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January 26, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 97-211
Joint Applications of WorldCom, Inc. and MCI Communications Corporation

Dear Secretary Salas:

Transmitted herewith on behalf of WorldCom, Inc. and MCI Communications Corporation please find an original plus four (4) copies of the "JOINT REPLY OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION TO PETITIONS TO DENY AND COMMENTS" to be filed in the above-referenced proceeding. For the Commission's convenience, I have also enclosed a copy of the pleading on a 3.5 inch diskette formatted in an IBM-compatible format using WordPerfect 5.1 for Windows software in a "read only" mode.

I would appreciate it if you would please date-stamp the enclosed extra copy of this filing and return it with the messenger to acknowledge receipt by the Commission.

If you have any questions regarding this submission, please do not hesitate to contact me.

Very truly yours,

Jean L Kiddoo

Jean L. Kiddoo

Enclosures
cc: All Parties on the Attached Service List

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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.	)	

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To: The Commission

JOINT REPLY
OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION
TO PETITIONS TO DENY AND COMMENTS

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Dated: January 26, 1998

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SUMMARY

1. **Local exchange market.** The local exchange markets at present are subject to the near-total monopoly domination of the incumbent carriers. Bringing meaningful competition to these markets, in the face of fierce resistance from the entrenched incumbents, requires not only forceful regulatory and legal action, but a strong and aggressive competitor to lead the way. The combined MCI WorldCom will be that strong and aggressive competitor. MCI has a national brand name and a broad residential and large business customer base. WorldCom has an extensive local exchange network and predominantly business customer base that includes many small businesses. That combination -- plus the efficiencies and financial savings the merger will achieve -- will allow the combined company to mount a more serious challenge to the entrenched incumbents than the two companies could accomplish separately.

The combined company will have at least as much motivation as the separate companies to challenge the incumbents' present market domination. Indeed, the merger will be a failure, and a waste of the billions that each company has invested in the local markets, unless the combined company can substantially cut into the incumbents' market share by aggressively winning over their customers.

There is no substance to the charge that the merger will result in a cutback of MCI's previous commitment to residential local exchange service. Given the importance in today's market of "one-stop shopping," the combined company will offer local service to MCI's present base of long-distance residential customers, among other things, to help retain those customers for its other services. As both companies' Chairmen will confirm in writing to Chairman Kennard, both MCI and WorldCom are fully committed to continuing MCI's longstanding commitment to residential customers. Nor will the merger harm universal service. Increased local competition, by driving down local phone rates for all consumers, should help make local telephone service more universally available. To the extent that this process drives down high local rates that may have provided an implicit subsidy for universal service, that will be replaced by universal service fund contributions, which MCI WorldCom will pay along with other industry participants.

2. Long distance market. The merger will enhance vigorous competition in the long distance market. Vigorous competition demonstrates that coordinated interaction is not occurring with the current market structure. That market is already competitive. This fact, together with low entry barriers, sophisticated customers, and other factors would foreclose any attempt post-merger to increase prices through tacit collusion. Moreover, the industry is becoming less concentrated, as the number of significant facilities-based competitors grows. Additional entry is both easy and actually occurring. New entrants are building extensive new facilities and resellers can quickly acquire the facilities they need to compete, at cost-based rates that entail little or no sunk cost. Significant new facilities-based entry will continue as the market continues to grow and as new entrants take advantage of the decreasing unit cost of constructing new fiber networks or expanding existing ones. In the last 12 months, at least three carriers have started to construct, or announced plans to expand significantly, national networks.

In addition, there are several significant potential entrants -- including the BOCs, who, upon satisfying the requisite regulatory conditions, are reported to be planning "a jihad in long distance." Other potential entrants abound, including electric power companies, independent phone companies and foreign carriers. Given the ease of entry and declining cost of building facilities, there is simply no possibility that the merger would enable MCI WorldCom to restrict output and raise prices; if it did, existing competition would seize the opportunity to capture business, and if the attempt were even partially successful (which it could not be), additional facilities-based entry would only be encouraged.

