Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
2000 Biennial Regulatory Review	)	IB Docket No. 00-231
	)	
Amendment of Parts 43 and 63	)	
of the Commission's Rules	)	

COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. ("WorldCom") hereby submits these Comments in response to the Commission's Notice of Proposed Rule Making ("NPRM") in the above-referenced proceeding.[1] WorldCom commends the Commission's efforts to clarify and streamline its rules. With one exception, WorldCom supports the Commission's proposals. Specifically, the Commission should not eliminate its current requirement that U.S. carriers with dominant foreign carrier affiliates may only obtain authorization to provide facilities-based private lines if the foreign affiliate offers to settle traffic with all U.S. carriers at or below the relevant settlement benchmark rate.

I. WORLDCOM SUPPORTS THE COMMISSION'S PROPOSAL TO STREAMLINE AND HARMONIZE ITS RULES FOR *PRO FORMA* ASSIGNMENTS AND TRANSFERS OF CONTROL OF INTERNATIONAL SECTION 214 AUTHORIZATIONS.

In the *NPRM*, the Commission proposes to amend Section 63.24 of its rules to provide greater flexibility and clarity regarding assignments and transfers of control of international

[1] *2000 Biennial Regulatory Review: Amendment of Parts 43 and 63 of the Commission's Rules*, IB Docket No. 00-231, Notice of Proposed Rulemaking, FCC 00-407 (rel. November 30, 2000) (hereinafter "*NPRM*").

Section 214 authorizations ("Section 214 authorizations").[2] As it now stands, Section 63.24 is confusing and too limited in application. For these reasons, and because many transactions involving transfers and assignments of international Section 214 authorizations also include transfers and assignments of wireless licenses, the Commission proposes to amend Section 63.24 to follow more closely the procedures applicable to Commercial Mobile Radio Service ("CMRS") licenses.[3]

WorldCom supports the Commission's efforts to streamline Section 63.24. A more harmonized, consolidated approach would provide greater flexibility for Section 214 authorization holders and expand the possible range of transactions that qualify for filing on a *pro forma* basis. For example, as Section 63.24 currently exists, a transaction is considered to be *pro forma* if it meets one of six enumerated criteria.[4] WorldCom agrees with the Commission that these criteria are too narrow and limit the types of transactions that otherwise should qualify for filing on a *pro forma* basis. WorldCom thus supports the Commission's proposal to apply to Section 214 authorizations the same analysis used for determining when assignments and transfers of control of CMRS licenses are *pro forma*. By making these changes, the Commission's rules regarding *pro forma* assignments and transfers of control of Section 214 authorizations will become easier to understand and apply, ensuring that the Commission will not needlessly delay routine transactions.

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[2] *See id.* at ¶ 7.

[3] *See id.* at ¶ 10.

[4] *See* Section 63.24.

II. THE COMMISSION SHOULD NOT PREMATURELY ELIMINATE ITS BENCHMARK CONDITION RELATING TO SECTION 214 FACILITIES-BASED PRIVATE LINE AUTHORIZATIONS.

The Commission proposes to discontinue the application of the settlement rate benchmark condition to Section 214 authorizations used to provide facilities-based private lines.[5] The Commission tentatively concludes that the burden of this policy outweighs its benefits. WorldCom disagrees, and urges the Commission not to eliminate its current rule.

In its *Benchmarks Order*,[6] the Commission established benchmarks that govern international settlement rates that U.S. carriers must pay to foreign carriers to terminate international traffic originating in the United States. Because of concern about potential distortions in the U.S. market created by above-cost settlement rates, the Commission adopted benchmark conditions for certain types of Section 214 authorizations.

The condition at issue in this proceeding requires that a U.S. carrier may provide facilities-based private line services on a route where it is affiliated with a carrier with market power on the foreign end of the route only if the foreign affiliate offers to all U.S. carriers on the route a rate for settling traffic that is at or below the relevant benchmark rate.[7] As the Commission notes in its *NPRM*, the Commission adopted the benchmark condition for facilities-based service to affiliated markets to address the potential for a carrier to prevent cheating, *i.e.*, the unlawful use of private lines for the provision of switched services in avoidance of the

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[5] *See NPRM* at ¶ 22.

