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December 9, 1993

Honorable Anne K. Bingaman
Assistant Attorney General
U.S. Department of Justice
Antitrust Division
Washington, D.C. 20530

Re: Business Review Request: National
Telecommunications Data Exchange

Dear Ms. Bingaman:

Pursuant to Title 28 of the Code of Federal Regulations, § 50.6, National Telecommunications Data Exchange, Inc. ("NTDE") requests that the Department of Justice provide it with an expedited business review letter setting forth the Department's antitrust enforcement intentions with respect to a credit information clearinghouse that NTDE wishes to establish for telecommunication carriers.

To familiarize the Department with NTDE and its proposed credit information clearinghouse, I will first briefly describe NTDE and then provide some background on the telecommunications industry and the problems that have led to the creation of this program. Next, I will describe the operative provisions of the credit information clearinghouse, provide the Department with the appropriate materials with which to analyze the competitive effects of this credit information exchange, and highlight why this program poses no risk to competition.

NTDE is a classic credit data exchange service, patterned on the services offered by vendors such as Dun & Bradstreet, TRW, Equifax, and EDS. Like all such services, NTDE's principal purpose is to provide carriers with advance warning about customers who pose a credit risk, to enable carriers to protect themselves from incurring bad debt. NTDE is structured as a voluntary, not-for-profit corporation. The founding membership is eight telecommunications carriers,¹ but

¹ The founding members of the NTDE are: Allnet Communication Services, Inc., AT&T, Business Telecom, Inc., Cable & Wireless, Inc., LDDS Metromedia Communications Corporation, MCI Telecommunications Corporation, Sprint, and WilTel Business Networks.

membership is open to any telecommunications carrier. Participating telecommunications carriers will submit to an independent third-party vendor ("vendor") data on closed commercial accounts with unpaid balances. Members may then submit requests to the vendor for information about potential new customers ("applicants") to determine whether an applicant has recently left another telecommunications carrier with an outstanding unpaid debt.

Courts have, of course, long recognized that companies may exchange credit and debt information without violating the antitrust laws, provided that they continue to make independent decisions on the basis of such information. NTDE has been scrupulously designed to satisfy these conditions and to avoid any risk to competition. The details of the program are set forth below. Most fundamentally, NTDE will exchange data only in electronic or written form; only with regard to unpaid debt for closed commercial accounts; and only through the auspices of a third party, independent vendor. The information to be exchanged through the vendor will not identify the carriers supplying or requesting information; there will be no direct communications between competitors regarding any specific accounts; and no information will be exchanged between carriers regarding credit practices and/or procedures.

BACKGROUND

Telecommunications carriers, like many other companies, are concerned about the growing level of uncollected debt that they carry. Interexchange carriers have a 6.8% uncollectible rate, which in 1993 is estimated to result in \$1.7 billion in uncollected debt. It has been estimated that in 1993, local telephone companies will have approximately \$860 million in uncollectible bills, a rate of 6.7% of their total revenues. This rate of uncollectibles is nearly double that of other industries.²

Uncollectibles arise from causes ranging from business failures through deliberate telecommunications toll fraud. Whatever the factors leading to the initial non-payment, a wide range of businesses close their accounts leaving unpaid balances and then seek to obtain telecommunications service from another carrier which is unaware of their past credit history. Typically, telecommunications companies protect themselves against bad debt by requiring the payment of a deposit or

² Dossier, U.S. Telecom Service Markets, 1992, McGraw Hill, Inc.

prepayment of bills where circumstances warrant.³ NTDE is designed to provide a source of information that will allow carriers to use the protective practices they wish with new applicants.

General credit histories as reported by firms such as TRW are not only expensive, but also of limited use to telecommunications carriers. The failure to pay telecommunications bills is viewed as a better indicator of credit risk on a new telecommunications account than failure to pay other kinds of bills. It is difficult to confirm that bad debt accounts identified from general commercial credit reports relate to the prospective new customer's prior experience with a telecommunications carrier. For these reasons, the founders of the NTDE believe that a data base devoted exclusively to telecommunications credit histories will significantly improve their ability to reduce uncollectibles.

