission has expressed its intent to review this issue in a formal proceeding in 2001. Therefore, WorldCom’s request for waiver of the commingling requirements should be denied.

WorldCom also fails to justify a waiver of the collocation requirements in safe harbors 1 and 2 based upon arguments that its network configuration is unique.<sup>16</sup> In the *Supplemental Order Clarification*, the Commission concluded that the “limited collocation requirements contained in local usage options 1 and 2 are reasonable.”<sup>17</sup> The

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<sup>13</sup> *Supplemental Order Clarification* at 9601, ¶25.

<sup>14</sup> WorldCom Petition for Waiver at 11-13. See *Supplemental Order Clarification* at 9602, ¶28 note 79 (Commission citing letters from MCI WorldCom which made the same request).

<sup>15</sup> *Supplemental Order Clarification* at 9602, ¶28.

<sup>16</sup> WorldCom Petition for Waiver at 15-16.

<sup>17</sup> *Supplemental Order Clarification* at 9600, ¶24.

Commission reached the conclusion that the collocation obligations made it more “efficient for the incumbent LEC to connect unbundled loop-transport combinations directly to a requesting carrier’s collocation gage.”<sup>18</sup> The Commission also reasoned that “the collocation requirements contained in options 1 and 2 should not impose an undue burden on requesting carriers because they require only that the circuit that the requesting carrier seeks to convert terminate at a single collocation arrangement in the incumbent LEC’s network.”<sup>19</sup> The Commission should deny WorldCom’s waiver of the collocation requirements.

The Petition for Waiver concedes that the Commission has rejected WorldCom’s arguments in the *Supplemental Order Clarification*. By definition, the Petition for Waiver filed by WorldCom is frivolous. WorldCom has failed to provide any legal or policy reasons why the Commission should ignore its findings in the *Supplemental Order Clarification*. The Commission should deny WorldCom’s waiver request.

Respectfully submitted,

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October 2, 2000

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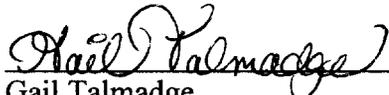
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<sup>18</sup> *Supplemental Order Clarification* at 9600, ¶24.

<sup>19</sup> *Id.*

**CERTIFICATE OF SERVICE**

I, Gail Talmadge, do hereby certify that copies of the foregoing *Opposition Comments of the United States Telecom Association*, in CC Docket No. 96-98, were served this 2<sup>nd</sup> day of October, 2000, by hand delivery or postage-paid, first class mail to the parties on the attached list:

  
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