

129. With respect to business customers, we find that BT has some brand name recognition and could possibly become a significant market participant in this segment of the U.S.-U.K. outbound international market. Nevertheless, we conclude that the three largest U.S. interexchange carriers, the BOCs, and GTE are likely to prove more significant market participants in this market segment than BT. These firms have greater established business relationships with business customers and greater brand recognition among business customers than BT. In addition, there are other likely market participants, including existing actual competitors such as WorldCom and C&W, that have capabilities and incentives to compete in this market that are at least equal to those of BT. Accordingly, we find that with respect to this market segment as well, the elimination of BT as a likely market participant in the U.S.-U.K. outbound international services market is unlikely to have any significant adverse effect on competition.

130. *Global Seamless Service Market.* The market for global seamless services is still in its early stages of development, and its services currently are not available to all classes of customers and do not reach all locations. Competition in these markets requires significant resources, which must extend throughout the world. Currently, three international joint ventures are the primary entities serving this market: Concert Communications (a joint venture between BT and MCI), WorldPartners (a joint venture with AT&T and several foreign monopoly providers), and Global One (a joint venture between Sprint, DT and FT).

131. We conclude that the merger of BT and MCI will not eliminate a likely significant market participant because, under the terms of the current joint venture, BT and MCI each are the sole distributors of Concert services in the United Kingdom and the United States, respectively.<sup>180</sup> Thus, the merger does not eliminate a significant market participant that, absent the merger, would have entered this market. We further conclude that the merger is likely to make Concert a more efficient and effective provider of global seamless services. More specifically, we believe that the merger, by replacing a joint venture organizational structure with a single-ownership structure, should generate significant efficiencies for the new Concert,<sup>181</sup> which are likely to be passed on to consumers. The merged entity will be better able to coordinate and implement new network and service standards down through to the physical layer of the network, and such capabilities are likely to be important in developing advanced global seamless services. Accordingly, we find that the merger is likely to enhance

---

<sup>180</sup> See *BT/MCI I*, 9 FCC Rcd at 3965.

<sup>181</sup> It is widely recognized that the presence of multiple participants makes management of joint ventures more cumbersome, slower, and less efficient. See, e.g., J. Peter Killing, *Strategies for Joint Venture Success* 8 (1983); Michael E. Porter, *The Competitive Advantage of Nations* 66 (1990); David C. Mowery & Nathan Rosenberg, *Technology and the Pursuit of Economic Growth* 247 (1989); Michael E. Porter & Mark B. Fuller, *Coalitions and Global Strategy in Competition in Global Industries* 326 (Michael E. Porter, ed. 1986).

competition and benefit consumers in the market for global seamless services, provided that other providers of global seamless service have the ability to originate traffic in the United Kingdom.<sup>182</sup>

132. *Conclusion.* We thus conclude that the merger is unlikely to have any anti-competitive effects on any of the three relevant end-user markets. We further conclude that the merger is likely to enhance competition in two of the three relevant markets -- the market for U.S. local exchange and exchange access services and the market for global seamless services.

#### b. Input Markets

133. As discussed in Section IV.C above, BT is among the most significant market participants in each of the relevant input markets. In addition, with the exception of the international transport market, MCI is not currently an actual participant in any of these input markets, nor does it appear likely to become among the most significant market participants in any of these markets. In the following paragraphs, we discuss the likely competitive effect of the mergers on each of the relevant input markets.

134. *International Transport between the United States and the United Kingdom.* In order to evaluate the competitive effect of the BT/MCI merger on the international transport input market, it is necessary to consider two separate time periods. First, in the near term, we must assume that the transport capacity between the United States and the United Kingdom is fixed, and we must consider the competitive effect of the merger in light of this fixed capacity.<sup>183</sup> In order to evaluate the likely short-term competitive effects, we will focus first on the effects of the merger on the TAT-12/13 cable because this cable is currently the most cost-effective and reliable means of transporting calls from the United States to the United Kingdom.<sup>184</sup> In the slightly longer term, however, we expect the transport capacity between the United States and the United Kingdom to increase significantly, and we must consider the competitive effect of the merger in light of this expanded capacity and the possibility of further additions to capacity over time.

---

<sup>182</sup> As we discuss below, the lack of equal access in the United Kingdom affects the ability of carriers to provide global, end-to-end services. *See infra* ¶ 189.

<sup>183</sup> As previously discussed, carriers seeking to transport calls from the United States to the United Kingdom generally must rely on submarine cables, either privately owned or owned by a consortium of international carriers, or on satellite systems. *See supra* ¶ 95.

<sup>184</sup> *See supra* ¶ 98.

135. As noted, in evaluating the short-term competitive effects of the merger, we will take existing international transport capacity between the United States and the United Kingdom as given, and focus initially on the TAT-12/13 submarine cable. We believe that the merger of BT/MCI will increase the merged entity's market power over U.S.-U.K. international transport only to the extent that the merger results in BT/MCI having increased control over whole circuits on TAT-12/13.<sup>185</sup> We acknowledge that the merger will increase BT/MCI's control over whole circuits somewhat, both because MCI and BT owned some whole circuits prior to the merger, and because some MCI western half-circuits were matched with BT eastern half-circuits.<sup>186</sup> Because the sale or lease of circuits, after the initial allocation, is not subject to any form of price regulation, the question then becomes: will BT/MCI's increased control over whole circuits on TAT-12/13 enable it to exercise increased market power, either through unilateral price increases or coordinated interaction with other carriers controlling whole circuits?<sup>187</sup>

136. We conclude that, in the near term, the merger will increase concentration and thus possibly market power in the U.S.-U.K. international transport market. The exercise of this market power could harm U.S. consumers through unilateral price increases to competing carriers or through coordinated interaction with carriers controlling other circuits on this route. We find, however, that the commitments made by BT/MCI with respect to this market, along with other factors identified below, will prevent anti-competitive behavior by the merged

---

<sup>185</sup> We note that, prior to the merger, MCI owned primarily western half-circuits on TAT-12/13, while BT owned primarily eastern half-circuits. To the extent that these half-circuits are matched with circuits owned by *other* international carriers, the merger of these *half-circuits* should not have any significant competitive effect on the U.S.-U.K. transport market.

<sup>186</sup> See June TAT-12/13 Schedules. Currently, there are 3010 TAT-12/13 circuits allocated on the U.S.-U.K. route. Of these 3010 circuits, 1327 circuits are wholly owned (*i.e.*, carriers own both halves of these circuits) and the remainder are matched between different carriers on opposite sides of the Atlantic. BT has 245 whole circuits, MCI has 122 whole circuits, and BT and MCI jointly own 567 matched circuits. Thus, prior to the consummation of the merger, BT owns approximately 18.5 percent, and MCI owns approximately 9.2 percent, of the U.S.-U.K. whole circuits currently allocated on TAT-12/13. BT's whole circuits represents approximately 8.2 percent, and MCI's whole circuits represents approximately 4.1 percent, of the total U.S.-U.K. circuits on TAT-12/13. Post-merger, BT/MCI's matched half-circuits become whole circuits, increasing the number of whole circuits on TAT-12/13 to 1894. The merged entity will then own 934 whole circuits, or approximately 49 percent of the whole circuits on TAT-12/13. BT/MCI's whole circuits will then represent approximately 31 percent of the total U.S.-U.K. circuits, including both whole and half circuits, on TAT-12/13. *See id.*