A recent action by the Federal Communications Commission (FCC) regarding 800 numbers is likely to exacerbate the uncollectible problem facing telecommunications carriers. Prior to May 1993, specific 800 numbers were allocated to telecommunications carriers, who then assigned these numbers to commercial customers, but retained ultimate control over the numbers. Customers often pay extensive amounts of money to promote the 800 number assigned to them and to develop consumer awareness of the number's association with their business. While an 800 number telecommunications customer could terminate his business relationship with his telecommunications provider and seek 800 number service from another carrier, in the past the customer could not take the 800 telephone number with him to the new carrier. Thus, customers had a strong incentive to pay their bills because the termination by their carrier would mean the loss of the 800 number associated with their enterprise.

In May 1993, the FCC made 800 numbers portable. Now a commercial customer, once it obtains an 800 number, can freely move that 800 number from any telecommunications carrier to any other. As a result, a commercial customer can now run up a very substantial bill and then simply move its 800 number service, including its 800 number, to another carrier, leaving the unpaid

³ Historically, telecommunications carriers have imposed such requirements on customers with histories of poor payment with that carrier itself. However, the proliferation of telecommunications companies in the past fifteen years has meant that carriers now routinely receive requests for services from customers unknown to them.

bill behind. Thus, 800 number portability has eliminated an incentive for payment and increased a carrier's financial risk. Because 1994 billings from 800 number service are estimated to be \$10,000,000,000, the loss of this payment incentive is expected to have a significant impact.

Another problem facing telecommunications carriers resulting from the rise in unpaid commercial debt is the collection of that bad debt. Often commercial customers have moved or reconstituted themselves as a new business, requiring telecommunications carriers to locate them to collect the debt owed. Trying to trace companies responsible for bad debt is known as "skip tracing" and is important in reducing the burden of unpaid bills and toll fraud. NTDE will offer its members an optional service to assist in tracing skip accounts.

THE NATIONAL TELECOMMUNICATIONS DATA EXCHANGE

NTDE's purpose, as set forth in its Bylaws,⁴ "shall be to promote the exchange of commercial credit information among telecommunications carriers." NTDE will contract with a third party vendor, such as TRW or Dun & Bradstreet, to establish a data base of closed commercial accounts with uncollected balances. A participating carrier considering opening a new commercial account will be able to query the vendor about that applicant. The inquiring carrier would be advised by the vendor if the NTDE data base reflects that the applicant has an outstanding undisputed debt with an NTDE member. This will enable the inquiring carrier to make a more informed decision as to whether to open the account and what terms, such as required deposits or prepayments, to impose to protect against the bad credit risk.

In addition, the NTDE will provide an optional skip tracing service. A telecommunications carrier with outstanding debts can elect to be advised by the vendor if its former customer has applied for service with another carrier. The skip trace report will contain the customer's current address to enable the company carrying the bad debt to trace the debtor to a new location and seek recovery.

It is perhaps as important to note what information will not be exchanged under the NTDE program as what will be exchanged. No information will be exchanged about consumer accounts. No information will be exchanged about individual members' credit terms or practices either in general or in

⁴ Attached as Tab A.

specific cases. No information will be exchanged regarding how each member treats applicants identified as having bad debts. There will be no discussion or agreement on credit terms or how applicants with bad debts should be handled. The program will simply identify whether an applicant's description matches that of a customer with an unpaid debt, the amount of the undisputed debt, and the connect and disconnect dates for the customer's previous service. The telecommunications carrier to whom the bad debt is owed will not be disclosed to the inquiring carrier and, in the instance of skip tracing, the name of the inquiring telecommunications carrier will not be disclosed to the carrier whose customer has been traced.

