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In the Matter of	)	
Applications of WorldCom, Inc. and	)	
MCI Communications Corporation for	)	CC Docket No. 97-211
Transfer of Control of	)	
MCI Communications Corporation	)	
to WorldCom, Inc.	)	

Comments of the Communications Workers of America

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I. Summary

These are the comments of the Communications Workers of America (CWA), filed in response to the joint application by MCI Communications Corporation and WorldCom, Inc., pursuant to Sections 214 and 310(d) of the Communications Act of 1934, as amended, to transfer control of MCI's Title II and Title III authorizations and licenses to WorldCom, Inc.

CWA represents 630,000 workers who are also consumers of telecommunications services. The majority of CWA members work in the telecommunications industry. CWA-represented employees work for firms providing local, long distance, wireless, video, Internet access, and other information services to residential and business customers.

Because MCI, WorldCom, and the Internet are not regulated, the application for transfer of control of Title II and Title III licenses is the Commission's only opportunity to ensure that the merger is in the public interest. This proceeding takes on special importance because it provides the Commission with the single opportunity to protect against monopoly bottleneck control over the Internet backbone, the core telecommunications infrastructure for the 21st century.

The applicants fail to demonstrate that the proposed merger between MCI and WorldCom, Inc. is in the public interest Therefore, the Commission should deny the applicants' request for transfer of control of licenses and authorizations. The proposed merger fails to meet the Commission's public interest standard for these reasons:

1. The proposed merger will have the anti-competitive effect of significantly increasing the merged entity's market power to set prices for Internet access. The merged entity will control 63 percent of the U.S. Internet backbone market.

2. The proposed merger will significantly delay the development of competition in the local exchange residential and small business market. The merged entity's business plans indicate that the merged entity plans to reduce spending in the local loop by a total of $5.3 billion over the next four years, compared to pre-merger planned local loop investments by MCI and WorldCom.

3. The proposed merger will hurt universal service. The merged entity's vertical integration of the long distance and the local exchange access markets in 100 central business districts will shift significant revenues from the public switched network to the private MCI-WorldCom network. It will also increase access charge bypass by high-value business customers, accelerating the reduction in access charge revenues beyond the reductions anticipated by the Commission in its May 1997 Access Reform Order. In response to the sharp reduction in revenues in the local exchange, there will be increased pressure to raise local residential rates, to reduce investment in the public switched network, or both.

4. The proposed merger will reduce U.S. employment growth in telecommunications. The merged entity's planned reduction in network investment and sales and marketing expenses translates into a loss of 75,000 telecommunications jobs by the year 2002.

II. Introduction

The Commission has the legal obligation, under Sections 214(a) and 310(d) of the Communications Act, as amended, to determine whether the applicants' request for transfer of control serves the "public interest, convenience, and necessity."[1] The public interest, convenience, and necessity standard is a broad, flexible standard, encompassing the "broad aims of the Communications Act," including "preserving and advancing" universal service[2] and implementation of a "pro-competitive" national policy framework as articulated in the Telecommunications Act of 1996.[3] The public interest standard can include other factors as well, such as "just, reasonable, and affordable rates"[4] and the economic impact of the merger on job growth and employment. Under the public interest standard, the burden of proof is on the applicant, not on the Commission.[5]

The proposed merger would result in the second largest telecommunications company in the nation, with an estimated $32 billion in revenues in 1998. The merger would increase the merged entity's market power through both horizontal and vertical integration. The merged entity would

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[1] 47 U.S.C. §§ 214(a), 310(d) (1997). *See also* In the Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order*, File No. NSD-L-96-10 (Aug. 14, 1997) at 2 and 29 (hereinafter *Bell Atlantic NYNEX Order).*

[2] 47 U.S.C. § 254 (1997); *Bell Atlantic NYNEX Order*, 2.

[3] Telecommunications Act of 1996, Pub. L. No. 104-104 (preamble), 100 Stat. 56 (1996) (hereinafter Telecommunications Act of 1996); *Bell-Atlantic NYNEX Order*, 2.

[4] *Bell Atlantic NYNEX Order*, n. 67.