Nor will the merger increase the likelihood of collusion. Given WorldCom's present market share, the merger will not alter MCI's position as the number two firm in the interexchange market either in absolute terms or relative to AT&T, which will still be twice the size of MCI WorldCom. This fact, together with low entry barriers and the increasingly "commodity" nature of the long distance market, forecloses any attempt to increase prices through tacit collusion, and will continue to do so after the merger.

The merger will also not reduce residential interexchange competition. The residential market is presently fiercely competitive, as witnessed by declining prices, the approximately 50 million PIC changes a year, and the surge in "dial around" services. If GTE and the BOCs truly believed that excess profit margins existed in the residential long-distance business, they would be competing for these customers outside their home regions (as they are presently free to do). Their failure to do so demonstrates how effective residential interexchange competition really is.

Despite the fiercely competitive nature of the residential business, there is no reason why the merger would decrease the individual companies' existing commitment or incentive to service this market. It made sense for MCI to sell directly to residential consumers before the merger, and it will continue to make sense after the merger. It also made sense for WorldCom to reach the residential market through resellers before the merger, and it will make sense after. Residential customers are important users of network capacity that would otherwise be relatively idle during evenings and weekends, and thus help spread the sunk costs of the network. In addition, residential customers provide a broader market for innovative products.

Finally, there is no basis for the charge that the merger will reduce competition in the wholesale market. At bottom, there is no separate wholesale market, since long distance capacity is essentially fungible. Any attempt to increase wholesale prices would necessarily fail, because other facilities-based carriers could easily make wholesale services available at lower rates and take advantage of the marketing opportunity. In addition, the resellers themselves could build their own facilities -- as has happened frequently in the past.

3. International. Similarly, the merger will have procompetitive effects in the international market. MCI and WorldCom have complementary international competitive operations, which the combined company will expand upon, with the goal of becoming the first truly global end-to-end competitive carrier offering a complete range of telecommunications services.

GTE's singular assertions that the merger will have anticompetitive impacts are based on its mistaken definition of product markets; its failure to recognize the growing competitiveness and steadily declining prices for international services; the lack of a meaningful distinction between IMTS and international private line services; the relative ease of entry and the presence of hundreds of other competitors; and the fact that after the merger AT&T's market share will still be nearly twice as large as the combined company's. Nor will the merger give the combined company the ability to control undersea cable capacity, as GTE mistakenly alleges.

4. Internet. The assertion that the merger will, in some amorphous manner, enable the combined company to control the Internet "backbone" does not withstand scrutiny. Internet "backbone" consists essentially of telecommunications transmission facilities and supporting equipment, which are being constructed and expanded at an unprecedented rate by virtually every major telecommunications carrier. Any fiber optic transmission capacity can be utilized for this purpose: there is nothing unique about WorldCom's, MCI's or other major carriers' networks. And anyone can buy the necessary routers, servers and other supporting equipment from third party [redacted] even if they were accurate (and they are not). The key points are low barriers to entry, rapidly expanding capacity, dynamic routing, and explosive growth in demand inducing further expansion and entry.

Nor are the network access points a bottleneck. Anyone can build a new network access point at a low cost and connect to the Internet at any one of multiple locations. Moreover, of the 39 network access points in the U.S., WorldCom operates only seven (and MCI none). Further, there is no validity to concerns expressed by commenters regarding peering arrangements or alleged difficulty in ISPs switching transmission providers.

5. Other Issues. MCI has a proud record of programs serving minority and immigrant communities, and WorldCom's network is predominantly situated in urban areas adjacent to low income housing concentrations. There is thus no basis for raising concerns of potential "redlining."

There is no legal or policy basis for linking approval of the merger to approval of BOC entry into the in-region, interLATA market. The BOCs are entitled to enter the interexchange market only upon satisfaction of the requirements set forth in Section 271 of the Telecommunications Act of 1996.

The record currently before the Commission is ample to permit an informed and reasoned resolution of straightforward issues concerning a merger of two non-dominant carriers. This case does not involve disputes over facts, but rather disputes over inferences and conclusions to be drawn from facts, as well as legal and economic conclusions concerning market structure, competitive effect and the public interest. It is well established that these are not issues that would benefit from a hearing, which would only lead to interminable delay.