<sup>187</sup> We note that, when circuits on TAT-12/13 were initially allocated, the price charged to consortium participants was based on the cost of constructing the cables, plus expected expenses, including maintenance and restoration expenses. Subsequent sales or leases of the circuits are not subject to any form of price regulation, however.

entity in the near term. First, and most importantly, BT/MCI has agreed to take various steps to share capacity on TAT-12/13 with new entrants.<sup>188</sup> More specifically, BT/MCI has committed to: (1) offer U.K. international facilities licensees a total of 147 whole circuits, for sale on an IRU basis to new entrants;<sup>189</sup> (2) allow certain U.K. international facilities licensees that are currently taking eastern end half-circuit international private leased circuits (IPLCs) for international simple resale to convert the IPLCs into IRUs; (3) sell to U.S. correspondents or their U.K. affiliates, upon request, eastern end matched half-circuits owned by BT and currently used for the provision of IMTS or international private line services between BT and the U.S. correspondents; and (4) offer to convert such international private line leases into IRUs in such a manner that international simple resellers that become U.K. international facilities licensees will be in the same financial position as if their international private line leases had been scheduled to terminate on the date on which the conversion takes place.<sup>190</sup> Moreover, BT's commitments to sell these circuits under OFTEL's oversight at prices that approach BT's cost for these circuits and on reasonable, transparent, and nondiscriminatory terms should significantly constrain BT's ability to exercise any market power it may possess.<sup>191</sup> We believe that these commitments by BT/MCI to make additional capacity on TAT-12/13 available to new entrants should largely counterbalance any increased market power the merged entity might acquire over international transport between the United States and the United Kingdom over the near term as a result of the merger.

137. Second, there exist other means of transport between the United States and the United Kingdom besides TAT-12/13.<sup>192</sup> Although these other submarine cables and satellite systems may be less efficient and reliable than TAT-12/13, they do provide alternative transport capacity that also limits the ability of BT/MCI to exercise any market power it may have over TAT-12/13 circuits, either unilaterally or through coordinated interaction over the near term.

---

<sup>188</sup> BT/MCI proposed these commitments to the European Commission during the European Commission's review of the merger. The European Commission accepted the commitments as a condition of its approval of the merger. See Letter from James E. Graf, II, President of BT to William F. Caton, Acting Secretary, FCC (June 2, 1997) (June 2, 1997 BT letter).

<sup>189</sup> These 147 whole circuits will amount to approximately 7.8 percent of the whole circuit capacity of TAT-12/13 on the U.S.-U.K. route. See *supra* note 186.

<sup>190</sup> See June 2, 1997 BT letter at 2. The offer is made for 12 months after the date of the European Commission approval of the merger.

<sup>191</sup> Through OFTEL's "modern equivalent asset" valuation, OFTEL attempts to estimate BT's "true cost" of acquiring these circuits.

<sup>192</sup> See *supra* ¶ 95.

138. Finally, U.S. carriers will continue to be able to terminate calls in the United Kingdom at the current settlement rate of \$0.07 per minute.<sup>193</sup> Although the current settlement rate may exceed the economic cost of terminating calls, this alternative method of terminating calls should also tend to constrain the ability of BT/MCI to raise transport rates as a result of its increased control over whole circuits. For these reasons, we do not believe that the merger of BT and MCI should have any significant anti-competitive effect on U.S.-U.K. international transport during the near term.

139. We believe that the merger poses less of a competitive threat in the slightly longer term, as new transport capacity is added on this route. First, by February 1999, the capacity of TAT-12/13 will be doubled through the implementation of wave division multiplexing (WDM) technology.<sup>194</sup> After the WDM Upgrade Program is implemented, all current consortium owners that choose to participate in the program will receive additional whole circuits in proportion to their ownership shares.<sup>195</sup> BT/MCI's relative percentage ownership of whole circuits will decline.<sup>196</sup> Accordingly, implementation of the WDM Upgrade Program will reduce BT/MCI's percentage ownership of whole circuits on TAT-12/13 and thus mitigate any increased market power BT/MCI may have acquired as a result of the merger.

140. More important, the recent reduction in regulatory barriers to entry, combined with a decrease in the cost of constructing new transoceanic cables, should lead to the more rapid construction of cable capacity, which would tend to make the exercise of market power over this input market more difficult. Specifically, the United Kingdom now licenses carriers other than BT and CWC to own and operate U.K. international facilities, and has taken steps to ease the ability of licensees' to construct those facilities.<sup>197</sup>

141. In addition, because of reductions in the cost of fiber optic cable and improvements in compression technology, the cost of capacity has fallen dramatically in recent years.<sup>198</sup> The fact that two new state-of-the-art cable systems connecting the United States and the United Kingdom, the Gemini and Atlantic Crossing cable systems, are currently

---

<sup>193</sup> For a more detailed discussion of BT's settlement rate with U.S. carriers, *see infra* Section V.B.1.

<sup>194</sup> *See* Letter from Louise Ferrara, AT&T to J. Hedlund, FCC (July 16, 1997).

<sup>195</sup> *Id.*

<sup>196</sup> *See* June TAT-12/13 Schedules

<sup>197</sup> *See infra* ¶ 144.

<sup>198</sup> *See* TeleGeography 1996/97 at 60-61.

under construction and will soon go into operation provides concrete support for this conclusion.<sup>199</sup> The fact that these two new submarine cable systems will soon become operational and that additional cables can be quickly authorized and constructed suggests that, over the longer term, BT/MCI is unlikely to be able to exercise market power in this input market.<sup>200</sup>

142. *U.K. Cable Station Access.* As discussed above,<sup>201</sup> we find that BT both is an actual competitor and appears likely to remain among the most significant participants in this input market. BT is the sole owner and operator of the TAT-12/13 cable landing station and DACS, over which most U.S.-U.K. traffic is transmitted for ultimate termination in the United Kingdom. We also find, however, that MCI, though until recently a precluded competitor, is neither a significant participant in this market currently, nor does it appear likely to become a significant market participant in the foreseeable future. CWC is the only firm other than BT that currently owns cable landing stations in the United Kingdom. A new cable station is currently under construction by the owners of the Atlantic Crossing cable system. As we noted earlier, other market participants may arise in the future as new cables are constructed.<sup>202</sup> We thus conclude that the merger will not result in the loss of a likely significant competitor in this market, and thus should not have any horizontal anti-competitive effect in this input market.

143. *U.K. Backhaul.* As discussed above, we find that BT and CWC are both actual competitors in this market and appear likely to remain among the most significant participants in this input market.<sup>203</sup> We find no evidence that MCI would likely become a significant participant in this market, even absent the merger. More importantly, we further find that, due to recent regulatory changes in the United Kingdom, barriers to entry into this market have been significantly reduced.

---

<sup>199</sup> See *supra* ¶ 101.

<sup>200</sup> We recognize that the mere construction of these two new cable systems will not necessarily result in deconcentration of this input market, since the level of concentration depends on how the new capacity is allocated among existing, competing carriers, including BT/MCI. We note, however, that the Commission retains the authority to reallocate capacity should it find that capacity on this route is becoming too concentrated. See *infra* note 211.

<sup>201</sup> See *supra* ¶ 103.

<sup>202</sup> See *supra* ¶ 101.

<sup>203</sup> See *supra* ¶ 107.