[5] *Id.*, 32.

control more than 63 percent of the U.S. Internet backbone network; it would be the second largest long-distance carrier with its 45,000-mile long distance network and 25 percent long distance market share; and it would be the largest competitive access provider with 9,000 miles of fiber-optic rings serving business customers in 100 urban markets. The merged entity would have a 22 million customer base.

First, we discuss the anti-competitive impact of the proposed merger's horizontal integration on two distinct and relevant markets: the Internet access market and the local exchange residential market. We conclude that each of these is a relevant market for merger analysis, that the proposed merger will have anti-competitive effects in both of these markets, and, therefore, that the proposed merger fails to meet the Communications Act's public interest standard.

In the Internet access market, the merged entity would control more than 63 percent of the Internet backbone in the U.S. MCI's Internet backbone network, the largest in the U.S with 41 percent market share, when combined with WorldCom UUNet's backbone network, the third largest in the U.S. with 21 percent market share, would dominate all other backbone providers. By eliminating each other as a major competitor and by creating one dominant Internet backbone provider, the merged entity would have the market power through unilateral or concerted action to control the price of and potentially to restrict access to Internet access. The merged entity's dominant control of the Internet backbone would allow it to exercise bottleneck control over backbone access by Internet service providers (ISPs), including the ability to adopt discriminatory and predatory pricing policies that favor its own Internet service providers over those of

competitors. The merged entity would also have the ability to use its dominant market power to squeeze out many Internet service providers, further consolidating the ISP market resulting in price increases paid both by ISPs for backbone access and ultimately by end users for Internet access.

In the local exchange residential and small business market, the merger would result in delayed competitive entry by MCI, the long distance telecommunications firm that prior to the proposed merger with WorldCom had articulated the most aggressive plans for facilities-based competition to serve residential customers and small businesses in the local loop. The merged entity's business plans indicate a shift in strategy away from investment to serve local exchange residential and small businesses customers toward a singular focus on mid-sized and large business customers. Thus, the merger will not serve the pro-competitive goal of the Telecommunications Act of 1996 to break the bottleneck in the local exchange residential and small business market through facilities-based competition.

Furthermore, the proposed merger is not in the public interest because it will hurt the national policy goal to advance and preserve universal service. The merged entity's vertical integration of the long distance and local exchange access market in 100 central business districts will shift significant revenues from the public switched network to the private MCI-WorldCom network. It will also increase access charge bypass by high-value business customers, accelerating the reduction in access charges beyond those anticipated in the Commission's May 1997 Access Reform Order. This will undermine universal service goals during the transition period from

implicit to explicit universal service support as local exchange carriers respond to the sharp reduction in revenues with increased pressure to raise local residential rates, reduce investment in the public switched network, or both.

Finally, the merger is not in the public interest because it will reduce U.S. telecommunications employment growth by as many as 75,000 jobs. The merged entity's planned $1.5 billion reduction by the year 2002 in network investment and sales and marketing expenses in the local loop[6] translates into a loss of 75,000 telecommunications jobs.

III. The Proposed Merger Will Increase the Merged Entity's Market Power to Set Prices for Internet Access

A. The Internet Backbone Is a Relevant Product Market

The first step in a merger analysis is to define the relevant product markets.[7] The Commission defines a product market as "a service or group of services for which there is no close demand substitute."[8] Based on this definition, the Internet backbone market is a distinct product market.

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[6] WorldCom, Inc. Form 8-K submitted to the Securities and Exchange Commission, Nov. 9, 1997, Exhibit 99.3, Analysts Presentation Given on November 10, 1997 by MCI and WorldCom, pp. 25-6 (hereinafter WorldCom Form 8-K, Exhibit 99.3).

[7] In evaluating the proposed merger's anti-competitive impact through horizontal integration, we use the three-step analytic methodology that the Commission used in analyzing the Bell Atlantic NYNEX merger. First, we define the relevant markets. Second, we identify the market participants, especially the most significant market participants. Third, we evaluate the effects of the merger on competition in the relevant markets, such as whether the merger is likely to result in either unilateral or coordinated effects that enhance the market power of the merging parties. *See Bell Atlantic NYNEX Order*, 2.

[8] *Id.*, 50.

