



December 12, 2002

*By Electronic Filing*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Written Ex Parte*  
UNE Triennial Review Proceeding  
CC Dockets No. 01-338, 96-98, and 98-147

Dear Ms. Dortch:

In this proceeding, the Commission has been presented with a number of different proposals regarding the best way to treat the network elements needed to provide DSL services. Ultimately, the Commission will have to choose between two disparate approaches that yield starkly different results. The Commission can opt to allow competitors unbundled access to the network elements they need, and ensure that customers – particularly those in rural and suburban areas – have a choice of broadband providers and a wide range of service options. Or the Commission can limit such access in the manner proposed by the High Tech Broadband Coalition (“HTBC”)<sup>1</sup> and advance the interests of the incumbent LECs at the expense of consumers and competitors by making the incumbent LEC the only service provider available to many customers. In this letter, WorldCom details the anticompetitive aspects of HTBC’s proposal and explains why adopting HTBC’s proposal would be harmful to consumers. WorldCom then provides a more moderate proposal, which would increase consumer choice while ensuring that the incumbent LECs are adequately compensated for the functionalities they provide to competitors.

*The HTBC Proposal Does Not Advance the Goals of the Statute*

HTBC proposes that the Commission modify certain subsections of 47 C.F.R. § 51.319, which define the elements that must be unbundled pursuant to Section 251 of the Act. Specifically, HTBC proposes that the Commission:

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<sup>1</sup> See Letter to Marlene H. Dortch, FCC, from Paul W. Kenefick, Alcatel USA, Inc., filed on behalf of High Tech Broadband Coalition in CC Docket No. 01-338 (Nov. 15, 2002).

- 1) Revise the definition of the loop to preclude unbundled access to fiber-fed loops (*i.e.*, next generation digital loop carrier [“NGDLC”] platforms) and associated electronics used to transmit packetized data;
- 2) Limit competitive access to existing copper loops for data;
- 3) Preclude competitive access to incumbent LEC packet switching at the remote terminal;
- 4) Narrow the definition of “subloop” to copper loops and provide competitive LECs with access to such copper subloops “near” the remote terminal; and
- 5) Preclude unbundled access to dark fiber.<sup>2</sup>

The result of HTBC’s proposal would be to allow competitors access to copper loops, but not to fiber-fed loops. HTBC’s proposal appears to be based on the premise that incumbent LECs need additional incentives to deploy fiber facilities further into their network. This premise is flawed, however. As WorldCom has explained, the deployment of fiber-fed loops is part of the natural evolution of the incumbent LECs’ network, allowing for greater efficiency in the provision of both voice and data services.<sup>3</sup> Moreover, despite the repeated claims by the incumbent LECs and their allies, there is no record evidence that regulatory constraints have affected the pace of deployment of advanced services.

In addition to being based on an unfounded premise, HTBC’s proposal also suffers from several other critical flaws: It ignores the Commission’s longstanding policy of technological neutrality; it is anticompetitive; and it would limit the availability of advanced services to the public.

HTBC’s proposal is at odds with the Commission’s well-established policy of taking a technology-neutral approach to rulemaking.<sup>4</sup> In the context of the unbundling rules, this policy

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

<sup>3</sup> Indeed, the incumbent LECs began extending fiber closer to the home years ago. This is far from a new development. See Reply Comments of WorldCom, Inc., CC Docket No. 01-338, at 41-42 (July 17, 2002) (“*WorldCom Reply Comments*”).

<sup>4</sup> See, e.g., *Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service*, Second Notice of Proposed Rulemaking, 12 FCC Rcd 17706 at ¶ 25 (1998) (discussing the importance of ensuring that the FCC’s public safety communications policies “are neutral with respect to technologies”); *Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 at ¶ 10 (2002) (adopting a technology-neutral, functionality-based definition of TRS); *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Order on Reconsideration, 17 FCC Rcd 14789 at ¶ 13 & n.27 (2002) (“The Commission has strenuously avoided solutions that are other than technology-neutral in crafting regulatory requirements for E911 implementation.”); *Federal State Joint Board on Universal Service*, Twelfth Report and Order,

has manifested itself in the Commission's decision to focus on an element's function,<sup>5</sup> not its technological make-up.<sup>6</sup> After all, loops are bottleneck facilities regardless of whether they are all-copper or fiber-fed NGDLC loops. Indeed, the Commission has explicitly expressed its concern that distinctions based on technology would allow incumbent LECs to act anticompetitively.<sup>7</sup>

HTBC's proposal also has the practical effect of limiting competitive DSL service. If the Commission does not require incumbent LECs to provide unbundled access to fiber-fed loops, competitive LECs will be precluded from serving a significant number of customers that the incumbent LEC is able to serve by virtue of the fact that it owns the local loop. As described below, as a practical matter, competitive carriers cannot access the copper portion of the loop at remote terminals and HTBC's proposal would therefore prevent competitive LECs from reaching customers served by fiber-fed loops.<sup>8</sup>