144. As we found above, several newly-licensed international facilities competitors, including Energis and WorldCom, have recently entered, or are about to enter, the U.K. backhaul market. Other U.K. domestic and international licensees have or can apply for "code powers," which enable them to apply to courts for "compulsory wayleaves" (similar to eminent domain powers) and provide for a streamlined procedure for dealing with all relevant U.K. authorities.<sup>204</sup>

145. Given the quick entry of new firms and the ability of licensees to apply for code powers, we find no reason why additional competitors will not be able to enter this market in the future. We find no evidence in this record, however, that, absent the merger, MCI might consider entering this market, or that it possessed capabilities or incentives that were superior to other potential entrants into this market. Significantly, we further find that there are several other competitors, with capabilities and incentives at least equal to MCI, that are entering, or appear likely to enter, this market.

146. *U.K. Intercity Transport.* We find that BT is an actual competitor and appears likely to remain among the most significant participants in this input market. We find no evidence in this record, however, that, absent the merger, MCI might consider entering this market, or that it possessed capabilities or incentives that were superior to other potential entrants into this market. Significantly, we further find that there are several other competitors, with capabilities, assets and incentives at least equal to MCI, that are entering, or appear likely to enter, this market.

147. As we mentioned above, CWC has built the most extensive competing network to the principal centers for long distance and international traffic. Energis and Scottish Telecom have used utility rights of way to construct extensive optical transmission systems and have installed several switches. BRT's network reaches into many U.K. communities and BRT already provides dark fiber to other operators.<sup>205</sup> In addition, AT&T, WorldCom, and Global One hold domestic facilities licenses and are assembling their own networks.<sup>206</sup>

148. Given the existing competitors in this market, we thus conclude that the BT/MCI merger will neither result in the loss of a significant competitor nor have any other horizontal anti-competitive effect on this input market.

---

<sup>204</sup> See *supra* ¶ 109.

<sup>205</sup> BT/MCI application at 39-40.

<sup>206</sup> *Id.* at 40-41.

149. *U.K. Local Services (Originating or Terminating)*. As discussed above, we find that BT is an actual competitor and is likely to remain among the most significant participants in the markets for U.K. local originating and terminating services. We find no evidence in the record, however, that MCI, even absent the merger, would likely consider entering this market. Moreover, we find that there are other competitors, with capabilities and incentives at least equal to MCI, that have entered or are considering entering this market.

150. There are a number of actual competitors to BT in the U.K. local services market.<sup>207</sup> CWC and a number of cable companies already compete with BT. From July to September 1996, the combined total of CWC's and the cable companies' shares of the U.K. local exchange market was 7.7 percent. In addition, Ionica, a current fixed wireless provider of local service, is required by the terms of its license to cover 75 percent of England and Wales over the next three years.<sup>208</sup> In Scotland, two other companies will be providing similar fixed wireless services and other fixed access operators are also planning services.<sup>209</sup> Other carriers, such as WorldCom and COLT, have constructed fiber optic facilities in city centers.<sup>210</sup>

151. We thus conclude that the merger will not result in the loss of a likely significant competitor in this market and is not likely to have any horizontal anti-competitive effect on this market. Moreover, although we recognize that any carrier that provides terminating access services, including BT, possesses a certain degree of market power as a result of its control over terminating access, we see no reason why BT's current market power, arising from its control of terminating access, would be augmented by the merger.

### 3. Conclusion

152. In summary, we find that, with the exception of the international transport market, the merger will not result in the loss of a likely significant market participant in the relevant input markets and will not have any other significant horizontal anti-competitive effect on any of these input markets. Thus, we conclude that, with respect to the relevant input markets other than international transport, the merger generally will not increase the potential for the exercise of either unilateral or oligopolistic market power. As to the international transport market, we find that, although the merger of BT and MCI will lead to

---

<sup>207</sup> *Id.* at 27-37; U.K. Government reply comments at 9-11.

<sup>208</sup> BT/MCI application at 34-35; U.K. Government reply comments at 10.

<sup>209</sup> *Id.* at 10.

<sup>210</sup> *Id.*

some increased concentration of transport facilities in the short term, there are mitigating factors, including BT/MCI's agreement to share its existing capacity with new entrants, that appears likely to offset the increase in market power resulting from this increase in concentration in international transport facilities. More importantly, the substantial increase in international transport capacity over the next two years, as a result of the introduction of WDM technology on TAT-12/13 and the construction of two new submarine cable systems, will act as a significant constraint against any horizontal anti-competitive effect caused by the merger.<sup>211</sup>

## **E. Analysis of Vertical Competitive Effects**

### **1. Introduction: Analytical Framework**

153. In this section, we consider the possibility that the merger of BT and MCI will have vertical effects that harm competition. We focus on the harmful vertical effects that, based on the parties' filings and our own independent analysis, appear most likely to result from the proposed merger.<sup>212</sup> A merger may have vertical effects that benefit competition, as well as vertical effects that harm competition.

154. Vertical effects that benefit competition refer to various types of efficiencies arising from vertical integration, especially efficiencies that reduce the costs of producing the relevant goods and services, improve the quality of products, or increase the variety of alternatives available to consumers. Vertical effects that harm competition generally depend on the vertically integrated firm possessing market power in an upstream "input" market and taking actions in that input market that leverage this market power in the downstream "end-user" market. These downstream effects could harm consumers through increases in prices, decreases in quality, or a reduction in alternatives in end-user markets.<sup>213</sup> Our analysis in this

---

<sup>211</sup> Nonetheless, we retain the authority to reallocate U.S. carriers' interests and capacity in the TAT-12/13 cable to accommodate additional carriers should we find it in the public interest to do so. See *TAT-12/13 Cable Landing License*, 8 FCC Rcd at 4815. We generally agree with the U.K. Government, however, that any further action to address availability of submarine cable capacity should be based upon a full record not limited to BT/MCI's involvement.

<sup>212</sup> Other proposed mergers involving other firms and businesses may pose different possible vertical harms and thus may require different analysis.

<sup>213</sup> See Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power Over Price*, 96 Yale L.J. 209 (Dec. 1986). See also ABA Antitrust Section, *Antitrust Law Developments*, 330-33 (3d ed. 1992); Michael H. Riordan & Steven C. Salop, *Evaluating Vertical Mergers: A Post-Chicago Approach*, 63 Antitrust L.J. 513 (1995); Martin Perry, *Vertical Integration: Determinants and Effects*, in *The Handbook of Industrial Organization* 183 (Richard Schmalensee & Robert Willig, eds. 1989).

section focuses on the possibility that the proposed merger will result in vertical effects that harm competition.<sup>214</sup> It is important to emphasize that a reduction in the profits of rivals without an adverse effect on consumers constitutes harm to competitors, but not necessarily harm to competition. Moreover, our focus is on the extent to which a proposed merger increases the likelihood of adverse vertical effects, and not on adverse vertical effects that likely would arise even in the absence of the merger.

155. In general, we are concerned whether the merger of BT and MCI will increase the ability or the incentive of the vertically integrated firm to affect competition adversely in any downstream end-user market. There are several ways in which consumers could be harmed by the vertical integration of this transaction. First, the integrated firm could engage in price and non-price discriminatory practices in the provision of those inputs to its rivals that could raise the costs of those rivals in the provision of a relevant end-user product, such as U.S.-U.K. outbound international calls. End users would be harmed by such actions if the rival firms passed on these higher costs, causing end users either to suffer higher prices or to substitute inferior alternatives in response to these higher prices. In addition, the integrated firm could use non-price discrimination strategies that lower the quality of rivals' products in relevant end-user markets, enabling the vertically integrated firm to raise the price of its end-user products, and causing end users to suffer the effects of higher prices and lower quality. Finally, the integrated firm could engage in predation, such as through a predatory price squeeze. Successful predation reduces the variety of alternative downstream products available to end users, and causes end users to suffer the higher prices and lower qualities that result from ultimate increases in market power in the relevant end-user markets.<sup>215</sup>

**a. Raising Rivals' Costs**

156. In examining a vertical transaction, we focus upon whether the transaction either increases the incentives or the ability of the integrated firm to raise the costs of its rivals to the detriment of consumer welfare.