In a report prepared for the Commission's Office of Plans and Policy, Kevin Werbach identifies three types of Internet entities: end users, Internet service providers (ISPs), and Internet backbone providers. End users are individuals who access the Internet. Internet service providers, of which there are about 3,000 today, connect end users to the Internet backbone networks. Internet backbone providers, in Werbach's words, "route traffic between ISPs, and interconnect with other backbone providers."[9] Werbach's picture, which in this case is worth a thousand words, depicts backbone providers as unique market entities. (*See* "Conceptual Overview of the Internet," next page.)

Among Internet backbone providers, there are a limited number of *national* Internet backbone providers. A *national* Internet backbone provider is one that maintains a packet-switched national data network with DS-3 (45 Mbps) or higher speeds, peers (interconnects) with other networks at the Internet's main Network Access Points, and is able to carry data traffic from the originating to the terminating user without having to purchase Internet access from any other company.[10]

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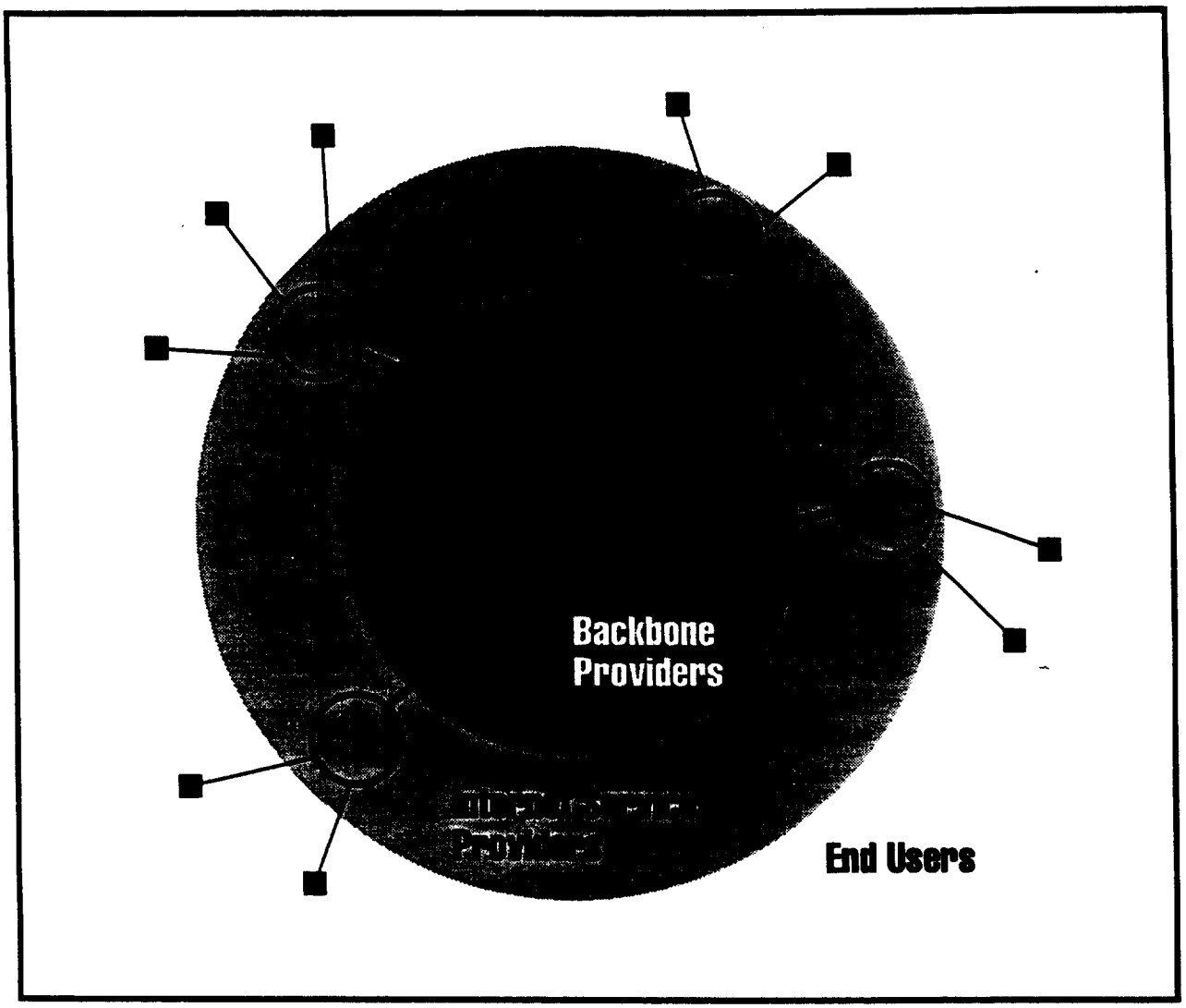
[9] Kevin Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, OPP Working Paper Series, No. 29, March 1997, p. 12.