The Operating Guidelines⁵ specify the types of information to be provided by each of the members, the timing during which such information shall be provided, the matching process, and the means of notification provided when a match is made. The Request for Proposal ("RFP")⁶ was issued on October 20, 1993, seeking bids from third party vendors for the contract to operate the NTDE. The RFP sets forth the technical specifications for the bid.

Upon joining NTDE, each member will identify all "Closed Commercial Accounts," closed within the previous 12 months. "Closed Commercial Accounts" are defined as all former commercial, non-residential customers (1) whose services were disconnected, whether voluntarily or involuntarily, in accordance with the member's standard business practices, (2) whose debt to the member exceeds \$100, and (3) whose debt to the member is not disputed. Each member is thereafter obliged promptly to identify each new Closed Commercial Account. In addition, the obligation to submit Closed Commercial Account Records continues for the six-month period beginning on the date of any member's suspension, cancellation, or withdrawal.

For each such account, each member must provide the following information, if known:

- A. customer billing name, address and location, and service addresses
- B. type of business (corporation, partnership, etc.)
- C. principal's social security number
- D. name of principal or officer
- E. contact name (optional)

⁵ Attached as Tab B.

⁶ Attached as Tab C.

- F. customer's employer identification number
- G. business telephone number
- H. 800 number, if appropriate
- I. carrier identification
- J. connect and disconnect dates
- K. amount of debt
- L. any remarks
- M. date on which record was last updated

NTDE's Operating Guidelines mandate that information in the Closed Commercial Account Data Base be retained in the active portion of the base for two years, after which it will be archived for historical and analytical reference.

At their discretion, members may seek information about applicants for commercial service who have applied for new or additional services. For each such applicant, the member must create an Applicant Record that contains the same data as included in items A-I of the Closed Commercial Account Record. When a member submits an Applicant Record that matches a record in the Closed Commercial Account Data Base, a Match Report will be generated. This Report will contain all information in the Closed Commercial Account Record except for the identity of the member submitting the account record.

If it so desires, a member may request that a Match Report be updated. When such an update is requested, the vendor will contact the member submitting the matching Closed Commercial Account Record to determine if any of the relevant information has changed since the Report was initially submitted, e.g., the bad debt has been cleared. A new report will be generated by the vendor and forwarded to the requesting carrier.⁸

⁷ When receiving a Match Report, a member may request the Carrier Source Identification Option. This option does not allow a member to identify any other NTDE member; rather, it identifies whenever the requesting member itself was the source of the Closed Commercial Account Record. In this way, a member lacking reliable internal reporting controls can use the NTDE to determine that the prospective customer was, in fact, its own customer and thereby take the requisite action to initiate appropriate collection procedures.

⁸ The NTDE Operating Guidelines provide that prior to using the information contained in a Match Report, a member must reconfirm that the applicant is a commercial enterprise. The Operating Guidelines also require that the member disclose to the applicant
(continued...)

Applicant Records will be retained and reviewed for matches for six months for at least two reasons. First, often it will take a few months for a carrier to determine that a bill will not be paid, close the account with an unpaid balance, and report the closure. Therefore, a Closed Commercial Account Record may not be submitted until months after another carrier makes an inquiry about an applicant for service. Second, a customer often applies for service with a new carrier prior to disconnection by its existing carrier. During this period, an inquiry by a member will not result in a match. By retaining the Applicant Records for six months, a match will be made when the first carrier completes its internal closing process and submits the Closed Commercial Account Record, thereby increasing the likelihood of a match.

NTDE provides an optional service through which a member may obtain a Skip Report when an account it has identified in a Closed Commercial Account Record matches another member's new Applicant Record. This Report will provide the information included in the Applicant Record except for the identity of the member submitting this Report. Thus, it will identify the current location of the customer owing the bad debt, but will not identify the carrier from which it is seeking service.