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Applications of WorldCom, Inc. and	)	
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Transfer of Control of MCI Communications	)	
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To: The Commission

JOINT REPLY
OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION
TO PETITIONS TO DENY AND COMMENTS

WorldCom, Inc. ("WorldCom") and MCI Communications Corporation ("MCI," and, together with WorldCom, hereafter, the "Joint Applicants"), by their undersigned counsel, hereby submit this Joint Reply to the Petitions to Deny and Comments filed in this proceeding on January 5, 1998, with respect to the above-captioned applications (collectively, "Application").[1]

I. INTRODUCTION.

The Commission should approve the merger between WorldCom and MCI because it will increase competition in key telecommunications markets, and poses no significant risk to competition in any market. Consumers of all types in every community in all parts of our nation will benefit from the investment, the innovation, and the competition that the merger will generate. This merger is plainly in the public interest.

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[1] The Applications were filed by WorldCom on October 1, 1997, and were amended by the Joint Applicants on November 21, 1997, to reflect the Joint Applicants' agreement to merge.

The MCI WorldCom merger will improve prospects for solving the most pressing problem in telecommunications markets: the continued dominance of the local exchange by incumbent local exchange carriers, including the Bell Operating Companies (BOCs) and GTE Corporation (GTE). Although two years have passed since enactment of the landmark Telecommunications Act of 1996 (the "1996 Act"), local incumbents continue to control more than 98 percent of local revenues and access lines. That is because the 1996 Act's market-opening provisions have not worked as Congress expected. Incumbents have been too successful at undermining the most procompetitive provisions of the 1996 Act in the courts and in the marketplace. Resale of the incumbent's services holds no prospect for genuine, sustainable competition because it precludes product differentiation and because resale discounts are too low to permit profitable entry. The 1996 Act's most promising innovation -- unbundled access to elements of the existing local network -- has been drained of its power by the intransigence and legal maneuvering of the incumbents. The inability of new entrants to obtain combinations of network elements at economic cost, the absence of final forward-looking cost-based prices for elements in most of the country, and the continued foot-dragging of the incumbents in implementing operations support systems, have all contributed to the defeat of this aspect of Congress' plan for local competition. The only near-term prospect for local competition is through the slowest, and most capital-intensive, method -- construction of local facilities by new entrants.

For meaningful local competition to develop in this challenging environment, there must be *stronger*, not merely more, competitors. Successful entry will encourage, not deter, additional investment in local markets -- just as it has done and continues to do for long-distance and Internet services. The contention of some opponents that WorldCom and MCI would use the merger to somehow reduce local competition by slowing WorldCom's and MCI's growth is nonsensical -- WorldCom and MCI have invested billions of dollars precisely so that they can capture customers from the incumbents through competitively priced packages of innovative services. Less growth and less competition would benefit only the incumbents.

MCI and WorldCom together have a far greater chance of succeeding in a facilities-based strategy than would either entity standing alone. On the day of closing, MCI WorldCom will be able to pursue facilities-based entry in many more local markets than could either company standing alone. The two companies will have local networks in approximately 100 cities. The merger will enable MCI WorldCom to expand the reach of these networks further and faster. In local markets where both MCI and WorldCom are now trying to establish a presence, their facilities provide complementary, not redundant, capacity. Because the merged company can expand and accelerate the reach of its local facilities and draw on the existing customer bases of the two companies, it will be far better able to compete in more locations than would either entity standing alone.

The merger will also create a stronger local competitor by combining two companies with complementary advantages: MCI's national brand name, marketing experience, and broad residential and large business base, with WorldCom's more diverse business base and the local expertise and local systems of MFS Communications, Inc. and Brooks Fiber Properties, Inc. And MCI WorldCom's substantial base of long distance customers will provide additional strength because it will allow for more efficient provisioning of exchange access -- and stoke the competition on which the Commission is relying to drive down rates. Thus, MCI WorldCom will be in a position to provide a competitive choice for more local customers, and to do so faster than would either entity alone -- first using its own facilities, and then (as pricing, operations support systems ("OSS") and other obstacles erected by the incumbent local carriers ("ILECs") are broken down) by using unbundled network elements to extend its reach to both residential and business customers.