[10] "Keynote/Boardwatch Internet Backbone Performance Index," http://www.keynote.com/measures/backbones/backbones.html.



Conceptual Overview of the Internet

Source; Kevin Werbach, *Digital Tornado: The Internet and Telecommunications Policy*, FCC office of Plans and Policy, March 1997.

Given the enormous capital investment, technical expertise, and operating costs required to be an Internet backbone provider, there is no product substitute. Thus, using the Commission's definition of a product market, the Internet backbone market is a relevant product market for merger analysis.

B. The Merged Entity Would Control 63 Percent of the Internet Backbone Market

The next step in a merger analysis is to determine the number of relevant market participants, especially the most significant market participants. For this purpose, we must identify the number of national Internet backbone providers, using the definition noted above (*i.e.*, that the backbone provider does not have to purchase Internet access from any other provider).

Today there are nine national Internet backbone providers.[11]

Since 1994, when the National Science Foundation privatized the Internet backbone, there has been no publicly available data on Internet traffic. Our data on Internet backbone provider market share is based on survey data collected and published by *Boardwatch* magazine in June 1997.[12] This data set uses two measures for market share: the percent of Internet service providers

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[11] Janet Kornblum, "Will WorldCom Own the Backbone Business?," *C/net News.com*, Sept. 11, 1997 (http://www.news.com/News/Item/0,4,14171,00.html). *See also* "GTE's MCI Bid Impacts AT&T's Net Position," *Internet Week,* Oct. 20, 1997, which, using a slightly different definition, reports that there are only seven national backbone providers.

[12] Jack Rickard, "The Big, The Confused, and the Nasty: UUNet Resigns from the Internet--US West Expresses Clueless Greed and Confusion, the FCC Rules on Access Charges," *Boardwatch,* June 1997, http://www.boardwatch.com/mag/97/June/bwm1.htm (hereinafter *Boardwatch*).

connected to the backbone network and the percent of total connections to the backbone network. This information is provided in Table 1 on the next page.

Using the first measure (percent of connected ISPs), the merged entity would control 63 percent market share.[13] Using the second measure (percent of total connections), the merged entity would control 55 percent market share.[14] This market share data is consistent with market share information that has been published in the press and investment analyst reports.[15] (See "Attachments".)

Based on the percent of connected ISPs, MCI is the largest Internet backbone provider, with 40.73 percent market share. WorldCom owns three of the other largest Internet backbone providers, including the third largest, UUNet (with 21.05 percent market share), the sixth largest, ANS (with 1.79 percent market share), and CNS (with .13 percent market share).

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[13] *Id.*

[14] *Id.*

[15] Other sources that cite market share data include: Thomas E. Weber and Rebecca Quick, "Would WorldCom-MCI Deal Lift Tolls on Net?," *The Wall Street Journal,* Oct. 2, 1997, p. B-1; "The New World Order," *Business Week,* Oct. 13, 1997, p. 30; Kenneth Cukier, "MCI-WorldCom Faces Internet Probe," *Communications Week International*, Nov. 24, 1997; "Net Charges Loom as WorldCom Grabs for 60% of Backbone," *ComputerWire, Inc.*, Dec. 5, 1997; Bhawani Shanker, "WorldCom, MCI, and the Internet," *UMI,* Dec. 1, 1997; Morgan Stanley Dean Witter, "WorldCom: The I's Have It; International and Internet Fuel a Great Growth Story," June 2, 1997, p. 22; "GTE's MCI Bid Impacts AT&T's Net Position," *supra.*