[6] *See International Settlement Rates*, IB Docket No. 96-261, Report and Order, 12 FCC Rcd 19806 (1997) (*Benchmarks Order*), *aff'd sub nom. Cable and Wireless Plc v. FCC*, 166 F.3d 1224 (D.C. Cir. 1999), Report and Order on Reconsideration and Order Lifting Stay, 14 FCC Rcd 9256 (1999) (*Benchmarks Reconsideration Order*).

[7] The condition is codified at 47 C.F.R. § 63.10(e).

benchmark condition.[8] WorldCom submits that nothing has changed since the Commission adopted this condition.

First, the incentive for unlawful one-way bypass remains a serious issue. A carrier's ability to maintain high settlement rates for inbound traffic from the United States, while bypassing those rates for outbound traffic to the United States is a powerful lure. By removing this condition, the Commission would make it easier than ever for a dominant foreign carrier to circumvent unlawfully the settlement rate benchmarks. Once a U.S. carrier obtains a Section 214 facilities-based authorization, it would require significant effort for the Commission or other carriers to actively monitor whether these authorized carriers are providing unlawful switched services over private lines or lawful private line services. Knowing that the odds of getting caught are low, many carriers may choose to assume the risk of engaging in unlawful bypass.

Second, detection of cheating remains a problem. The Commission contends that if it were to eliminate the benchmark condition, the Commission would still maintain the ability to detect evasion and commence an enforcement proceeding.[9] WorldCom disagrees. The Commission's Section 43.61 traffic data reports will not provide sufficient detection and enforcement protection.

There is an inherent lag time in the filing of Section 43.61 traffic data reports that makes it difficult to rely on these reports for swift review and enforcement. The Commission's Section 43.61 traffic data reports are filed on July 31 of each year for services offered during the preceding calendar year. As a result, even assuming that the Commission staff has the necessary

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[8] *See NPRM* at ¶ 22.

[9] The Commission states that any substantial shift in a carrier's traffic from facilities-based switched services to facilities-based private lines would be detected by the Commission and other carriers on that route through the carrier's Section 43.61 traffic data reports. *See NPRM* at ¶ 24.

resources to diligently monitor and analyze these reports, many months would pass before such a shift would be detected. Several more months would pass before enforcement proceedings would be commenced and concluded. By this time, the harm would be irreversible. In sum, Section 43.61 reporting requirements are not an adequate substitute for the effective *ex ante* regulation in place today.

Third, WorldCom strongly believes that the Commission should continue to use all the tools available to it to ensure that its settlement rate benchmark policies are fully implemented as scheduled. By January 1, 2003, U.S. carriers will be required to settle traffic at or below the applicable benchmark rate with the final group of countries listed in the Commission's *Benchmarks Order*. WorldCom thus urges the Commission not to eliminate those Section 214 conditions that are associated with the *Benchmarks Order* before this date. Removing this condition now will send the wrong message about the Commission's resolve to carry through its policies. Indeed, given the likelihood of success of unlawful bypass, dominant foreign carriers that remain above the settlement rate benchmarks will have little incentive to negotiate lower settlement rates with U.S. carriers. Because full compliance with the *Benchmarks Order* will not occur until 2003, it is inappropriate and inadvisable for the Commission to eliminate this condition until full implementation of the *Order* is realized.

The Commission thus should not eliminate the current benchmark condition on Section 214 facilities-based private lines. Unlawful bypass remains a serious threat, and the Commission does not have the ability to quickly detect and cure such activity. To ensure the continued success of its settlement rate benchmark policies, the Commission should refrain from removing this benchmark condition until implementation of the *Benchmarks Order* is successfully completed in 2003.

III. MISCELLANEOUS ISSUES

Finally, WorldCom agrees with the Commission's tentative conclusion that it is no longer in the public interest for applicants to file Section 214 applications on computer diskettes, as permitted by Section 63.53(b).[10] With the introduction and success of the International Bureau Filing System (IBFS), applicants have an additional, effective method in which to file Section 214 applications. WorldCom thus concurs that it is no longer necessary to maintain this obsolete rule.

IV. CONCLUSION

WorldCom supports the Commission's efforts to clarify and streamline its rules; however, WorldCom urges the Commission to preserve its current benchmark condition on Section 214 facilities-based private lines. By retaining this condition, the Commission will promote the continued success of its *Benchmarks Order*, while preventing carriers from engaging in unlawful bypass.

Respectfully submitted,

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[10] *See id.* at ¶ 38.