---

<sup>214</sup> The possible efficiencies of the merger are discussed below in Section VI.F.

<sup>215</sup> In the *LEC In-Region Interexchange Order*, we discussed our concern that harmful vertical behavior by incumbent LECs also could include harmful cost misallocation in addition to discrimination and predatory conduct. *LEC In-Region Interexchange Order* at ¶¶ 103-108. Although cost misallocation remains a concern regarding vertical activities of regulated LECs in the U.S. domestic context, we conclude below that this merger does not raise create any concerns that would warrant special separation requirements. We note, however, that the *Foreign Participation Notice* seeks comment generally on whether we should require some level of structural separation between a U.S. carrier and its affiliated foreign carrier. BT/MCI will be subject to any rules of general applicability adopted in that proceeding. See *infra* ¶ 317.

157. In the event that BT/MCI could raise its rivals' costs, the integrated firm could be able both to increase its own end-user prices and increase its end-user market share. The incentive to engage in such a strategy typically depends on the integrated firm's loss in profit in the input market compared with the gain in profit in the end-user market. The comparison will depend on a number of factors. First, raising rivals' costs via either a price discrimination or a non-price discrimination strategy could cause the integrated firm to lose sales in the input market.<sup>216</sup> The profitability of such a strategy thus is affected by the degree to which rivals would reduce their consumption of the integrated firm's input product. Second, the extent to which rivals reduce their consumption of the integrated firm's input product in response to a raising rivals' cost strategy depends on how cost-effective the alternative inputs are to which the rivals might turn as substitutes. This may depend in part on the extent to which there can be entry of new input suppliers or expansion by any other existing input suppliers in response to the raising rivals' cost strategy or the ability of the rivals to defend against such a strategy by their own vertical integration. Third, the ability of the vertically integrated firm to profit from a raising rivals' cost strategy depends on the extent to which rivals would pass on cost increases in higher prices to end users. If the rivals would not pass on the increases in cost at least partially, due to competitive conditions in end-user markets, then the downstream affiliate would gain no market power as a result of the strategy and end-user prices would not increase.

158. Fourth, the input firm's percentage ownership interest in the downstream affiliate can affect the vertically integrated firm's incentive to raise rivals' costs. For example, in this case, BT's interest in MCI, as a result of the merger, will rise from twenty percent to one hundred percent. This increased equity interest in MCI increases the profits that BT would obtain as a result of a successful raising rivals' cost strategy, which thereby increases the incentive for BT to engage in such a strategy. Moreover, BT's complete corporate control of MCI can be expected to result in changes in managerial incentives that cause the managers of MCI to act more fully in the interests of the overall enterprise. Finally, the ability of the firm to engage in such a strategy depends on the regulatory environment. For example, if the price of the input is regulated, and the quality of the input and other terms of its provisioning are well-monitored, then the firm may be unable to raise its rivals' costs.<sup>217</sup>

---

<sup>216</sup> For example, if the firm raises the price of its input product, then the volume of the firm's sales of that product could decrease.

<sup>217</sup> We note that in evaluating the vertical effects of mergers, the presence of adequate regulation does not mitigate public interest harms. As we stated in the *Bell Atlantic/NYNEX Order*, "[i]n order to reach a pro-competitive, de-regulatory industry structure, market performance must improve to the point where competition, rather than regulation, effectively constrains market power." *Bell Atlantic/NYNEX Order* at ¶ 45.

159. A vertically integrated firm may adopt any of several strategies for raising its rivals' costs.<sup>218</sup> First, to the extent that the firm is the sole supplier of (or has market power over) an essential input in an input market, it could simply raise the price of the input to its downstream competitors, whether or not it raises the price to its own downstream affiliate (which, from the perspective of the fully integrated firm, pays economic cost regardless of the nominal transfer price of the input).<sup>219</sup> Depending on market conditions, this could increase the vertically integrated firm's total profits, at the same time that it disadvantages its rivals and makes them less competitive in the end-user market. If the rival firms pass on the cost increase to end users, then the rival downstream firms will be less competitive relative to the integrated firm's downstream affiliate. This allows the downstream affiliate to capture more of the profits in the end-user market, by expanding market share, raising its price for the end-user service, or both. Such a result would increase the overall profitability of the integrated firm if the lost profits from input sales are not too great. Under these circumstances, end-users will ultimately face higher prices than they would in the absence of vertical interaction.

160. In addition to price discrimination, a vertically integrated firm could engage in other strategies that would have effects similar to raising directly the costs of its rivals. In particular, the integrated firm could adversely affect the timeliness or quality of the input product that it delivers to its rivals. For example, the firm may simply delay the delivery of the input product to its downstream rivals while continuing to provide the input to its own operations on a timely basis. For instance, BT could speedily fulfill its own orders for international transport facilities while "slow rolling" orders by its competitors. To the extent that such delays require the rivals to incur more costs (such as additional compression equipment in lieu of additional transatlantic capacity), those firms would be disadvantaged in the same manner as if the integrated firm simply had raised the price of the input. Similar strategies can be undertaken by degrading the quality level of the input (e.g., signal attenuation in an interconnection arrangement). To the extent that such strategies result in rivals setting higher prices (or reducing the quality) for their services to reflect the increased cost in providing the services, they reduce the benefits available to consumers.

161. It is also important to note that in the event the integrated firm engages in this type of non-price discrimination, its downstream rivals may choose not to, or may be unable to, remedy the defect. For instance, if a rival encounters a degradation in signal quality on the BT-end of an international circuit, the rival may not be able to remedy this defect at reasonable cost. As a result, these strategies could cause the service offerings of the

---

<sup>218</sup> See *LEC In-Region Interexchange Order* at ¶ 111 (discussing similar discrimination strategies in the domestic long distance context).

<sup>219</sup> Although raising rivals' costs in this manner may result in predation, raising rivals' costs is not necessarily predatory. See *infra* ¶ 162.

integrated firm's rivals to be below the level they would have chosen to offer had the incumbent not provided degraded inputs. Such reduction in quality, in certain instances, allows opportunities for the integrated firm to extract monopoly profits from end users. For example, to the extent that there may be significant demand for high-quality U.S.-U.K. outbound international calls that only BT/MCI could provide because of the poor signal quality in its input interconnection arrangements with its rivals, BT/MCI might be able to price its higher-quality services at monopolistic levels, at least for some consumers. Because monopolistic pricing harms consumers, it is important that our vertical effects analysis consider the extent to which the transaction may increase the incentives and ability of BT/MCI to engage successfully in this type of strategy. We have previously articulated these concerns.<sup>220</sup>

#### b. Predatory Price Squeeze

162. In addition to the actions described above, a vertically integrated firm might engage in a predatory strategy -- known as a predatory price squeeze -- to drive its rivals from the market.<sup>221</sup> A vertically integrated firm might raise the price of its input (or lower the price of its end-user service) to the point where the price of its end-user product is less than the price of the input plus an efficient firm's cost of producing the final end-user service.<sup>222</sup> Such a strategy could be profitable only if the vertically integrated firm cannot already fully extract monopoly rents from its control of the input price, and even then only in certain circumstances. For instance, the integrated firm subsequently must be able to raise the downstream price of the end-user service long enough to recoup its losses after its rivals had exited the market, without inducing new entry.<sup>223</sup> To the extent that new entry entails sunk cost investment, new entry into the market may be delayed -- or even put off entirely --

---

<sup>220</sup> As we said of Sprint regarding its proposed relationship with FT and DT, "Sprint would receive [increased] returns simply because of its affiliation with FT and DT and not because of the superior quality, lower prices, or innovativeness of its services. At the same time, the costs of Sprint's rivals would be raised above competitive levels, which would tend to reduce competition in the market as a whole." *Sprint Declaratory Ruling*, 11 FCC Rcd at 1860.