At the same time, the combined entity poses no risk of domination of any market, and hence no threat to consumer welfare. The interexchange market is robustly competitive today. Rapid growth fueled by declining prices, coupled with falling costs, have induced a flood of new facilities-based entry. The merger will permit MCI and WorldCom to compete more efficiently in this dynamically competitive market. Nor should the Commission heed the call of some petitioners to regulate MCI WorldCom's provision of Internet services. The national policy is "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). No single company could even begin to dominate this huge and complex network of networks connecting thousands of ISPs through a protocol designed specifically to permit the routing of transmissions over an almost infinite variety of paths.

There is no substance to the charge that the merger will diminish the two companies' commitment to residential service. MCI's large base of long-distance residential customers represents a significant marketing opportunity for the combined company's local exchange and other services. Residential customers will also be important to the combined company in filling network capacity that might otherwise be idle during off-peak business hours. WorldCom, which presently reaches large numbers of residential customers through resellers and some of its own direct marketing, should find it profitable to continue to do so. The management of both companies is firmly committed to continuing their companies' present commitment to residential service, following the merger.

The public interest posture of this merger is confirmed by the identity of the principal critics -- GTE, a disappointed bidder for MCI (trying to keep its hopes alive by obstructing and delaying this merger), an incumbent local monopolist and a facilities-based interexchange and Internet services provider (understandably disquieted by the prospect of intensified competition resulting from the merger); and two BOCs that share GTE's dread that this merger will provide the spark that ignites local competition (and that also all too predictably seek to use this proceeding to advance their Section 271 agenda.) The issues raised by commenting parties either reflect a misconception of MCI's and WorldCom's current activities and future plans, or are simply unrelated to the Commission's inquiry. As demonstrated in the Application and in this Joint Reply, the concrete and immediate competitive benefits of combining MCI and WorldCom far outweigh any speculative concerns that the merger might decrease competition in any way.

Finally, GTE frivolously asserts that the Application did not contain sufficient information for the Commission even to reach a consideration on the merits. As the Joint Applicants conclusively demonstrate in their Joint Opposition to the Motion to Dismiss,[2] the Application and its supporting documents contain more than sufficient economic justification and other information for the Commission to determine that the transfer of control of MCI's licenses and authorizations to WorldCom is in the public interest.

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[2] Pursuant to the Public Notice dated Jan. 12, 1998, the Joint Opposition to the Motion to Dismiss will be filed tomorrow, January 27, 1998. "Correction," Commission Seeks Comment on GTE Service Corporation Motion to Dismiss Applications of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI to WorldCom, *Public Notice*, DA 98-49 (rel. Jan. 12, 1998).

II. THE MERGER WILL FURTHER THE PUBLIC INTEREST BY ENHANCING THE CHANCE OF ACHIEVING A COMPETITIVE LOCAL EXCHANGE MARKET, WHILE RAISING NO ANTITRUST OR REGULATORY CONCERNS.

The local exchange market is still dominated overwhelmingly by the incumbent telephone companies, with market shares in the high ninety percent range. That is the central, ineluctable fact against which all of the oppositions to the MCI WorldCom merger must be evaluated. It is the incumbent monopolists, not a combined MCI WorldCom, that pose the clear and present danger to the development of local competition, and, in fact, control the only bottleneck that could adversely affect growth of the Internet. The opposition of some of them, especially GTE, to this merger is the best evidence we could present of the pro-competitive nature of this merger. This merger should be approved precisely because it enhances the chance that the incumbent companies' monopoly stranglehold on the local exchange market will be broken.

