No matter how the market is defined (*i.e.* local or national), the incumbent carriers are the dominant market participants. Under traditional and well accepted antitrust economic theory, a reshuffling or combining of market share among companies controlling only a minuscule portion of any market raises no antitrust concern.

GTE, itself a disappointed suitor for MCI, also tries to manufacture competitive concern by maintaining that there is an "overlap of 84 percent of the two companies' markets," because WorldCom has some existing facilities in 26 of the 31 markets in which MCI also has facilities or plans to build facilities. *GTE Petition* at 44. Although it is a difficult argument to grasp, GTE suggests that the reduced competition *between MCI and WorldCom* in these local exchange markets will have anticompetitive implications. This argument borders on the absurd: in each of those markets, there is an incumbent carrier, such as GTE itself, with overwhelming market dominance. As previously discussed, the merger of two "overlapping"[15] competitors with only a minuscule market share between them raises no antitrust concern.

Contrary to GTE's assertions, there is no "overlap" in the sense of duplicate or redundant facilities. Frequently, MCI and WorldCom networks in the same city do not reach the same customers, do not serve the same buildings, do not traverse the same streets or are not configured in a similar manner. Moreover, most of the customers in these cities are unserved by any competing

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[15] The term "overlapping" is itself very misleading. It suggests that if WorldCom and MCI have any facilities at all in the same city, they provide blanket coverage for that city such that the merger eliminates that competition. There is no support in the record for such a proposition and it is factually inaccurate.

carrier (but *all* could be served by the ILEC).[16] Significantly, the term "overlap" suggests that after the merger, some of the facilities will become "redundant" and will be idled. To the contrary, MCI WorldCom's intent is that the combined company will aggressively market its services to the point where all its existing facilities are optimally utilized and new facilities will be needed. This merger is fundamentally different from a merger of, for example, two steel plants that will result in the closing of one of them. Here, there will be no "overlap" because the combined company's switching, transmission and other network facilities will be fully utilized. The history of both companies has been one of continual rapid expansion as their existing facilities become fully utilized. WorldCom fully expects that pattern to continue after the merger, as the combined company deploys its combined resources to expand its customer base.

Finally, GTE's analysis rests on the assumption that there are only three "significant" CLECs (or four, counting AT&T). But in fact there are many others -- as noted, the New York Public Service Commission counts at least 13 CLECs in addition to WorldCom and MCI in the New York market alone. Those CLECs -- as well as many others throughout the country -- are all potential competitors in local exchange markets. Moreover, other potential competitors include electric and gas utilities, wireless, other interexchange carriers, independent telephone carriers, construction companies, cable companies and out-of-region ILECs.[17] Once MCI WorldCom leads the way into

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[16] GTE's argument has merit in theory only (if it exists at all) for that fraction of the 1% of local customers for which WorldCom and MCI have built local loops to the same end users.

[17] At a minimum, adjacent ILECs would have to be considered potential competitors. *Bell Atlantic/NYNEX Order, supra* note 3, at ¶ 99 (prior to merger, Bell Atlantic considered potential competitor in local exchange market in New York Metro area); "Ameritech Corp.: St. Louis Area Is Targeted In Local Phone Service Plan," *Wall Street Journal* (Nov. 7, 1997); *see also* n.26, *infra*.

local markets as an "icebreaker," the path into active local exchange competition will be cleared so that other CLECs may follow. As the history of competition in the long distance market demonstrates, the success of one entrant will inevitably lead to entry by others (*e.g.*, MCI's success led to entry and expansion by Sprint, WorldCom, LCI International, Inc. ("LCI"), IXC Communications, Inc. ("IXC"), Qwest Communications International, Inc. ("Qwest"), and a host of other carriers with mixed facilities-based and resold services). Successful entry into the local market by MCI WorldCom will lower entry barriers for other competitors, which can only serve to benefit all customers.

It is particularly curious for GTE, as an incumbent local monopoly, to be expressing concern over the state of local competition, given its historical and continuing resistance to local competition.[18] GTE, as this Commission well knows, sought to merge with MCI itself and its

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[18] MCI chronicles the "Bad Acts" of GTE and other ILECs on its web page. Examples of GTE's anti-competitive behavior that are cited include reports that GTE wrongly told some customers that GTE no longer would repair the customer's phone lines if the customer switched to MCI for local toll calls, and that a customer would be charged extra for billing if MCI handled their local toll calls. *See* <http://www.mci.com/mcisearch/aboutyou/interests/publicpol/you_local/badactqr.shtml#gte>.