As noted above, the data bases will be operated by a third party vendor, described in the Bylaws as the Commercial Credit Agency ("CCA"). This vendor has yet to be chosen. The NTDE will be managed on a daily basis by an Executive Director, who will be responsible for communicating with the members, any outside vendors, and the CCA. All NTDE members will submit data to and receive reports from the CCA -- there will be no direct communication between members as a consequence of their exchange of credit information through NTDE.

NTDE will have an annual meeting to discuss various administrative matters involved in operating the program, such as organizational structure, membership, finance, adequacy of data exchange program, etc. It may also hold ad hoc meetings at the request of members. Both regular and ad hoc meetings can only be called upon written notice. Notices must state the purpose or purposes for which the meeting is being called and shall provide a written agenda. Meetings shall be chaired by the Executive Director. Formal minutes will be kept for all meetings. Counsel

8 (...continued)
that it used information obtained from NTDE if it uses any information from a Match Report when making its credit decision.

for the various members are permitted to attend all such meetings.

ANTITRUST ANALYSIS

A. NTDE Has Been Structured to Comply with the Antitrust Laws

Enclosed are the Bylaws and the Operating Guidelines for the NTDE and the RFP which was issued on October 20, 1993, seeking bids from potential operators of the data base. The Bylaws provide the framework for NTDE's operations, including its goals, requirements, membership, fees, management, and related issues.

Membership in NTDE is open to "[a]ny telecommunications carrier with commercial accounts." Bylaws, Article II, Section I. The Bylaws set forth the process by which a carrier may join NTDE and requires that each new member sign an agreement to obey NTDE's Bylaws, including the Statement of Compliance with the Antitrust Laws. Each member shall pay fees, dues, or other assessments as proposed by the Executive Director and as approved by a majority vote of the members.

The Bylaws incorporate by reference the Statement of Compliance with the Antitrust Laws, which provides that NTDE and its members:

shall not agree with, participate in or give consideration to any activity, plan, understanding, agreement, or arrangement that would constitute a violation of any federal or state law proscribing conduct intended to or tending to restrain trade. . . .

This Statement of Compliance prohibits members from discussing, exchanging information about, or agreeing with other members about: pricing, terms and conditions of sale, customers, business strategies and marketing plans, and boycotts and refusals to deal. In addition, the Statement of Compliance prohibits members from restricting or interfering with the exercise of any member's free and independent judgment in the management or operation of its business.

The Statement of Compliance also prohibits members from exchanging credit data directly with one another. Instead, it requires all such information, as well as all requests for credit information, to be submitted to the vendor. The vendor is prohibited from providing any member with the identity of any other member submitting information.

B. Implementation of the Exchange is Pro-Competitive

The purpose of the NTDE is to facilitate early identification of risk accounts by providing members with timely information about the credit history of applicants for commercial telecommunications services, and to trace customers owing unpaid balances. Implementation of NTDE will enable telecommunications carriers to make informed decisions about the creditworthiness of potential commercial customers and thereby reduce their risk of bad debts.

These clearly pro-competitive benefits will be accomplished with no risk to competition whatsoever. The data base will be managed by an independent third party vendor. No information will be directly exchanged between NTDE members with respect to their credit terms or practices. The reports provided to the members -- both the Match Reports and the Skip Trace Reports -- will provide information only with respect to the account or the applicant and will not disclose either the carrier who is holding the bad debt or the carrier to whom the applicant has applied for service. There will be no discussions between the members regarding the information in the reports or what the response of a member carrier should be to the applicant with a bad debt, nor will there be any discussions of credit practices, terms, or conditions.

While NTDE, like all corporations, will have annual meetings, the Bylaws specifically provide that only administrative matters such as compensation of NTDE's Executive Director, adequacy of the vendor, and operation of the NTDE may be discussed at such meetings. The Bylaws mandate that notices specifying the reasons for any meetings, as well as a written agenda, must be sent in advance to each member. Attendance at any meeting is limited to a member's responsible credit personnel and counsel.