Table 1. Internet Backbone Providers			
Backbone	**Connections**	**% of ISPs**	**% of total connections**
MCI	**1569**	**40.73%**	**35.22%**
Sprint IP Svcs	1176	30.53%	26.30%
UUNET	**811**	**21.05%**	**18.20%**
AGIS	303	7.87%	6.80%
BBN	189	4.90%	4.24%
ANS	**69**	**1.79%**	**1.55%**
Digex	61	1.58%	1.37%
DataXchange	53	1.37%	1.19%
CWIX	45	1.17%	1.01%
Goodnet	45	1.17%	1.01%
PSI	31	.80%	.70%
NAPNet	23	.60%	.52%
GridNet	21	.55%	.47%
ATMnet	17	.44%	.38%
IBM	13	.34%	.29%
CAIS	10	.26%	.22%
NetCom	9	.23%	.20%
Savvis	5	.13%	.11%
CompuServe	**5**	**.13%**	**.11%**

Source: *Boardwatch*, June 1997.
Bold indicates that this Internet service provider would be owned by the merged MCI-WorldCom..
% of ISPs = % of all ISPs interconnecting with this backbone provider; **% of total connections** = % of total ISP connections with this backbone provider.
This table also includes Internet backbone providers which do not meet the definition of national backbone providers because they must purchase some Internet access from other providers.

The merged MCI-WorldCom's 63 percent market share of the Internet backbone market represents more than twice the market share of the next largest backbone provider, Sprint, with its 30.5 percent market share. No other Internet backbone provider comes close to MCI, Sprint, or UUNet in market share, measured either as a percent of ISPs or as a percent of total connections. The next largest backbone providers, AGIS and BBN, have 7.8 percent and 4.9 percent market share (measured as percent of connected ISPs), respectively.

The proposed merger would reduce competition in the Internet backbone provider market among the most significant market participants in three ways. First, it would eliminate MCI which is WorldCom UUNet's largest major competitor. Second, it would create a market dominated by one powerful provider, with almost two-thirds of the market share. Third, it would leave the market with only two significant market participants. This would have serious anti-competitive consequences by creating one backbone provider with the ability through unilateral or concerted action to exercise market power to control prices, reduce access, or both.

C. Quantitative Analysis of Concentration

The U.S. Department of Justice (DOJ) uses the Herfindahl-Hirschman Index (HHI) to conduct a quantitative analysis that calculates changes in market concentration due to a merger. The HHI analysis is typically used as a "screen" to identify cases in which a merger significantly aggravates

or creates highly concentrated markets. The results of the HHI quantitative analysis supplement, but do not substitute for, our more detailed examination of competitive concerns.[16]

The HHI is calculated by summing the squares of the firms' percentage of the market. According to the DOJ's *1992 Horizontal Merger Guidelines,* a market with an HHI above 1800 is considered "highly concentrated."[17] In a market with an HHI above 1800, the DOJ generally regards mergers that increase the HHI by more than 100 points as "likely to create or enhance market power or facilitiate its exercise."[18]

The pre-merger market shares would be 40.7 percent for MCI and 22.9 percent for the WorldCom group (UUNet, ANS, and Compuserve), which produces: 40.7 x 40.7 = 1,656; 22.9 x 22.9 = 524. The pre-merger HHI would be at least 1656 + 524, or 2,180. In the post-merger market, however, the merged entity's market share would produce an HHI of 63.6 x 63.6, or 4,025. Accordingly, the merger would result in a change of 4,025 - 2,180 = 1,845.

This is well above the threshold of the *1992 Horizontal Merger Guidelines* for identifying a merger "likely to create or enhance market power or facilitiate its exercise." A merger between MCI and WorldCom would result in a highly concentrated Internet backbone market.

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[16] *Bell Atlantic NYNEX Order*, 140.

[17] United States Department of Justice & Federal Trade Commission, *1992 Horizontal Merger Guidelines*, 57 Fed. Reg. 41558, § 1.51 (1992) (hereinafter *1992 Horizontal Merger Guidelines).*

[18] *Id. See also Bell Atlantic NYNEX Order*, n. 265.