<sup>221</sup> See Thomas G. Krattenmaker & Steven C. Salop, *supra* note 213; Janusz A. Ordover & Garth Saloner, *Predation, Monopolization, and Antitrust in 1 The Handbook of Industrial Organization* (Richard Schmalensee & Robert Willig, eds. 1989); see also *Bell Atlantic/NYNEX Order* at ¶¶ 115-16; *Access Charge Reform*, CC Docket No. 96-262, et al., *First Report and Order*, FCC No. 97-158 at ¶¶ 275-83 (rel. May 16, 1997) (*Access Charge Reform Order*).

<sup>222</sup> *Benchmarks Order* at ¶¶ 208-09 (defining price squeeze in the international context).

<sup>223</sup> See *Access Charge Reform Order* at ¶¶ 275-82.

merely because the threat of a predatory price squeeze response by the incumbent could diminish the perceived *ex ante* return upon that sunk cost investment.

## 2. Application of Framework: Raising Rivals' Costs and Market Power in End-User Markets

163. We now apply the foregoing framework to the proposed merger. As previously discussed, BT is a significant market participant in each of the relevant input markets, including: (1) international transport between the United States and United Kingdom (particularly submarine cable transport facilities); (2) U.K. cable landing station access; (3) U.K. backhaul; (4) U.K. intercity transport; (5) U.K. local terminating exchange access services; and (6) U.K. local originating exchange access services. In particular, we examine whether the transaction gives BT an increased incentive and ability to raise rivals' cost or obtain market power in end-user markets to the detriment of consumers.<sup>224</sup> We then consider whether BT could engage in a predatory price squeeze given its market position in any of the relevant input markets.

### a. International Transport on the U.S.-U.K. Route

164. As we noted above in Section IV.C, most transatlantic traffic travels over submarine cables.<sup>225</sup> Since both BT and MCI have U.S.-U.K. submarine cable assets, the status of competition in the provision of submarine U.S.-U.K. cable capacity is important to determine whether the transaction increases the ability of the combined BT/MCI to use those assets to affect the relevant end-user markets. In addition, the complete acquisition of MCI's input and end-user market assets may also increase BT's incentive to use these submarine cable assets for such purposes. That incentive, however, would be greatly diminished if BT/MCI's rivals had adequate alternative sources of supply after the transaction.

165. We found above that the merger will, in the short-term, increase BT/MCI's control of whole circuits on the TAT-12/13 cable.<sup>226</sup> We also found, however, that the merger will not significantly increase BT/MCI's near-term market power over U.S.-U.K. international transport for several reasons. In particular, as we describe above, BT/MCI has made several

---

<sup>224</sup> No party has alleged in this proceeding that either BT or MCI possesses or exercises market power in any U.S. input market. Nor does any party allege that BT/MCI, as a result of the merger, will obtain market power in any such input market. MCI, however, has committed to make U.S. backhaul available on a nondiscriminatory basis. *See infra* Section VI.C.

<sup>225</sup> *See supra* ¶ 97.

<sup>226</sup> *See supra* ¶¶ 135-141.

commitments regarding access to its TAT-12/13 holdings and its commitments to sell circuits under OFTEL's oversight at prices that approach cost on reasonable, transparent and nondiscriminatory terms. This commitment should significantly constrain BT/MCI's ability to exercise whatever market power it may possess by virtue of these transatlantic facilities. We also found that other existing means of U.S.-U.K. transport and the availability to carriers of a \$0.07 per minute settlement rate helps alleviate our near-term concerns.<sup>227</sup> In the longer term, BT/MCI's ability to discriminate will be further constrained by the introduction by mid-1988 of substantial amounts of new transoceanic cable capacity.<sup>228</sup> This increase in capacity should mitigate any market power BT/MCI might otherwise have in this input market as a result of the merger and thus prevent any price or non-price discrimination by BT/MCI. In addition, the recent reduction in regulatory barriers and the decrease in the cost of constructing new transoceanic cable should facilitate more rapid entry and thereby make the exercise of market power over this input market more difficult. For these reasons, we also conclude that it is unnecessary to impose any reporting requirements on BT/MCI, as requested by some commenters.<sup>229</sup>

**b. U.K. Cable Landing Station Access**

166. As previously discussed, BT currently controls important cable landing stations and digital access cross-connect switches in the United Kingdom, but MCI does not.<sup>230</sup> We see no reason to conclude that the proposed merger will increase BT's ability to use this market position so as to impact any end-user market. It is important, however, to note that the merger with MCI might increase BT's incentive to utilize its market power to disadvantage its rivals in a manner that harms competition. Nevertheless, a combination of circumstances leads us to believe that BT's market position is effectively unusable to harm competition.

167. First, we find that the U.K. Government has taken steps to facilitate new cable landing station constructions, and new entry is occurring.<sup>231</sup> A new cable station is currently under construction by the owners of the Atlantic Crossing cable, which will land at the new

---

<sup>227</sup> See *supra* ¶¶ 137-138.

<sup>228</sup> See *supra* ¶ 101.

<sup>229</sup> See, e.g., Sprint comments at 10, WorldCom comments at 14.

<sup>230</sup> See *supra* ¶¶ 103, 104.

<sup>231</sup> See *supra* ¶ 105.

station.<sup>232</sup> We further find no legal or regulatory barriers to the construction of new submarine cables and new cable landing stations associated with these new cables.

168. Second, in the near term, the presence of OFTEL regulation and the conditions contained in BT's licenses prevent BT from discriminating against unaffiliated carriers and ensure that competing carriers can obtain access to the cable landing stations at the same cost and under the same terms as BT. For example, Conditions 12 and 13 of BT's license require BT to provide in-span handover (which includes DACS activation) on cost-oriented terms.<sup>233</sup> In addition, Condition 16A requires publication of the charges for these services; Condition 17 requires nondiscrimination and prohibits undue preference; and Condition 18A prohibits anti-competitive conduct. Given OFTEL's regulatory oversight and the conditions in BT's license, we conclude that BT could not use any market power it has over U.K. cable landing stations to discriminate successfully against nonaffiliated carriers. This combination of regulation, significant new entry, and the ease of further entry gives us confidence that BT will not be able to use its control over U.K. cable landing stations to discriminate against unaffiliated carriers to the detriment of U.S. consumers.<sup>234</sup>

169. Finally, we are not persuaded by WorldCom's complaint that BT unnecessarily delays access to BT's DACS.<sup>235</sup> To the contrary, we find that BT's general practice of fulfilling an international facilities licensee's previously forecast, in-span handover orders in 35 business days, except in the unusual cases, appears to be reasonable.<sup>236</sup> Accordingly, we find no reason to impose any additional conditions on BT/MCI that would require BT to improve the service intervals for DACS access. In response to ACC's argument that capacity ports have not been made available in units of 2 Mbps, BT counters that units of 2 Mbps are available at the Lands' End cable station. At other cable stations, however, BT currently does not have the necessary equipment to provide ports in units of 2 Mbps. BT has indicated that

---

<sup>232</sup> The owners of the Gemini cable, WorldCom and C&W, plan to use an existing cable station owned by CWC, a C&W affiliate.