In the *Bell Atlantic/NYNEX Order*, the Commission concluded that the most significant issue in a merger case is "the extent to which the merger is likely to affect future market structure, conduct and performance."[3] With effective enforcement of the market-opening provisions of the 1996 Act by Federal and state agencies, the merger carries the promise -- and the likelihood --that the local exchange market, which has long been the central focus of the FCC and other telecommunications policy makers and the principal goal of the 1996 Act, will finally become competitive. The merger will create a strong, aggressive nationwide competitor that is better positioned than either of the two

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[3] Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries, *Memorandum Opinion and Order,* FCC 97-286, 9 Comm. Reg. (P&F) 187, at ¶ 98 (rel. Aug. 14, 1997) ("*Bell Atlantic/NYNEX Order*").

companies would be separately to challenge successfully the monopoly control presently exercised by the incumbent companies.

Implementation of the 1996 Act has not yet opened local exchange markets to competition. The Act envisioned three avenues for the introduction of local competition in the order of anticipated ease of entry: resale, leasing of unbundled local network elements, and facilities-based competitive local exchange service. Competitive entry through resale is not currently feasible because resale discounts are insufficient to support the business costs of any reseller, OSS is inadequate and resellers cannot independently differentiate their services by offering new or innovative services. Competitive entry through leasing of unbundled elements is encountering severe roadblocks both as a result of high costs (particularly recurring and non-recurring charges), inadequate OSS, and as a result of restrictive judicial interpretations that make this manner of entry technically and economically infeasible. In stark contrast, this merger, by creating a combined entity in a position to offer strong, facilities-based competition, offers a real prospect of introducing significant competition in local exchange markets, where the competitive goals of the 1996 Act might otherwise still be a long way off. The ILECs have come to this forum to further their competitive strategy of imposing resistance at every step of the way to local competition.

The merger does not raise any antitrust concerns. On the local side, the present local markets are monopolies, with the incumbent companies having an overall market share of nearly 100% in their respective service areas. Combined competitive local exchange market share ranges from 0% to less than 6% in those few markets where competitors have been operating for nearly a decade. Under the Department of Justice Merger Guidelines, an increase in concentration among companies sharing the remaining portion of the market raises no antitrust issue, because their shares are so small and because the incumbents are so entrenched.

Mergers can be adjudged to be anticompetitive when they enhance the chance that the remaining companies will engage in coordinated pricing. There is no realistic likelihood of that here. The point of the merger is to better enable WorldCom and MCI to attack the incumbent companies' dominant market share, not to coordinate prices with them. New entrants price at discounts off the incumbent because that is what fringe players do and it would be self-defeating for the merged firm to discount less because that would only enable the incumbent to keep more business.

It would make no conceivable sense for MCI WorldCom to compete less aggressively than MCI and WorldCom would individually. Such a strategy would make only the ILEC more successful -- not MCI WorldCom. The dynamics of the local business drive new entrants, especially facilities-based entrants like MCI WorldCom with substantial sunk costs, to grow and expand by increasing customers and traffic as rapidly as possible. It would be an admission of failure, not a declaration of success, for the management of MCI WorldCom to tell its shareholders that it had kept its market share to the same minuscule level that MCI and WorldCom had achieved pre-merger. In short, the incentives of the combined company to compete aggressively will be at least as great as the incentives of each company individually.

A. The combined company will be in a better position to compete with incumbent local exchange monopolies than MCI and WorldCom separately. The merger will strengthen local competition and benefit consumers.

To date, competitive local exchange carriers ("CLECs") have had relatively little success in penetrating local markets. For example, even in the New York metropolitan area, some ten years after the first competitive local switch was installed, the total CLEC share (including resellers) of the total access lines is 2.5% and of business access lines is 5.9% (a portion of the market which MCI and WorldCom share with other CLECs.)[4] In other areas, the CLEC share is far less. MCI and WorldCom, after this merger, intend to rectify that situation. The two companies bring complementary strengths to the merger. MCI has, among other things, a widely-recognized brand name and recognized marketing expertise, together with a broad base of both business and residential customers for its long distance service. WorldCom, following its acquisition of Brooks Fiber Properties, Inc., will have among other things, local exchange facilities in both first- and second-tier cities, including facilities in thousands of customers' buildings. *See* Declaration of Dennis W. Carlton and Hal S. Sider ¶ 9, attached hereto as Attachment B. The combination of MCI's reputation and customer recognition, with WorldCom's more extensive network of local exchange facilities, presents a unique opportunity to provide facilities-based local exchange competition that has the potential to significantly challenge the incumbents' monopoly.