Similarly, Mark Rosenblum of AT&T testified before the Senate Antitrust Subcommittee that GTE is actively working to thwart competition. He testified that: "GTE...is starkly flouting its obligation to permit competitors to purchase network element combinations. GTE has now gone to each of its State commissions asking that its interconnection agreement with AT&T be 'reformed' in such a way as to effectively nullify its statutory duty, and contractual commitment, to provide network element combinations." Rosenblum further argued that "GTE claims that it has the legal right -- and states that it will exercise this asserted right -- to go to the trouble and expense (which would be reimbursed by new entrants) to disconnect unbundled network elements that are already connected in its own network before providing them to new entrants, which it would do for the sole reason that the new entrants would then have to bear the additional cost of reconnecting them."

Rosenblum also asserted that "GTE has essentially declared all-out war on all regulators, both federal and state, that are trying to enforce the terms of the Act. GTE even asked 20 states to opposition to this merger must be seen for what it really is -- an attempt to protect its own incumbency from competition and an attempt to derail this merger so that it can attempt its own takeover of MCI -- a takeover that truly would raise serious anticompetitive questions.

C. The combined company will not cut back residential service.

Some commenters argue that the merger will result in some unspecified reduction of service to residential customers.[19] BellSouth adds that MCI WorldCom is likely to "jettison" MCI's residential long-distance customers.[20] Nothing could be further from the truth. One of the principal reasons for this merger is that the combined company will have an enhanced ability to offer consumers a total package of services: local, long distance, wireless, international and Internet. MCI already has a strong base nationwide of millions of residential customers for its long-distance service. Many residential customers prefer buying all their telecommunications services from a single company and receiving a single bill. The merged company will have every incentive to offer them a total package, including local and long distance services, as fast as regulatory and economic

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exempt it entirely from complying with the local competition requirements under a provision of the Act that is designed to apply only to small rural carriers (and GTE was naturally rebuffed)." Testimony of Mark C. Rosenblum, AT&T, before the Senate Judiciary Committee Subcommittee on Antitrust, Business Rights and Competition, Sept. 17, 1997.

[19] *Petition to Deny of Rainbow/PUSH Coalition* in CC Docket No. 97-211, at 18-19 (filed Jan. 5, 1998) ("*Rainbow/PUSH Petition*"); Comments of the Communications Workers of America in CC Docket No. 97-211, at 19-23 (filed Jan. 5, 1998), as amended Jan. 6, 1998 ("*CWA Comments*") *Comments of American Federation of Labor and Congress of Industrial Organizations* in CC Docket No. 97-211, at 5-6 (filed Jan. 5, 1998) ("*AFL-CIO Comments*").

[20] *Petition for Conditional Approval of the Applications of WorldCom, Inc. for Transfers of Control of MCI Communications Corporation of BellSouth Corporation* in CC Docket No. 97-211, at 16-19 (filed Jan. 5, 1998) ("*BellSouth Petition*").

conditions permit.[21] And beyond those customers, the combined company will have every incentive to expand MCI's current local service offering to attract new customers who might then also purchase its other services, as well as enhance and better balance the combined companies' network and switch utilization.

In short, the more customers the combined company has for its local services, the more potential customers it has for its other services. If the combined company does not offer full service packages, including local service, other companies will. At bottom, the whole point of this merger is to gain and retain customers, not lose them.

Moreover, in order to recover embedded investments, the combined company will have a powerful financial incentive to fully load its local networks, including by carrying traffic of residential customers in off-peak hours.[22]

CWA asserts that WorldCom plans "abandonment of facilities-based competition in the local exchange residential and small business market." *CWA Comments* at 23. CWA is wrong. The SEC filing which CWA erroneously cites is WorldCom's estimate of "Operating Cost Savings" and "Capital Expenditure Savings" resulting from the merger. These figures represent neither reduced

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[21] *See also* Section III, *infra* (discussing benefits the merger will bring to long distance service.)