<sup>233</sup> In addition, we note that OFTEL has proposed to classify in-span handover as a "non-competitive" interconnection service, meaning that it will set a starting charge based on forward-looking incremental costs to which it will apply an indexed (downward) price cap. U.K. Government reply comments at 27.

<sup>234</sup> This is in contrast to the situation with respect to local exchange facilities in the United States, where the regulatory structure for competition is still largely incomplete, entry into mass market levels has not begun, and the possibility of further entry is uncertain for significant portions of the market.

<sup>235</sup> WorldCom comments at 17.

<sup>236</sup> Letter from Mary L. Brown, Senior Policy Counsel, MCI, to William F. Caton, Acting Secretary, FCC (June 11, 1997).

it is working with operators at those stations to determine how any additional requests might be accommodated.<sup>237</sup> Although this situation is of concern, we are confident that future cable and cable landing station construction should, in the longer term, resolve our competitive concerns.

**c. U.K. Backhaul**

170. Although the addition of MCI's international market share might increase BT's incentive to use whatever market position it has in the provision of U.K. backhaul to disadvantage its rivals in a manner that harms competition, we find that the existence of facilities-based competitors in this input market, including CWC, Energis, and WorldCom, combined with a lack of regulatory or economic barriers to the entry of additional facilities-based competitors, effectively prevents BT/MCI from engaging in such a strategy. Indeed, we see no reason to conclude that the proposed merger will increase BT's ability to use the integrated firm's U.K. backhaul assets so as to impact any end-user market.

171. In this regard, we note that, as discussed above, OFTEL has granted the newly licensed facilities-based carriers "code powers" that allow them to build out backhaul facilities quickly.<sup>238</sup> In addition, the fact that Energis and WorldCom constructed backhaul facilities to Land's End (the cable landing station for TAT-12/13) within three weeks of receiving authorization, provides further support for our conclusion that facilities-based entry into this input market is relatively easy. Accordingly, given the apparent ease of entry into this market, we conclude that BT/MCI will not be able to use its provision of U.K. backhaul to discriminate against rivals to the detriment of U.S. consumers.

**d. U.K. Intercity Transport**

172. Although the merger with MCI does not increase BT's U.K. intercity transport network capabilities in any way, the addition of MCI's international market share might increase BT's incentive to utilize whatever market position it has in the provision of U.K. intercity transport to disadvantage its international rivals in a manner that would harm to U.S. consumers.

173. There is significant debate in the record as to whether BT currently has the ability to utilize its U.K. intercity transport network to disadvantage its rivals in the provision of U.S.-U.K. outbound international services. Several carriers commented that BT has the

---

<sup>237</sup> Letter from James E. Graf, II, President, BTNA, to William F. Caton, Acting Secretary, FCC (Aug. 13, 1997).

<sup>238</sup> See *supra* ¶ 144.

only ubiquitous intercity network in the United Kingdom and that BT could use it to discriminate against unaffiliated carriers.<sup>239</sup> BT/MCI and the U.K. Government counter that BT faces considerable competition in the intercity market.<sup>240</sup> They state that CWC has built the most extensive competing trunk network consisting of over forty switches. Energis and Scottish Telecom have used utility rights of way to construct extensive optical transmission systems and have installed several switches. Finally, the applicants assert that these alternative facilities-based providers have built tens of thousands of miles of transmission facilities, a substantial portion of which is fiber optic.<sup>241</sup>

174. We find above that, although BT faces increasing competition in this market, BT still controls the only ubiquitous intercity network in the United Kingdom.<sup>242</sup> Accordingly, it appears that BT has market power in this market and that, in the absence of regulation, BT may have the incentive and ability to exercise that market power to restrain competition in one or more of the relevant markets.<sup>243</sup> We find, however, that several factors will prevent BT from successfully engaging in price and non-price discrimination by virtue of its intercity facilities in the United Kingdom. First, OFTEL has established the rules necessary to permit the development of competing intercity networks, and continues its regulatory oversight of BT's interconnection rates.<sup>244</sup> Second, entry in the form of competing intercity networks has begun, and there is the possibility of further entry in the form of new construction. The proposed merger should not affect OFTEL's regulation of BT in this market, nor should it impair the continued development of intercity networks by BT's competitors.

**e. U.K. Exchange Access Services**

175. Access to local exchange customers in the United Kingdom is needed for the termination of calls in the U.S.-U.K. outbound international market and for the origination of intercity calls and U.K.-U.S. outbound international calls in the United Kingdom. U.K.

---

<sup>239</sup> See, e.g., AT&T comments at 2-3, 7-8; DT comments at 2; Energis comments at 1; FT comments at 7-8; Frontier comments at 2; Sprint comments at 2, 13-14; WorldCom comments at 2, 18.

<sup>240</sup> See *supra* ¶¶ 113-114.

<sup>241</sup> Letter from Michael H. Salsbury, Executive Vice President and General Counsel, MCI to Peter F. Cowhey, Chief, Int'l Bur., FCC (July 24, 1997).

<sup>242</sup> See *supra* ¶ 111.

<sup>243</sup> See *supra* ¶ 111.

<sup>244</sup> See generally Section V.A.1.

intercity and international calls are, in turn, two of many services that comprise the global seamless service market. In the Section IV.C above, we discussed the extent of BT's control over local exchange markets in the United Kingdom. In this section, we will discuss the potential leveraging of that control into the U.S.-U.K. international market (through terminating access services) and the global seamless service market (through both originating and terminating access services).<sup>245</sup>

176. Although the transaction does not improve BT's market position in the provision of access services, merger with MCI significantly enhances BT's incentive and ability to use its market position in an anti-competitive manner. With regard to incentives, full ownership of MCI would enhance BT's benefit from any increase in price or market share that MCI achieves in end-user markets as a result of anti-competitive activity on the part of BT. For example, the transaction would increase BT's incentive to provide itself access for outgoing and incoming calls with superior technical quality, speed of provisioning, or other characteristics that are more favorable than those afforded to its competitors for such calls. Because of MCI's large share of the U.S.-U.K. outbound international services market, benefits from anti-competitive activity would be large and the incentives correspondingly amplified. Also, BT's control of MCI's operations would facilitate their ability to engage in anti-competitive conduct.

177. As we discuss below, we find that the United Kingdom's policies with regard to equal access, unbundling of network elements, and resale exacerbate rather than relieve these potential problems. We recognize that, in certain areas of the United Kingdom, alternatives exist to the BT network that may assist in checking BT's market power.<sup>246</sup> Although BT's market position in the access service markets appears to be diminishing over time, it will not diminish as quickly as it would if the U.K. regulatory regime included equal access to other carriers and unbundled local exchange network elements and resale. We anticipate, however, that European Union regulations and the U.K. Government's implementation of those regulations, as well as MCI's voluntary commitment (discussed below), will adequately address this problem.

---

<sup>245</sup> Other services, such as U.K. intercity services, also may fall under the umbrella of global seamless services. We will focus our analysis on U.K. originating access services, however, because such analysis applies to other U.K. originating services as well.