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[4] Bell Atlantic's statistics on CLEC lines in New York State do not specify what market share these lines represent. *Petition to Deny of Bell Atlantic*, in CC Docket No. 97-211, at 16 (filed Jan. 5, 1998) ("*Bell Atlantic Petition*"). Recent figures compiled in the New York Section 271 proceeding remedy this deficiency. Attached hereto as Attachment A is an analysis of Bell Atlantic and CLEC access lines, sent by the New York Public Service Commission on January 15, 1998 Memorandum, to the parties in the Commission's 271 proceeding. More than a dozen CLECs compete in this market. The study shows that the CLEC's combined share of business access lines in the New York Metropolitan area is 5.9%.

While the analysis notes that only the carriers represented at the Commission's Technical Conference held in December 1997 responded, the attendees at that conference included the major CLECs operating in New York: MCI, WorldCom, AT&T, Time Warner, Teleport, Manhattan Telecommunications, Sprint, Infonxx, RCN, LCI, Cablevision, and Intermedia.

The 1996 Act "contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale."[5] Of these entry strategies, resale is not a viable strategy today because resellers cannot differentiate their products, OSS is deficient, and the level of wholesale discounts is generally inadequate. Reliance on unbundled elements of the incumbent's network has been stalled by the Eighth Circuit's decision, non-cost based recurring and non-recurring charges, and unsatisfactory and technically infeasible OSS. *Iowa Utilities Board v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997), *cert. granted* (U.S. Jan. 26, 1998); *Ameritech Michigan Order,* ¶¶ 128-221;[6] *BellSouth South Carolina Order,* ¶¶ 101-169.[7] That leaves facilities-based entry, which has been widely recognized as the type of competitive entry offering the best opportunity for significant long-term local exchange competition, provided that competitors emerge with the financial strength to build and operate their own networks. That is the type of competition on which MCI WorldCom intends to place its primary reliance, following the merger. After the merger, it will become more feasible than it has been for either company operating on its own.

In addition to the combination of MCI's and WorldCom's customer base, name recognition and local exchange networks, the merger will result in other competitive synergies and efficiencies

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[5] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd. 15499, ¶ 12 (rel. Aug. 8, 1996) ("*Local Competition Order*").

[6] Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, Inter LATA Services in Michigan, CC Dkt. 97-137 (rel. August 19, 1997) ("*Ameritech Michigan Order*").

[7] Application of BellSouth Corporation et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, CC Dkt. 97-208 (rel. Dec. 24, 1997) ("*BellSouth South Carolina Order*").

enhancing the combined company's ability to challenge the incumbent local exchange monopolies through facilities-based competition. The combined company will have a greater ability to sell a broader package of services, including not only local and long distance, but also international and Internet services, as well as state-of-the-art telecommunications services which WorldCom has developed (such as new broadband and advanced data services). Carlton/Sider Decl. ¶ 10. With the cost savings and efficiencies the merger will bring, and the combined company's financial strength, significant facilities-based competition has a real prospect of success.

The combined company will achieve significant cost savings and efficiencies, and have greater financial strength and enhanced ability to raise capital. As explained recently in WorldCom's S-4 on file with the SEC ("WorldCom S-4"):[8]

> 1. Reduced domestic network costs: As a result of WorldCom's existing local network, the combined company will carry an increased proportion of its domestic traffic on its own local network facilities resulting in a reduction in leased line costs and access costs associated with switched traffic. WorldCom S-4 at 42. Savings can also be achieved in collocation costs, where the separate companies would otherwise separately collocate at the same central office.
>
> 2. Reduced costs in MCI's local activities: As a result of WorldCom's existing extensive local network and operations, the combined company will be able to execute MCI's plans to expand in the local market at a lower cost than MCI would be able to on a stand-alone basis. The combined company will avoid the need to duplicate certain sales, marketing and administrative functions and will have reduced network costs resulting from the more rapid transfer of traffic to the combined company's network facilities. WorldCom S-4 at 42-43.
>
> 3. Capital expenditure savings: Capital expenditure savings are expected to be realized in local network build out and information technology, primarily as a result of avoided duplicative capital expenditures. WorldCom S-4 at 43.

