



## DEPARTMENT OF JUSTICE

Antitrust Division

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September 3, 1997

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Dear Mr. Caesar:

This letter responds to your request on behalf of the National Consumer Telecommunications Data Exchange, Inc., ("NCTDE") 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 NCTDE and its member telecommunications carriers to exchange information about former customers of the member carriers whose accounts have been closed with undisputed unpaid balances in excess of an amount to be determined by the Board of Trustees. Based on the information and materials that you have provided the Department has no current intention to challenge the proposed credit information exchange program.

You have informed us that telecommunication carriers have a serious problem collecting monies owed them. Moreover, you suggest that the increased ease with which consumers can switch telecommunications carriers has the effect of increasing the industry's uncollectible rate. It is your clients' belief that many who default on their long-distance telephone bills seek to obtain replacement service from other long distance carriers.

In an effort to reduce their uncollectible rate, nine telecommunications carriers<sup>1</sup> formed NCTDE. NCTDE is a not-for profit corporation that will provide a form of credit data

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<sup>1</sup> NCTDE's founding members are: AT&T Corp; Bell South Telecommunications, Inc; Citizens Utilities Co; Frontier Communications Service, Inc.; IXC Communications; MCI Telecommunications Corp.; Nynex Long Distance Co.; Sprint Communications Company, L.P.; and WorldCom, Inc.

exchange service (though a third-party data vendor) to its members. NCTDE's members will be required to report to the retained third-party data vendor all closed accounts with undisputed uncollected balances in excess of an amount to be determined by its Board of Trustees. This will enable members who are reviewing an application for new telephone service to query the data base and determine whether the applicant has defaulted on its obligations to another member carrier. NCTDE will also provide a "skip tracing" service that will enable its members to determine whether any of their defaulted former residential 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.<sup>2</sup> 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 inquiring 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 NCTDE, 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 NCTDE'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.

Based on the information that you have provided, the Department has no current intention to challenge the exchange of information as proposed by NCTDE and its members. To the extent that NCTDE is operated in accord with the statements and

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

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 price, other terms or whether to do business with a 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, on which it will do business with a customer with a bad credit history. Similarly, a member that locates one of its former defaulted residential 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 NCTDE will be open on a nondiscriminatory basis to all telecommunications carriers assuages any concern that NCTDE might give its members a significant competitive advantage over rival carriers.

To the extent that the information exchange allows NCTDE members to better evaluate credit risk and/or increases their ability to collect monies owed them, it could have a procompetitive effect, i.e., it could 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, 29 C.F.R. § 50.6. Pursuant to its terms, your business review request and this letter will be made publicly available immediately, and any supporting data will be made publicly 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,

Joel I. Klein  
Assistant Attorney General