D. The Proposed Merger Will Significantly Increase the Merged Entity's Market Power to Set Prices for Internet Access

Since privatization of the Internet backbone in the early 1990s, there has been no regulatory requirement that networks interconnect with each other on the Internet. Rather, private network providers have agreed to interconnect with each other through voluntary "peering arrangements." These peering arrangements allow Internet service providers to exchange traffic across regional and national networks for free.

The voluntary peering arrangements on the Internet reflect the underlying Internet access market structure. The Internet access market today is a textbook example of a competitive market, with many buyers and sellers. The Internet backbone carriers interconnect for free with multiple Internet service providers (ISPs). Today, there are nine national backbone providers and 3,000 ISPs connecting end users to the Internet backbone. Vibrant competition among multiple ISPs for end users serves to drive prices toward their most efficient level, stimulating further demand which in turn reduces unit costs.

The voluntary peering system has worked well, sparking tremendous growth and innovation on the Internet. The number of Internet users doubles each year, from 9 million in 1995 to 30-35 million today. Analysts predict that there will be half a billion Internet users worldwide in the year 2000, with revenue growing from one billion dollars in 1995 to $23 billion in the year 2000.[19]

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[19] Werbach, *Digital Tornado,*"Worldcom: The I's Have It; International and Internet Fuel a Great Growth Story p. 22;, p. 20.

Many expect that the Internet's packet-switched data network will replace the public switched telephone network as the predominant communications infrastructure for voice, data, and video.[20]

The Commission has consistently supported a non-regulatory Internet policy based on the premise that government regulation is not necessary since the Internet marketplace is highly competitive. In its Computer II inquiry, the Commission concluded that competition, not regulation, would drive Internet investment, innovation, and efficiencies.[21] Congress, in Section 230 of the Telecommunications Act of 1996, reaffirmed a national policy goal "to preserve the vibrant and competitive free market that presently exists for the Internet."[22]

However, the proposed merger between MCI and WorldCom would jeopardize this non-regulatory, pro-competitive policy. The merged entity's dominant control over the Internet backbone market, absent regulatory constraint, would allow it to exercise its market power to control prices and access to the Internet backbone through unilateral or coordinated action.

The Commission recognized, in the Bell Atlantic NYNEX Merger Order, that "in telecommunications markets that . . . are not yet developed . . . the loss of even one significant market participant can adversely affect the development of competition . . . ."[23] The Commission

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[20] *See Digital Tornado* and "Worldcom: The I's Have It; International and Internet Fuel a Great Growth Story, *supra*.

[21] *Digital Tornado*, p. 29.

[22] Telecommunications Act of 1996, § 230(b)(1).

[23] *Bell Atlantic NYNEX Order,* 66.

also noted that to conclude that a merger would have little or no competitive effect on the grounds that other market participants remain, "the number of similar (i.e. *most significant*) market participants must be large[24]." The Commission also noted that "the merger of . . . two firms can remove the strongest constraint on the acquiring firm's ability to raise prices (or restrict output and/or quality)"[25] and that "a merger of two firms that consolidates a particular kind of asset, especially an asset that is difficult to replicate in the short run, likely will reduce competition[26]."

The proposed MCI-WorldCom merger meets all the conditions outlined above that would result in anti-competitive market dominance. The Internet is still a developing market. The number of Internet backbone providers is not large. The merger would eliminate competition between the largest and third largest provider, and would result in a firm that would dominate the market. The merger would consolidate control over an asset that is difficult to replicate in the short run.

Thus, the merged entity would be able to use its dominant market power over the Internet backbone unilaterally or in concerted action with the other remaining large backbone provider (Sprint) to set the prices for ISP access to the Internet backbone. Alternatively, the merged entity could use its market power to consolidate Internet access in the hands of a small number of ISPs

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[24] *Id.*, 65

[25] *Id.*, 102.

[26] *Id.*, 104.

by refusing interconnection to smaller players, by pricing those smaller ISPs out of the market, or by adopting pricing policies that discriminate in favor of the merged entity's own ISPs.