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[8] WorldCom, Inc. Amendment No. 3 to Form S-4 Registration Statement under the Securities Act of 1933. A copy of the Amended S-4 is attached hereto as Attachment G.

4. Core SG&A. Core sales, general and administrative cost savings will be achieved because the increased scale of activities in the combined company's operations will result in opportunities to reduce costs by avoiding expenditures on duplicative activities, greater purchasing power, and the adoption of best practices in cost containment. WorldCom S-4 at 43.

Because many of these savings will reduce the cost of providing local service, they should generally accelerate local market entry and make it more economically feasible for the combined company to offer local service to customers who might not be able to provide the revenues needed to support a higher cost structure. In addition, these cost savings should make the combined company able to build and operate additional local network facilities faster and further than the two companies could do separately. From both standpoints, the merger will enhance the ability of the combined company to provide all types of local service, and introduce the possibility of broad-based competition into the now monopoly-dominated local exchange.

Given its vigorous level of opposition, GTE no doubt sees a competitive threat from MCI WorldCom. Ordinarily, one discounts the views of a competitor like GTE because the antitrust laws were enacted for "'the protection of competition not competitors.'" *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 488 (1977), *quoting Brown Shoe v. United States*, 370 U.S. 294, 320 (1962); *Telecommunications Inc. and Liberty Media Corp.*, 9 FCC Rcd. 4783, ¶ 21 n. 52 (1994) ("antitrust laws are designed to protect competition, not competitors"). The simple fact that GTE opposes the merger is convincing evidence that it fears the enhanced competition for local exchange services that will result from a merger of MCI with WorldCom. The proposed merger will make the local market more competitive precisely because the combined company will be far better positioned than either applicant alone to compete against GTE and the BOC incumbents. That is apparently what GTE fears most.

B. Local exchange markets are now overwhelmingly dominated by the incumbent carriers. A merger of two competitors in the tiny remaining portion raises no antitrust issue.

In local exchange markets, the incumbent companies' overall share is roughly 99%. Carlton/Sider Decl. ¶ 7 and Table 1. Even if one takes the narrowest possible market definition and searches for what could possibly be the most favorable case for local competitive penetration, the incumbent's present market domination is still near-total.[9]

The Commission has utilized the Herfindahl-Hirschman Index ("HHI"), adopted by the Department of Justice's 1992 Merger Guidelines, as one tool for analyzing the market impact of horizontal mergers. *Craig O. McCaw & American Tel. & Tel. Co.*, 9 FCC Rcd. 5835, 5856-57, ¶ 30 (1994), *recon. denied,* 10 FCC Rcd. 11786 (1995), *aff'd sub nom. SBC Communications Corp. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995). Under the Merger Guidelines, in a "highly concentrated" market, "a horizontal merger that produces an increase to the HHI of less than 50 points generally does not raise significant antitrust concerns." *Craig O. McCaw*, 9 FCC Rcd. at 5857, ¶ 30, citing the 1992 Merger Guidelines, 4 Trade Regulation Reports at ¶ 13,104, § 1.51(c).[10] For example, even if we assume that the CLECs' 5.9% share of business lines in the New York Metropolitan area (which is generally considered one of the most competitive local markets in the country) were generously allocated 50% to MCI and WorldCom, while dividing the remaining 50% among at least

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[9] Recent information from the New York Public Service Commission, for example, shows that the total CLEC share of the business lines in the New York metropolitan area (including resellers) is 5.9%; and that 5.9% is shared by 15 CLECs. *See* Attachment A. Even in this market, focusing solely on business lines, the competitive share of the market is minuscule some 10 years after the first competitive local switch was installed.