WorldCom supports HTBC's proposal to retain the unbundling of copper loops for xDSL service, but notes that providing competitors with access to copper loops alone is insufficient. The incumbent LECs' decision to deploy NGDLC facilities clearly provides some benefit to those customers – particularly those in rural and suburban areas – that would not have access to DSL without such deployment. These benefits would be limited, however, if incumbents are permitted to deny competitive providers access to the fiber-fed facilities needed to reach more

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Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208 at ¶ 56 (2000) (providing federal support targeted to low-income individuals on tribal lands, “without regard to the specific technology used to provide the supported telecommunications services”); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 at ¶ 210 (2000) (noting that the support provided under CALLs is “portable among all eligible telecommunications carriers . . . regardless of the technology they use”).

<sup>5</sup> See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 at ¶ 259 (1996) (“*Local Competition Order*”) (stating that the FCC “should not identify elements in rigid terms, but rather by function.”)

<sup>6</sup> See *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696 at ¶ 167 (1999) (“*UNE Remand Order*”) (noting that the Commission’s intent “is to ensure that the loop definition will apply to new as well as current technologies, and to ensure that competitors will continue to be able to access loops as an unbundled network element as long as that access is required pursuant to section 252(d)(2) standards.”)

<sup>7</sup> See *Local Competition Order* at ¶ 383 (“[I]ncumbent LECs must provide competitors with access to unbundled loops regardless of whether the incumbent LEC uses integrated digital loop carrier technology, or similar remote concentration devices, for the particular loop sought by the competitor. . . . [S]uch an exception would encourage incumbent LECs to ‘hide’ loops from competitors through the use of IDLC technology.”)

<sup>8</sup> See *WorldCom Reply Comments* at 117-120.

remote customers. If competitors do not have access to the NGDLC facilities, suburban and rural consumers will have a much more limited choice of providers and a more limited range of service offerings compared to urban customers that can be reached over legacy copper facilities.<sup>9</sup> Limiting competitors to all-copper facilities would also leave companies, such as WorldCom, that have made substantial facilities investments to provide DSL service, at an unfair competitive disadvantage relative to the incumbent LECs that will continue to enjoy access to all customers, whether served by all-copper or fiber-fed loops.

Additionally, because Remote Terminal-based Digital Subscriber Line Access Multiplexers (“DSLAMs”) are closer to the customer than central office-based DSLAMs, the incumbent LECs would be able to offer more attractive service offerings with higher data rates than competitive LECs would be able to offer without access to fiber-fed loops. DSL-based services are distance sensitive, and therefore, the longer the loop, the lower the transmission speed of DSL that can be supported by the loop. An all-copper loop cannot support most types of DSL services beyond about 18,000 feet from the central office (“CO”). Deploying fiber in the feeder portion of the loop enables carriers to provide DSL to customers at distances beyond the reach of all-copper loops. Thus, if competitive LECs are denied access to these facilities, customers located more than 18,000 feet from the CO will not, as a practical matter, be able to choose a competitive LEC as their service provider.

HTBC’s proposal provides for competitive LEC access to the copper subloop near the Remote Terminal (“RT”). This is also an inadequate alternative to unbundled access to NGDLC facilities. The cost of deploying DSLAM equipment “near” RTs is prohibitively expensive. A number of states that have examined the issue of unbundling NGDLC platforms have already concluded that collocation of DSLAM equipment in the RT is uneconomical.<sup>10</sup> Deploying this equipment “near” the RT would be even more expensive than deploying it *in* the RT, as the competitive LEC would face many of the obstacles associated with collocation, while still being required to construct and deploy equipment shelters. Additionally, because RTs serve far fewer subscribers than COs, the cost per subscriber would be considerably higher when the DSLAM is located in or near the RT than when it is located in the CO.

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<sup>9</sup> The number of customers affected by these limitations is substantial. In deploying Project Pronto, for example, SBC was able to double the number of customers who could receive DSL service from around 40 percent to 80 percent. *See, e.g.*, SBC Press Release, “SBC Cuts Price of DSL Service” (Feb. 14, 2000), *available at*: <[http://www.sbc.com/press\\_room/1,5932,31,00.html?query=20000214-2](http://www.sbc.com/press_room/1,5932,31,00.html?query=20000214-2)>. Thus, if competitive LECs were denied access to fiber-fed loops roughly half of the customers in SBC’s region would be limited to SBC as their only option for DSL service and would be denied the various service offerings provided by different competitive LECs.

<sup>10</sup> *See, e.g., WorldCom Reply Comments* at 117-120.