Indeed, this is WorldCom's market strategy. Earlier this year, WorldCom's UUNet broke with Internet practice and began charging smaller ISPs for peering arrangements and refusing interconnection with those ISPs that did not pay the price. WorldCom's Chief Operating Officer John Sidgmore has made it clear in the press that this is WorldCom's Internet strategy.[27]

WorldCom's radical break with the free market practices embodied in the Internet's free peering arrangements threatens to undermine the development of the Internet, since there is no regulatory framework that prevents a dominant backbone provider from setting prices, adopting discriminatory or predatory pricing policies, or refusing interconnection.[28]

The merged entity's dominant market power would allow it to squeeze individual ISPs out of the market and to further consolidate power into a handful of service providers.[29] "The absence of competition in the ISP market, or the telecommunications infrastructure market," Werbach concluded in his Internet study, "could reduce incentives for innovation."[30]

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[27] "UUNet Details Pay 'Peering' Strategy for Smaller ISPs," *TR Daily*, May 12, 1997.

[28] Cukier, "MCI-WorldCom Faces Internet Probe," *supra.*

[29] *Id.*;Weber and Quick, "Would WorldCom-MCI Deal Lift Tolls on the Net?," *supra*; Andrew Kupfer, "Why Bernie Ebbers Wants to be the Internet's Mr. Big: The MCI-WorldCom Deal Illustrates Why Data Mean Everything to the Telecommunications Industry," *Fortune*, Dec. 8, 1997; Shanker, "WorldCom, MCI, and the Internet," *supra.*

[30] Werbach, *Digital Tornado*, p. 7.

The merged entity would in essence have bottleneck control over ISP access to the backbone network. In addition to its 63 percent ownership of the Internet backbone network, the merged entity would also own some of the largest ISP networks, including UUNet (the largest), MCI, ANS, and Compuserve. The merged entity would be able to use this bottleneck control in a discriminatory fashion, adopting pricing policies that favor interconnection with its own ISPs through cross-subsidies, predatory pricing, or other practices.

In the near future, the Internet backbone will become the major communications infrastructure as packet-switched data becomes the dominant traffic. Absent regulation, the only policy tool the Commission has at its disposal to ensure that competition continues to drive innovation on the Internet and to prevent bottleneck control of Internet access is to constrain the growth of dominant market power over the crucial Internet backbone. The threat of market domination over the Internet backbone is sufficient cause for the Commission to find that the proposed merger is not in the public interest.

IV. The Proposed Merger Will Delay Development of Competition in the Local Exchange Residential Market

A. MCI Before the Proposed Merger with WorldCom Was the Most Aggressive Potential "Precluded" Competitor in the Local Exchange Residential and Small Business Market.

A major policy goal of the Telecommunications Act of 1996 and of subsequent Commission Orders is to break up bottleneck monopoly control in the local exchange through facilities-based

competition in order to "secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[31] Therefore, the impact of the proposed merger on the development of competition in the local exchange residential and small business market is an important public interest consideration for the Commission.

In the Bell Atlantic NYNEX Order, the Commission defined the local exchange as a relevant product market for merger analysis and residential customers and small businesses as a distinct customer group for purposes of such an analysis.[32] Indeed, the Commission's Bell Atlantic NYNEX Order primarily focuses on the impact of that merger on the residential and small business market in the local exchange.

In that Order, the Commission concluded that the most significant market participants in the monopoly local exchange may be either actual existing competitors or "precluded" competitors. The Commission defined "precluded" competitors as "those competitors that could not enter prior to the changes contemplated by the 1996 Act and that are most likely to enter in response to implementation of the 1996 Act."[33] The Commission further concluded that MCI, along with the other large long distance companies, meets this definition of a precluded competitor in that it "is likely to enter the relevant markets...because (it) has the capabilities and incentives to acquire a

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[31] Telecommunications Act of 1996, preamble.

[32] *Bell Atlantic NYNEX Order,* 50 and 53.