[22] According to Tim Price, President and Chief Operating Officer of MCI Communications Corporation, "[Y]ou build capacity to handle the needs of your business customers during the work week in the daytime, and you have to start recruiting residential customers who use the network mostly at night and on weekends. That's the only way you can get efficient use of your capacity." J. Van, "MCI Deal May Cut Consumer Phone Bills $37 Billion," *Chicago Tribune*, Nov. 11, 1997.

expenditures, nor reduced service. Rather, as CWA well knows, they represent cost efficiencies in carrying out present plans to *expand* local service.[23]

In a further attempt to misrepresent WorldCom's residential service commitment, CWA quotes remarks attributed to a WorldCom executive, John Sidgmore, in a *Washington Post* article of October 3, 1997. *CWA Comments* at 19-20. But what CWA does not say is that the next day, the *Washington Post*'s Assistant Managing Editor took the unusual step of publicly admitting that the "wording [of the Oct. 3 article] was stronger than Sidgmore's remarks warranted"[24]; WorldCom also widely disseminated a press release disclaiming any intent to abandon residential customers.[25]

The Rainbow/PUSH Coalition argues that MCI, without WorldCom, might still pursue residential local service, despite the huge losses it has suffered. *Rainbow/PUSH Petition* at 20. But the issue is not what MCI might or might not do without the merger; the issue is whether the merger will adversely affect MCI's or WorldCom's separate plans for residential service. As we have

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[23] WorldCom explained to the SEC that its estimated savings in local services will occur because "[a]s a result of WorldCom's 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." Amendment No. 3 to Form S-4 at pp. 42-43 (filed Jan. 9, 1998) (emphasis added). WorldCom further explained that 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." *Id.* Finally, WorldCom explained that it estimated these cost savings based on "the projected operating costs associated with MCI's *plans to expand its presence in the local market*" and the proportion of these costs that "could be avoided *by combining MCI's and WorldCom's business.*" *Id.* (emphasis added).

[24] M. Mills, "WorldCom Clarifies MCI Plans," *Washington Post,* Oct. 4, 1997.

[25] "WorldCom Will Not Abandon MCI's Residential Long Distance Customers; Combined Company to Offer Competitive Choices For Both Local and Long Distance Service," Press Release, Oct. 3, 1997.

shown, the combined company will be better positioned than the separate companies to provide local service, including residential service, faster and further, and will have an economic incentive to retain and expand MCI's existing residential base as a platform for selling total service packages.

None of the commenters has shown that there is *any* reason why residential service that made economic sense for either of the companies to pursue separately should become uneconomic simply because the companies are combined. Indeed, the opposite is true. As we have described, the merger will achieve savings which will allow the combined company to provide local service, and to expand present capacity, at a lower cost than the companies could do separately. That will make it feasible to provide local service to customers at revenue levels below the levels needed to support the pre-merger cost structure. Thus the merger will enhance, not hinder, the company's efforts to provide service to small business and residential customers.[26]

WorldCom plans neither a reduction of local service, nor a shrinkage of expenditures for local service. The "savings" referred to in its SEC filings reflect the fact that the combined company will be able to achieve the same or even greater rate of expansion at a lower cost and in a more efficient and timely manner. MCI's millions of residential customers are an important part of this expansion. WorldCom realizes that in a competitive telecommunications market it must offer local service if it wants to reach these customers for its other services. That is one of the principal facets

[26] The BOCs themselves, in their few forays into the local exchange business outside their established territories, have either pursued business customers exclusively or residential customers only as part of a strategy to offer other services to these customers. *See* "Pacific Bell Agrees to Open Network to Ameritech Competition," *San Jose Mercury News* (Jan. 11, 1998) (Ameritech to offer resold local service in California, but only to businesses that already are Ameritech's customers in the Midwest; by contrast, Ameritech will offer residential service in St. Louis and Cape Girardeau, Missouri where it is the local cellular company and many customers have Ameritech service in their homes or businesses across the Mississippi River).

of this merger. Similarly, if WorldCom hopes to expand beyond these customers, WorldCom realizes that it must offer a package including all types of service. Once again, the purpose of this merger is to gain customers, not lose them.