The Statement of Compliance provides additional guidance on the manner in which all NTDE meetings must be held. It requires that a written agenda be prepared, including the date, time, and place of the meeting, the names of those scheduled to attend, and a brief description of the topic to be discussed. Within ten days after any meeting, the Executive Director shall circulate a record of the meeting, which will include the information noted above, as well as a summary of the discussions and any actions taken, or a notation that no action was taken. The Statement of Compliance also mandates that all NTDE business-related activities be transacted or discussed at formal NTDE meetings; no private conversations between members with respect to any NTDE business are permitted.

Cases interpreting federal antitrust law have found that credit information exchange programs such as NTDE are perfectly legal, provided that they are properly structured and operated. The leading case in this area, Cement Manufacturers Protective Ass'n v. United States, 268 U.S. 588 (1925) held that the gathering and dissemination of credit information was not illegal under the antitrust laws, provided that those persons exchanging the information are free to use it as they please. Id. at 603-04. This reasoning has been restated in more recent cases as well. Michelman v. Clark-Schwebel Fiber Glass Corp., 534 F.2d 1036, 1048 (2d Cir.), cert. denied, 429 U.S. 885 (1976), held that "it is not a violation of [Sherman Act] § 1 to exchange such [credit] information, provided that any action taken in reliance upon it is the result of each firm's independent judgment, and not of agreement." Zoslaw v. MCA Distrib. Corp., 693 F.2d 870, 886 (9th Cir. 1982), cert. denied, 460 U.S. 1085 (1983), upheld a credit information exchange, finding that it "was the sort the distributors could use for self protection purposes" and that there was no agreement to fix credit terms.

NTDE is also similar to the National Railroad Industry Trade Group credit information clearinghouse (the "NRITG") about which the Department issued a favorable business review letter on August 4, 1987.⁹ The NRITG was designed to reduce the risk of railroads incurring bad debts by making available to subscribing members information about the credit worthiness of particular shippers. Like NTDE, the NRITG uses a third party (Dun & Bradstreet), which acts as the clearinghouse to receive information from and disseminate information to the various members. Also like NTDE, the NRITG does not exchange current price or credit terms, nor does it identify the sources of the information or which members had problems with particular accounts. Based on all of these factors, the Department stated that it did not intend to challenge implementation of the NRITG. The information exchange proposed by NTDE is actually more limited than that approved by the Division in the NRITG letter. The NRITG allowed significantly more information about credit terms to be submitted to the CCA and to be retrieved by members of the NRITG in response to requests.

The benefits of such credit information clearinghouses are substantial and widely recognized and their use is widespread. Several other utility groups already operate similar international exchanges. Pacific Bell and Equifax responded to a directive from the California Public Utilities Commission to reduce uncollectibles by creating a clearinghouse similar to that

⁹ Attached as Tab D.

proposed by NTDE. Beginning in May 1986, these entities, together with six other telephone companies, formed Centralized Credit Check Service ("CCCS") that covers 99% of California's local telephone service. In a program very similar to NTDE's proposal, the CCCS maintains several electronic data bases, including one for applicants, which is retained for six months, and one for unpaid accounts, which is retained for two years. New applicants are compared to unpaid accounts and matching reports are generated upon request.