*WorldCom's Proposal Advances the Goals of the Statute*

As WorldCom has demonstrated, competitive LECs simply have no alternatives to fiber-fed NGDLC facilities.<sup>11</sup> If denied access to DSL-capable fiber-fed NGDLC loops, competitors will be unable to provide DSL services to millions of customers. These customers will be relegated to one choice for their DSL provider – the incumbent LEC. The only way competitors can provide DSL service to the growing customer base served by fiber is by gaining access to the incumbent LEC's NGDLC loop and associated electronics.

The incumbent LECs and HTBC argue that unbundled access to fiber-fed platforms will undermine incumbent LEC incentives to invest in these facilities, though they have not offered any evidence to suggest that unbundling serves as a disincentive for further investment.<sup>12</sup> Nonetheless, WorldCom recognizes that incumbent LECs should be appropriately compensated for the functionalities or services they provide. In the spirit of seeking a middle ground, WorldCom therefore offers the following proposal: The FCC should find that competitors are impaired without access to two separate UNEs – 1) the loop, which includes fiber/copper combinations<sup>13</sup>; and 2) packet transport to and from the RT. By defining packet transport to and from the RT as a separate UNE and allowing the incumbent LECs to charge for it separately, WorldCom's proposal ensures that the incumbent LECs will be compensated for the additional functionality they provide via the NDGLC facilities. This change could be implemented through a minor modification to section 51.319(c)(5) of the Commission's rules, defining access to packet switching.<sup>14</sup> A copy of the proposed rule, as modified, is attached to this letter as Attachment A.

In practice, WorldCom's proposal would work as follows: when the incumbent LEC upgrades its network in a manner that permits it to offer DSL service out of remote terminals, the incumbent LEC would be required to provide requesting competitive LECs with a bit-stream handoff in the central office or at another point in the incumbent LEC network. WorldCom agrees that the rate established for this bit-stream access should be the loop rate plus the forward-looking costs of the packet transport to and from the remote terminal. In other words, WorldCom recognizes that when it, or any other competitor, obtains access to the bit-stream, it is getting something more than just the loop. Thus, under WorldCom's proposal, competitive carriers would agree to pay for the packet transport functionality. However, the rate for the packet transport to and from the remote terminal must be priced at forward-looking costs,

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<sup>11</sup> See Letter to Marlene Dortch, FCC, from Kimberly Scardino and Dennis Guard, WorldCom, CC Docket No. 01-338, at 1-2 (Oct. 31, 2002).

<sup>12</sup> *Id.* at 4-5.

<sup>13</sup> Access to all fiber loops, or fiber to the home, should be addressed separately from copper/fiber loops. *Id.* at 7-8.

<sup>14</sup> 47 C.F.R. § 51.319(c)(5).

otherwise competitive LECs will not be able to compete with the incumbent LEC.<sup>15</sup> If the Commission feels that certain TELRIC inputs need to be adjusted to cover the costs of xDSL capable fiber-fed loops, it should provide appropriate guidance to the states.

WorldCom's proposal is technologically neutral, will foster competitive choice for broadband customers and will ensure that the incumbent LECs are compensated appropriately for their upgraded networks. Therefore, WorldCom urges the Commission to adopt the proposal described above.

Sincerely,

/s/ Kimberly Scardino  
Kimberly Scardino  
Senior Counsel  
WorldCom  
(202) 736-6478

Attachment

cc: Matthew Brill  
Michelle Carey  
Jonathan Cody  
Kyle Dixon  
Eric Einhorn  
Jordan Goldstein  
Daniel Gonzalez  
Christopher Libertelli  
William Maher  
Jeremy Miller  
Thomas Navin  
Brent Olson  
Robert Tanner

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<sup>15</sup> Verizon's federal PARTS tariff, which it has subsequently withdrawn, proposed to charge competitive LECs access to the packet transport at rates higher than what Verizon was selling to Internet Service Providers ("ISPs"). Thus, competitive LECs would not have been able to compete against Verizon.

## ATTACHMENT A

### **WorldCom's Proposed Rule Modification to Enable Competitors to Obtain Access to Packet Switching Capability at the Remote Terminal**

47 C.F.R. § 51.319 (c)(5)

(c) Switching capability ...

(5) An incumbent LEC shall be required to provide nondiscriminatory access to unbundled packet switching capability only where each of the following conditions are satisfied. ~~The requirements in this section relating to packet switching are not effective until May 17, 2000.~~

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault); and

~~(ii) There are no spare copper loops capable of supporting xDSL services the requesting carrier seeks to offer;~~

~~—— (iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access multiplexer in the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by paragraph (b) of this section; and~~

(iv) The incumbent LEC has deployed packet switching capability for its own use or the use of its affiliate.