<sup>246</sup> For example, in approximately one-third of the United Kingdom, there is alternative local infrastructure provided by a cable television company. These companies are required to offer service to 70 percent of the U.K. population by the year 2000. In addition, fixed wireless operators such as Ionica are required by the terms of their license to offer service to 75 percent of the U.K. population by the year 2000. BT, however, still controls the only ubiquitous network in the United Kingdom. See *supra* ¶ 122.

i. U.K. Terminating Access Services

178. As we discussed above, BT's local termination services are subject to little competition.<sup>247</sup> Accordingly, it appears that BT has market power in this market and that, in the absence of regulation, BT may have the incentive and ability to exercise that market power to restrain competition in one or more of the relevant markets. We find, however, that BT's ability to leverage its market power in the local exchange with regard to terminating access services is constrained by several factors. These factors mitigate some of the concerns that we have regarding this transaction's effect on BT's ability to engage in anti-competitive strategies.

179. First, the U.K. Government's regulation of BT constrains significantly BT's ability to engage in non-price discrimination.<sup>248</sup> Section 17 of BT's license generally prohibits BT from exercising "undue discrimination" or "undue preference" with respect to certain standard interconnection services. BT may not discriminate unduly among its customers or in favor of any of its own affiliates to the disadvantage of competitors. Conditions 17B and 17C specifically prohibit undue discrimination with respect to the quality of any standard interconnect service.<sup>249</sup> Also, BT is subject to cost-based price caps on access services, which constrains significantly its ability to engage in price discrimination.<sup>250</sup> Moreover, as the size of competitive access networks grow, BT will have to meet competitively determined interconnection and quality standards with regard to terminating access services or risk losing customers to other networks.

180. Based on these considerations, we find that BT's ability to engage in anti-competitive conduct with regard to terminating access services is sufficiently constrained. In making this finding, we rely primarily on the fact that the United Kingdom's regulations regarding the terminating access services market prevents anti-competitive leveraging of BT's substantial market power in that market.

---

<sup>247</sup> See *supra* ¶ 117.

<sup>248</sup> See *infra* Section V.A.1.

<sup>249</sup> See *supra* Section V.D.4. (finding that BT has market power in the local exchange market. For an explanation of BT's obligation to provide origination and termination services). See also *infra* Section V.A.1.b.

<sup>250</sup> See *infra* ¶ 223.

## ii. U.K. Originating Access Services

181. As we discussed above,<sup>251</sup> although BT faces increasing competition in this market, only a third of the customers in U.K. local exchange market can choose an alternative provider, and the economics of the business indicate that competitors cannot rapidly expand their operations or enter these markets quickly to counteract the exercise of market power in this market within a year or less.<sup>252</sup> Accordingly, it appears that BT has market power in this market and that, in the absence of regulation, BT may have the incentive and ability to restrain competition in one or more of the relevant markets.

182. U.K. originating access services are subject to many of same regulatory constraints as those described for terminating access services (*e.g.*, price caps and various license conditions regarding non-discriminatory behavior). Other U.K. regulatory policies, however, undermine these constraints and allow BT to leverage its market power over originating access market into the markets for end-user services that depend on originating access (*e.g.*, U.K. domestic and international services). As we describe below, these policies include the decision not to require BT to provide equal access to other long distance carriers, to provide unbundled local network elements to other carriers, and to resell local service at wholesale prices. Alternatives to BT's local network may grow in time and eventually constrain BT's control of originating access services, but they do not significantly do so at this time. In fact, the absence of equal access, unbundled local exchange network elements, and resale in the United Kingdom appears to create the conditions by which BT's market power over U.K. domestic and international services will be perpetuated.

183. *Equal Access.* Under U.K. law, BT is not required to provide its competitors with access to its local exchange customers for the provision of services on the same basis as BT affords itself such access.<sup>253</sup> Dialing parity<sup>254</sup> and carrier pre-selection<sup>255</sup> are unavailable in

---

<sup>251</sup> See *supra* Section IV.C.

<sup>252</sup> See *Bell Atlantic/NYNEX Order* at ¶ 133.

<sup>253</sup> Such access is the "equal access" that most of the United States has had since the mid-1980s, defined as an exchange carrier offering access to all interexchange carriers that is "equal in type, quality, and price" to that provided to the exchange carrier's affiliate that is engaged in interexchange service. *United States v. AT&T*, 552 F. Supp. 131, 227 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983).

<sup>254</sup> "Dialing parity" exists when a caller must dial the same number of digits to make an intercity or international call regardless of which intercity or international operator the caller has chosen to carry the call.

the United Kingdom. Thus, if a BT customer wishes a carrier other than BT to carry its intercity or international calls, the customer must dial three or four extra digits or use special equipment to dial the extra digits automatically. If no extra digits (the other carrier's "indirect access code") are dialed, the customer's call is automatically routed to BT.<sup>256</sup> BT is required to provide BT customers only with "indirect access" to new operators' networks for the completion of intercity and international calls. Indirect access involves customer choice, on a call-by-call basis, to route long distance or international traffic via the network of another operator, to which the customer is not directly connected. OFTEL considered requiring BT to provide carrier pre-selection and dialing parity, but declined to do so.<sup>257</sup>

184. A number of parties argue that the lack of equal access in the United Kingdom discriminates in favor of BT in the provision of intercity and international services.<sup>258</sup> Competing carriers wishing to overcome the inconvenience of indirect access must be willing to incur additional substantial costs. According to ACC, indirect access allows BT to obtain significant "unearned" default traffic merely because customers forget to dial the additional digits required to access a competitor's service.<sup>259</sup> ACC also points out that BT is the only carrier required to provide even indirect access.<sup>260</sup>

185. These parties also argue that, in the absence of equal access, the proposed merger will harm competition by positioning the merged entity as the only provider enjoying

---

<sup>255</sup> "Carrier pre-selection" allows a customer to choose, on a permanent basis, a provider to carry all of the customer's long distance and international calls.

<sup>256</sup> U.K. Government reply comments at 8.

<sup>257</sup> OFTEL, *Indirect Policy Statement* at ¶ 25 (July 1996); U.K. Government reply comments at 8. In 1994, OFTEL undertook a cost-benefit analysis to consider whether to require BT to provide equal access. The study, conducted by the National Economic Research Associates (NERA), an economic consultancy, found that the costs of providing equal access (estimated at £160 million) far outweighed the benefits (ranging from £43 million to £79 million over 10 years). In light of the study's findings, the United Kingdom decided it was not appropriate to change its indirect access policy. U.K. Government reply comments at 14-15.

<sup>258</sup> See, e.g., ACC comments at 5-9; AT&T comments at 22-26; Energis comments at 2-3; FT comments at 6; see also Bell Atlantic petition to deny at 4; BellSouth/Pactel/SBC comments at 6.

<sup>259</sup> ACC comments at 5-6. FT indicates that this benefit to BT may increase over the next years as OFTEL has proposed to increase the length of the indirect access codes to 5 or 6 digits. FT reply comments at 8 (citing OFTEL Statement, *The National Numbering Scheme* at § 62 (Jan. 1997)).