The results of the California exchange have been very positive, uncovering over 30,000 matches per month. When a match is made, collection rates have doubled. Those companies whose applicants have been identified as credit risks are able to make an informed decision about whether to require a deposit and how much of a deposit they wish to require. Further, up to 25% of the accounts entered into the unpaid account data base are later matched, resulting in successful skip tracing of the debtor. This program has proven substantially more effective than other methods of skip tracing -- over half of the amounts collected as a result of this program are obtained within 30 days.¹⁰

We understand that similar exchanges have been implemented among California power utilities and Southeastern utility companies. California Utility Exchange (CUE) includes Southern California Edison Company, Pacific Gas and Electric Company, Sierra Pacific Power Company, Los Angeles Department of Water and Power, and Southern California Gas Company. The Southeast Match Exchange (SOME) counts as members a number of utilities, including Carolina Telephone and Telegraph, Southern Bell, South Central Bell, Florida Power and Light Company, United Telephone Company, Alabama Power, Central Louisiana Electric Company, Hargray Telephone Company, Virginia Power Company, and North Carolina Power Company.¹¹

Indeed, even the federal government has adopted a similar program to prevent those who have failed to repay federal loans from obtaining new loans. The Credit Alert Interactive Voice Response System ("CAIVRS") was begun by the federal government in 1987 and includes loan data from the Departments of Agriculture, Education, Housing and Urban Development, and Veterans Affairs, as well as from the Small Business Administration. The CAIVRS data base includes several different types of loans, including home, property, and student loans.

¹⁰ See attached article (Tab E) "Teaming to Find Solutions."

¹¹ See attached materials provided by Equifax (Tab F).

CAIVRS allows potential lenders telephone access to the data base so that they may obtain the credit history of applicants. The data base is updated monthly and thus far in 1993, has handled 2.3 million inquiries, resulting in 30,000 matches. Preliminary reports have indicated that CAIVRS will save approximately \$280 million annually for the VA and HUD alone by preventing bad loans from being made.¹²

THE BUSINESS REVIEW REQUEST

In its press release of December 1, 1992, the Department committed to providing expedited treatment to business review requests with respect to information exchange programs such as this. Consistent with that press release, we are requesting expedited treatment of this business review letter in order to move rapidly toward addressing this significant financial problem.

The December 1 press release identified information and documents that should be provided regarding proposed information exchanges. This letter and its attachments provide substantially all of the information requested.

We have set forth (1) the persons expected to participate in the exchange; (2) its purpose and objectives; (3) the nature type, timeliness, and specificity of the information to be exchanged; (4) the method by which the information will be exchanged; (5) the general characteristics of market(s) involved; (6) the identity of the firms involved and the fact that the program is open to all telecommunications carriers; (7) the safeguards built into the program; and (8) the benefits that will flow from this exchange.

The only information identified in the press release that we have not provided is detailed information about all telecommunications services provided by the companies involved, including pricing and marketing practices, the availability of information regarding market conditions, individual transactions and individual competitors, and the ten largest customers for each of the telecommunications services provided. From our reading of the press release and conversations with various

¹² Stephen Barr, "Preventing Defaulters From Taking New Loans," Washington Post, October 21, 1993 at A29, attached as Tab G. We do not mean to suggest that CAIVRS is directly germane to an antitrust analysis -- its members are clearly not direct competitors. CAIVRS does, however, illustrate the public utility and pro-competitive justifications for programs such as NTDE.

Antitrust Division attorneys, it appears these provisions were included in anticipation that most information exchanges would involve the exchange of price, production, or capacity information. To evaluate the competitive effect of such exchanges, it is important to fully understand the markets in which the exchange takes place, the competitive process in those markets, and the current availability of information about pricing, sales, production, etc. Hence, the information outlined in the press release with regard to market conditions, availability of information, and customers is highly relevant to the analysis of such information exchanges. However, such detailed information is not relevant to an evaluation of the competitive effects of the information exchange NTDE is proposing, one limited to the exchange of bad debt information. Attempting to compile such data for an industry as complex as the telecommunications industry would be extremely burdensome and would not, in our view, further your analysis. Of course, if there is any additional information that you do need, we will promptly provide that information to you.

We look forward to a prompt and favorable response to our request. This program promises substantial benefits and we are anxious to move forward with its implementation. Please contact me if you have any questions.

Sincerely yours,


Judy Whalley

Enclosures

cc: B. Barry Grossman, Esq.