[10] In *McCaw*, the Commission approved the merger of AT&T (60% market share) with McCaw Cellular (0.3% market share). The increase in HHI was 36. *See* 9 FCC Rcd. at 5856, ¶ 30.

13 other New York Metro CLECs in the market (including Teleport, Sprint and AT&T), the merger would increase the HHI by less than 5 points -- far short of the 50-point HHI threshold for "significant antitrust concerns" in highly concentrated markets.[11]

To attain the 50-point HHI threshold, MCI and WorldCom would have to share equally a market share of at least ten percent.[12] We know of *no* local market, however defined, in which that threshold is even approached. The New York Metro business market is likely one of the most competitive local exchange markets in the country (although it remains highly concentrated, as witnessed by NYT's 94% share). But even in that market, the MCI WorldCom merger does not come close to approaching the HHI threshold for significant antitrust concern.

A basic antitrust concern regarding horizontal mergers is that they might enhance the likelihood of coordinated pricing. As the 1992 Merger Guidelines explain, "[a] merger may diminish competition by enabling the firms selling in the relevant market more likely, more successfully, or more completely to engage in coordinated interaction that harms consumers." Merger Guidelines, § 2.1. There is no conceivable danger that MCI WorldCom will engage in "coordinated interaction" with incumbent local exchange carriers. At present, there is no local exchange market in which the combined company will have more than a tiny share. In this situation,

[11] The HHI calculation sums the square of each market participant's share. A merger of two market participants with a 1.5% share each would increase their combined HHI score from 4.5 (1.5 squared plus 1.5 squared) to 9 (3 squared). The 1992 Guidelines define a market as "highly concentrated" when its total HHI is above 1800. Assuming an incumbent share of 94%, the HHI for the New York Metro area business market is over 8800.

[12] Under HHI analysis, the highest point increase is obtained where the merger partners have an equal share. A merger of two 5% participants would produce a 50-point increase. (Pre-merger, their combined score would be 50 -- 5 squared plus 5 squared. Post-merger, their combined score would be 100 -- 10 squared.)

the only rational business strategy for the combined company is to attack the incumbents' customer bases and seek to erode their market share. Indeed, the merger would be pointless if MCI WorldCom were satisfied with the minuscule share of the local exchange market it will have when the merger is consummated. To attack the incumbents' market share, MCI WorldCom must undercut the incumbents' pricing structure. There is simply no realistic scenario in which the combined company would engage in coordinated pricing with the ILECs. Nothing could be more alien to the economic situation or the corporate cultures of either WorldCom or MCI.

GTE argues that the merger raises "competitive questions" because, given "AT&T's equivocation in its resolve to enter local markets, MCI, WorldCom, and Sprint are left as the three remaining most significant nationwide market participants."[13] GTE argues that the merger "would thus eliminate one actual local exchange competitor by merging it with one of the remaining two most significant market participants." *GTE Petition* at 43. Putting aside GTE's egregious misreading of AT&T's attitude towards local markets (which AT&T has evidently shown that it does not share -- AT&T's proposal to acquire Teleport was announced after GTE's comments were filed),[14] the argument is, bluntly, ridiculous. Every single local exchange market consists of whatever CLECs (if any) are in the market, *plus the incumbent local exchange carrier.* Those incumbents are referred to as "dominant" for a reason: on a nationwide basis, they control 99% of the local markets.

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[13] *Petition to Deny of GTE Service Corporation and Its Affiliated Telecommunications Companies* in CC Docket No. 97-211, at 43 (filed Jan. 5, 1998) ("*GTE Petition*"). Interestingly, in the Commission's recent *Bell Atlantic/NYNEX Order,* the Commission did not identify WorldCom (or MFS Communications Company, Inc.) as among the five most significant actual and potential players in the New York City local exchange market. *Bell Atlantic/NYNEX Order, supra* note 3, at ¶ 99.

[14] "AT&T To Buy Teleport for $11.3 Billion," Wall Street Journa, Jan. 9, 1998, at A3.