<sup>260</sup> Alternative local exchange and exchange access providers are not required to provide indirect access. ACC argues that for this reason, it cannot provide service to a large percentage of the population in areas where cable companies have gained up to 30 percent of the homes for local access service. ACC comments at 6-7.

the efficiencies of end-to-end 1+ dialing between the United States and the United Kingdom.<sup>261</sup> Similarly, AT&T argues that BT's dominant position, combined with the lack of dialing parity and carrier pre-selection, will allow BT to maintain the predominant share of U.K. outbound traffic to the United States.<sup>262</sup> Thus, several parties urge us to condition approval of the merger on requiring BT to implement equal access.<sup>263</sup>

186. BT/MCI and the U.K. Government respond that there is no need to require BT to implement equal access in order to ensure effective competition in the provision of U.K. outbound calls to the United States. Both BT/MCI and the U.K. Government state that the different regimes in the United States and the United Kingdom are due to differences in the development of the telecommunications markets and competition in the respective countries.<sup>264</sup> More specifically, the U.K. Government states that its industrial policy of encouraging facilities-based competition would be undermined by the introduction of equal access.<sup>265</sup>

187. We generally agree with the commenters.<sup>266</sup> By not providing equal access to long distance carriers, BT is engaging in a form of non-price discrimination which allows it to leverage power over the local exchange to enhance its control over the U.K. long distance and international markets. Our experience has shown that equal access is an essential requirement for the development of a competitive intercity and international markets. For example, equal access in the United States allowed early competitors of AT&T to gain revenues faster than they otherwise would have in order to finance the construction of competing nationwide networks. In the period 1984 to the present, long distance competitors to AT&T increased their market share (total interstate minutes) from 15.8 percent to 47.2 percent.<sup>267</sup> This was possible, in large part, because of equal access. The European Commission recently cited the

---

<sup>261</sup> ACC comments at 7.

<sup>262</sup> AT&T reply comments at 12 n.14.

<sup>263</sup> ACC comments at 8-9; AT&T comments at 31; Energis comments at 2. *See also* FT comments at 6, reply comments at 9.

<sup>264</sup> BT/MCI opposition & reply at 17; U.K. Government reply comments at 8-9.

<sup>265</sup> BT/MCI opposition & reply at 18.

<sup>266</sup> We disagree, however, with some commenters' assertions that BT/MCI's advantage in providing end-to-end 1+ dialing between the United States and the United Kingdom will provide it such significant efficiency advantages as to enable it to engage in anti-competitive conduct.

<sup>267</sup> *See* Industry Analysis Division, Common Carrier Bureau, FCC, *Long Distance Market Shares: Third Quarter 1996* (Jan. 1997).

United States's experience as an example to demonstrate the beneficial effects of equal access on competition.<sup>268</sup>

188. Although the United Kingdom's indirect access policy may have been intended to foster the development of alternative facilities-based local infrastructure, it also appears to have allowed BT to minimize its loss of intercity and international market share. BT continues to maintain relatively high market shares of domestic intercity revenues (89.5 percent for residential, 69.9 percent for business for third quarter of 1996) and, to a lesser degree, international revenues (80.6 percent for residential, 48 percent for business for period July to September 1996).<sup>269</sup> It appears that the absence of equal access has allowed BT to leverage its near monopoly control over local exchange access (where it has a 91.4 percent share)<sup>270</sup> to maintain high market shares for intercity and international services.<sup>271</sup>

189. We believe that the same prolonged high market share for originating access will make the global seamless services market less competitive than it would be if equal access were implemented, and that, as a result, rates for global seamless services paid by U.S. customers will be higher than they otherwise would be. Although we found above that the merger does not eliminate any significant market participant in this market, it is important to note that the complete absorption of MCI into BT by the proposed merger will increase the incentive for BT to leverage its market power over U.K. local access to adversely affect competition in the global seamless services market. Since U.S. consumers are expected to be significant consumers in this market, we find that this vertical effect of the proposed merger will adversely affect U.S. consumers. We further find that this undesirable vertical effect will

---

<sup>268</sup> Commission of the European Communities, *Green Paper On A Numbering Policy for Telecommunications Services in Europe* COM(96) 590 (Nov. 20, 1996) at 32 (noting that introduction of equal access and balloting played a major role in AT&T's loss of market share during the late 1980s) (*European Commission Green Paper*).

<sup>269</sup> *OFTEL Market Information Update* at 13, 17.

<sup>270</sup> *Id.* at 9.

<sup>271</sup> By comparison, CWC, cable companies and other carriers had a 10.6 percent revenue share of the residential international service market. For international business service, CWC had a 22 percent revenue share, and other carriers (principally international resellers) had a 27.1 percent revenue share. Although the licensing of new competitors for the provision of these services should help diminish BT's market shares for these services, BT's control over local originating services has allowed it to remain a dominant carrier in the U.K. intercity and international markets. *See, e.g., OFTEL Market Information Update* at 9.

retard competition and is therefore within the scope of our public interest analysis of the proposed merger.<sup>272</sup>

190. The European Commission is making efforts to require all European Union Member States, including the United Kingdom, to implement equal access. We support these efforts. On the basis of a Green Paper consultation,<sup>273</sup> the European Commission, on May 21, 1997, issued a Communication to the European Parliament and the Council of Ministers recommending the implementation of equal access in E.U. Member States (including the United Kingdom).<sup>274</sup> On June 26, 1997, the European Council reached unanimous political agreement on a draft Resolution on the implementation of, among other things, equal access and carrier pre-selection in the member states. The draft Resolution specifically recognizes the importance of the availability of equal access and carrier pre-selection to the development of international and long distance competition. It calls for the introduction of carrier pre-selection (at least for operators with significant market power) immediately and, in any event, no later than January 1, 2000. The European Commission is expected to introduce draft regulations to the European Parliament and Council in September 1997 for final adoption.<sup>275</sup>

191. We agree with the European Commission that the implementation of equal access in the European Union will be an important step in furthering the goal of global telecommunications competition and will set a positive example for other liberalizing markets.

---

<sup>272</sup> In the *Bell Atlantic/NYNEX Order*, we stated at ¶ 3 that "it is incumbent upon applicants to prove that, on balance, the merger will *enhance and promote*, rather than eliminate or retard, competition" (emphasis added) and at ¶ 5 that "[w]e do not believe that the best approach to promote competition is to refrain taking any actions to offset . . . incumbent LECs[']s market power."

<sup>273</sup> In November 1996, the European Commission published a Green Paper on a Numbering Policy for Telecommunications Services in Europe presenting various options for certain numbering issues -- including equal access -- and inviting comments. The European Commission concluded that carrier selection mechanisms are mandatory to foster competition in main telecommunications markets. *European Commission Green Paper*, Annex II at 29. The Green Paper proposed to require all Member states to implement carrier pre-selection (equal access) by January 1, 2000 after having implemented carrier selection by January 1, 1998. According to the European Commission, the cost of introducing carrier selection is relatively small if compared with the benefits that can be derived. *European Commission Green Paper* at 15-16. It estimated that the cost to implement it in the European Union would be ECU 2 billion over 10 years and the savings to consumers would be ECU 20-25 billion per year. At an exchange rate of 1.06 ECU/dollar, the cost of implementing equal access would be approximately \$2.12 billion and the savings to consumers would be between \$21.2 billion and \$26.5 billion.

<sup>274</sup> Commission to the European Parliament and the Council, *Communication from the Commission to the European Parliament and the Council Regarding the Consultation on the Green Paper on a Numbering Policy for Telecommunications Services in Europe* at 19 (May 21, 1997) (*European Commission Communication*).

<sup>275</sup> European Council, *Numbering Policy for Telecommunications Services in Europe* (June 27, 1997).