U.S. Department of Justice

Antitrust Division

Office of the Assistant Attorney General

Washington, D.C. 20530

MAR 8 1994

Judy Whalley, Esq.
Howrey & Simon
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2402

Dear Ms. Whalley:

This letter responds to your request on behalf of National Telecommunications Data Exchange, Inc., ("NTDE") for the issuance of a business review letter pursuant to the Department of Justice's business review procedure, 28 C.F.R. § 50.6. You have requested a statement of the Department's current enforcement intentions regarding a proposal by NTDE and its member interexchange telecommunications carriers to exchange information about former business customers of the member carriers whose accounts have been closed with undisputed unpaid balances in excess of one hundred dollars. Based on the information and materials that you have provided together with your letter of December 9, 1993, the Department has no current intention to challenge the proposed credit information exchange program.

You have informed us that telecommuncation carriers have a serious problem collecting monies owed them. They have been unable to collect over six percent of their revenues, a rate nearly double that of other industries. Moreover, you suggest that the Federal Communications Commision's recent regulatory change making 800 numbers portable, may have the unintended effect of increasing the industry's uncollectable rate. It is your clients' belief that many business firms that default on their long-distance telephone bills seek to obtain replacement service from other long distance carriers.

In an effort to reduce their uncollectable rate, eight long-distance carriers 1/ formed NTDE. NTDE, a not-for-profit

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1/ NTDE'S founding members are: Allnet Communications Services, Inc., AT&T, Business Telecom, Inc., Cable & Wireless,

Footnote Continued

corporation, will provide a form of credit data exchange service (through a third-party data vendor) to its members. NTDE'S members will be required to report to the retained third-party data vendor all closed business accounts with undisputed uncollected balances in excess of one hundred dollars. This will enable members who are reviewing an application for new business service to query the data base and determine whether the applicant has defaulted on its obligations to another member carrier. NTDE will also provide an optional "skip tracing" service that will enable its members to determine whether any of their defaulted former business customers has applied for replacement long distance service from another member carrier, e.g., from another address or under a different name.

The information communicated to and from the third-party data vendor will be limited to that described above. There will be no direct communication between members; all information will be exchanged through the third-party vendor in what is often described as a "blind" manner, i.e, neither the old nor prospective new carrier will know the identity of the other. 2/ No information will be exchanged about open accounts, or the general credit terms or practices of members, or those used in specific cases. No information relating to how members treat applicants with "bad" credit histories will be exchanged. When a member learns that a new applicant has defaulted on its obligation to another member, the inquring member will be left to make an independent unilateral decision as to whether to refuse to serve the new applicant or to insist on some protective measure, such as an up-front deposit. Neither NTDE, the third-party vendor nor any other member will participate in that decision. In the same manner, a member that locates a former defaulting customer through NTDE'S "skip tracing" service will independently and unilaterally determine whether to utilize available legal recourse to recover any or all of the monies owed to it.

1/ Continued

Inc., LDDS Metromedia Communications Corporation, MCI Telecommunications Corporation, Sprint, and Wiltel Business Networks. NTDE membership will be available to other carriers on nondiscriminatory terms.

2/ The only exception will be that a member will be able to determine whether an applicant for new service was one of it's own defaulting closed accounts. Presumably, this service would be of greatest value to members that lack reliable internal reporting controls.

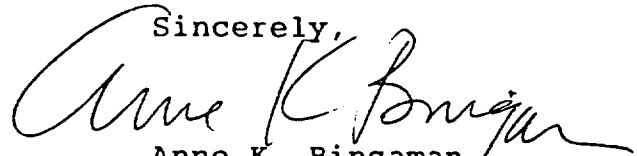
Based on the information that you have provided, the Department has no current intention to challenge the exchange of information as proposeed by NTDE and its members. To the extent that NTDE is operated in accord with the statements and commitments in the materials submitted to the Department, the information exchange should not produce any anticompetitive effects. The information exchange program has been designed with sufficient safeguards that the program is not likely to facilitate collusion. The limited amounts of information exchanged are not likely to result in concerted decisions with respect to price, other terms or whether any member decides to do business with a commercial customer that has previously defaulted on its obligation to a telecommunications carrier. The information will be exchanged on a "blind" basis and the receiving member will unilaterally determine the terms, if any, that it will do business with a customer with a bad credit history. Similarly, a member that locates one of its former defaulted business customers through the "skip tracing" service will make a unilateral decision as to whether to pursue its rights against the former customer. Finally, the fact that NTDE will be open on a nondiscriminatory basis to all interexchange carriers assuages any concern that NTDE might give its members a significant competitive advantage over rival carriers.

To the extent that the information exchange allows NTDE members to better evaluate credit risk and/or increases their ability to collect monies owed them, it will have a procompetitive effect, i.e., it will enhance efficiency and lower operating costs thereby increasing output.

This letter expresses the Department's current enforcement intentions. In accordance with its normal practice, the Department reserves the right to bring an enforcement action in the future if the actual operation of the proposed information exchange proves to be anticompetitive in any purpose or effect.

This statement is made in accordance with the Department's business review procedure, 28 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publically available immediately, and any supporting data will be made publically available within thirty days of the date of this letter, unless you request that any part of the material be withheld in accordance with Paragraph 10(c) of the business review procedure.

Sincerely,



Anne K. Bingaman
Assistant Attorney General

Enclosure