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October 21, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W. Room TWB-204
Washington, D.C. 20554

Re: Notice of Oral Ex Parte Communication, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 04-313 and 01-338

Dear Ms. Dortch:

On October 20, 2004, David L. Bogaty, president of WorldNet Telecommunications, Inc. ("WorldNet"), and the undersigned together with Arthur Harding, counsel to WorldNet, met with Commissioner Abernathy's Senior Legal Advisor, Mathew Brill, regarding the above-referenced dockets.

The substance of the meeting dealt with an overview and the implications of the federal UNE rules in Puerto Rico as outlined in the attached presentation. The presentation was provided to Mr. Brill. WorldNet's counsel emphasized that that the FCC must take into account in any ruling that it makes Puerto Rico's unique market conditions and the findings of the Telecommunications Regulatory Board of Puerto Rico.

Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter and attachment are being filed electronically in the above-referenced proceedings.

Respectfully submitted

Lawrence R. Freedman

Attachment
cc: Mathew Brill

SUMMARY OF EX PARTE PRESENTATION
WORLDNET TELECOMMUNICATIONS, INC.
WC DOCKET NO. 04-313, CC DOCKET NO. 01-338

- The FCC must not phase out UNE access in any market where a prima facie showing of impairment has been made.

  -- Just as a blanket, nationwide finding of impairment for mass market switching and high capacity transport was unjustified, a non-granular, blanket nationwide finding of non-impairment would be equally unjustified.

  -- If a prima facie case of impairment has been made to the FCC on a granular, market-specific basis, the twelve-month UNE phase-out must not apply in those specific markets.

  -- Any such prima facie case must address the impairment analysis factors identified by the FCC.

    * The USTA II court did not have a problem with the impairment factors identified by the FCC.

    * Rather, certain prior FCC actions have not survived judicial review because impairment was found on a nationwide, rather than granular market-by-market basis, and because the authority to issue ultimate impairment decisions was improperly delegated to the states.

- The Puerto Rico market for mass market switching and high capacity transport qualifies for a provisional finding of impairment.

  -- Only one facilities-based competitor exists in Puerto Rico. Of the 1200 wireline switches deployed nationwide, only one is in Puerto Rico.

  -- As of January, 2004 the incumbent provider, PRTC, had never provided a single cross-connect or UNE loop. The Puerto Rico PUC has found "impairment" for enterprise switching. PRTC never commenced a 9-month "mass market" proceeding.

  -- Because of significant operational barriers, collocation in Puerto Rico is rare, time-consuming and expensive. Only one competitor has obtaiined collocation, and that took three years and the filing of a complaint with the PUC.

  -- Section 271 does not apply to PRTC, so even this reduced level of market-opening has not taken place in Puerto Rico.

- The FCC should establish a process for future impairment showings to satisfy judicial concerns:

  -- Where a prima facie impairment showing has been made to the FCC (as in the case with respect to WorldNet), or UNEs are scheduled to be phased-out over the twelve-month transition period, a process needs to be established to assure continued UNE availability in appropriate cases.

  -- Similarly, the revised FCC unbundling framework must be flexible to account for changed circumstances.

- WorldNet proposes the following process:

  -- Any party should be allowed to seek continued availability of specified UNEs (including, at a minimum, mass market switching and high-capacity transport) based on market-specific impairment showings.

  -- State PUCs should be allowed to play a role in developing the factual record to support impairment showings, but the FCC must retain ultimate authority to render final unbundling decisions.

  -- Similar to the jurisdictional approach for pole attachment complaints under Section 224(c) of the Act, any state PUC should be authorized to issue findings of fact in connection with an impairment showing upon certification to the Commission that the state PUC:

    * Is ready and willing to consider impairment petitions filed by any CLEC operating within the state;

    * Is prepared to conduct appropriate fact-finding proceedings to develop a record on such localized, granular market conditions as the FCC might specify, including market definition; and

    * Commits to submit its written findings of fact on all relevant issues to the FCC within 120 days after the petition is filed with the state PUC.

  -- The factual record developed by the state PUC would be submitted to the FCC, which would have final authority to issue an unbundling order within 60 days.

  -- Where a state PUC has not been certified to make such factual determinations, unbundling petitions could be filed directly with the FCC.

  -- Unbundling orders for specific UNEs in specific markets would remain in effect for at least two years, at which time any party could file a new petition based on changed circumstances.

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