[33] *Id.*, 7.

critical mass of customers in the relevant markets and to do so relatively rapidly."[34] The most important of those "capabilities" is an existing mass market customer base and expertise in marketing, provisioning, billing, and providing customer service to this mass market. The Commission noted that customer preference survey information submitted as part of the record in the Bell Atlantic NYNEX case supported its conclusion that MCI, along with the other major long distance carriers, was a precluded competitor in the local exchange mass market.[35]

After passage of the Telecommunications Act of 1996, MCI took the lead as the most aggressive among the potential competitors for residential and small business customers in the local exchange. The company announced plans to spend $2 billion to build local facilities, with plans to enter residential and small business markets in 31 cities in 1997 and 75 cities in 1998.[36] "We plan to serve residential customers with our local networks," MCI President and Chief Operating Officer Timothy F. Price announced.[37] Analysts noted that among the long distance companies, "only MCI was interested in spending real money on local wires and switches."[38] MCI continued to maintain its commitment to the residential and small business local exchange market, even after July 1997 when it announced lower than anticipated revenues from the local loop.[39]

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[34] *Id.*, 82.

[35] *Id.*.

[36] Standard & Poors, *Telecommunications: Wireline*, Sept. 25, 1997, p. 13.

[37] "One Year After Telecom Act: MCI Aggressively Expands Local Service; Brings Local Networks to Six New Cities, Plans Local Service for Residential Customers in More States; MCI Committed to Serving Local Customers Nationwide," Feb. 6, 1997 (http://www.mci.com/mcisearch/about...rests/publicpol/press/970206.html).

[38] Robert Crandall, "MCI Played the Regulation Game and Lost," *The Wall Street Journal*, Nov. 27, 1997.

[39] "MCI Remains Committed to Its Local Service Strategy," *Communications Today*, July 7, 1997.

B. The Merged Entity's Plans to Reduce Investment in the Local Exchange by $5.3 Billion over the Next Four Years Would Jeopardize the Telecommunication Act of 1996's Goal to Stimulate Facilities-Based Competition in the Local Exchange Residential and Small Business Market

1. The Merged Entity Would Likely Abandon MCI's Commitment to Residential and Small Business Customers

On October 3, 1997, two days after MCI and WorldCom announced their proposed merger, WorldCom's Vice-Chairman and Chief Operating Officer John Sidgmore announced in a press interview that the merged company planned to retreat from the consumer market by transferring MCI's current long distance residential customers to another firm. "[We are] not in the consumer business," Sidgmore said.[40] "It's very difficult for us to find a way to make economic sense out of the advertising budgets, the customer service budgets, etc. required to be in the consumer business."[41] While the merged company might continue to earn high-margin revenues by carrying consumer traffic on its network, Sidgmore said, the low-margin work of providing customer service, operator services, and billing would be transferred to another carrier.[42]

Sidgmore's statement provoked a firestorm of negative reaction. And so, the next day, on October 4, 1997, Sidgmore tried to soften his original statement. The plan to transfer residential customers, he said, was only a "possibility" or something "we would consider." But he repeated

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[40] Mike Mills, "WorldCom Would Shift MCI's Focus; Bidder Plans to Shed Residential Service," *Washington Post,* Oct. 3, 1997.

[41] *Id.*

[42] *Id.*

that the merged company would show little interest in the residential market. "Our religious focus is on the business customer," he said.[43] "It is a jihad."[44] (See "Attachments".)

Based on these public statements, the future of the merged entity's long distance residential and small business customers is unclear. But analysis of financial documents filed by WorldCom with the Securities and Exchange Commission (SEC) makes clear that the merged company plans to abandon MCI's previous plan to build out its network in order to serve residential and small business customers.

2. The Merged Entity Would Reduce Local Loop Investments by a Total of $5.3 Billion over the Next Four Years

Indeed, according to WorldCom and MCI, the merged entity plans to reduce investment in the local exchange by $1.2 billion in 1999 rising to a reduced investment of $1.5 billion by 2002, compared to pre-merged planned local loop investments.[45] Over the next four years, the merged entity plans to reduce investment in the local loop by an estimated total of $5.3 billion.[46] MCI and WorldCom describe these reduced local loop investments as "synergy" savings, savings to be

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[43] Mike Mills, "WorldCom Clarifies MCI Plans; Bidder Pledges It 'Will Not Abandon' Residential Customers," *Washington Post,* October 4, 1997.

[44] *Id.*

[45] WorldCom Form 8K, Exhibit 99.3, *supra.,* pp. 25-6.

[46] *Id.*