D. The merger will not undermine universal service.

CWA's argument that the merger will "hurt universal service" is seriously flawed in that it ignores the developments that have occurred as a result of the Telecommunications Act of 1996. *CWA Comments* at 27-31. The premise of CWA's argument is that the merged company will be more effective, indeed too effective, in taking business away from incumbent carriers. CWA is right that the merger will permit MCI WorldCom to be a more effective competitor, but it is wrong in concluding that increased local competition is bad for consumers or for universal service. Not only is that argument contrary to the established policies of the Commission and the 1996 Act, it misses the point that local competition will drive down the price of local services for all consumers and thereby make telephone service more affordable and more universally available. To the extent that service to some customers should be subsidized to keep rates affordable, these subsidies should be provided through the reform of universal service that is underway, not by suppressing local competition, whether by blocking a procompetitive merger or otherwise.

CWA alleges that universal service will be undermined in two ways: (1) the diversion of local exchange service to businesses from the public switched network to a private CLEC network will drain resources available to ILECs for their universal service obligations, *CWA Comments* at 26-27; and (2) by having ubiquitous networks on which CLECs can provide local exchange and exchange access service, CLECs will be able to bypass the access charge regime that compensates LECs for the use of their local exchange facilities. *Id.* at 27-31. Although it does not appear that these observations arise from the merger itself, CWA's argument rests entirely on the faulty foundation that universal service support is implicit in local business rates and in access charges. Under the 1996 Act and the Commission's *Access Charge Reform Order*,[27] these implicit subsidies are to be eliminated and replaced with explicit subsidies.

The 1996 Act requires that "there should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service,"[28] and that "[a]ny such support should be explicit and sufficient to achieve the purposes of this section."[29] As a result of this mandate, the Commission, in its *Access Charge Reform Order*, adopted rules to make universal service support explicit and eliminate implicit subsidies. With respect to the interstate contribution to universal services, the universal service support revenues generated from access charges have been replaced by a new Universal Service Fund. Contributions to the Fund are to be made by MCI WorldCom and other providers of interstate telecommunications services based upon their end-user intrastate, interstate and international telecommunications revenues. Because state funding mechanisms for universal service based upon intrastate revenues must also be made explicit, the implicit subsidies contained in intraLATA toll, local business line and other local exchange service rates must also be replaced by explicit funding mechanisms.

As these explicit funding mechanisms become fully implemented, access charges are to be reduced to cost, thereby eliminating the implicit subsidy for universal service. Consequently, the

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[27] In the Matter of Access Charge Reform, *First Report and Order*, CC Docket No. 96-262 (rel. May 16, 1997) (*"Access Charge Reform Order"*).

[28] 47 U.S.C. § 254(b)(5).

[29] 47 U.S.C. § 254(e).

implicit subsidies that CWA fears will be lost as a result of the MCI WorldCom merger will in fact be replaced by explicit subsidies. As the second-largest provider of interstate telecommunications services in the country, MCI WorldCom expects to pay a substantial share of its interexchange revenues to support universal service.

The Commission also intends to rely on competition provided by CLECs to determine the proper rates for local exchange access free of implicit subsidies.[30] The fact that ILECs will lose customers, and the revenue generated by those customers, to CLECs in a competitive market was clearly contemplated by the 1996 Act, the *Universal Service Order,*[31] and the *Access Charge Reform Order.* However, revenue losses of ILECs will not jeopardize the provision of universal service because the 1996 Act and the *Universal Service Order* ensure that universal service will be maintained through explicit subsidies to eligible telecommunications carriers, including ILECs. CWA's fears over the loss of universal service funding are simply unfounded, and in any event, would not be caused by the merger of two non-dominant competitive telecommunications carriers.

CWA argues that the transition from a system of implicit subsidies to the explicit subsidy regime contemplated by the 1996 Act will not happen immediately, and that the merger will "undermine the economics of the transition." *CWA Petition* at 29. That argument conflicts with the Commission's standard for assessing mergers, under which the Commission looks to the effect of the merger on the assumption that the 1996 Act will be implemented. *Bell Atlantic/NYNEX Order, supra* note 3, ¶ 98. Under this principle, the fact that this merger will hasten the

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[30] *Access Charge Reform Order*, *supra* note 27, at ¶ 7.

[31] In the Matter of Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 12 FCC Rcd. 8776 (rel. May 8, 1997) ("*Universal Service Order*").

implementation of the competitive regime envisioned by the 1996 Act -- a regime under which the subsidy for universal service is explicit rather than implicit -- is a favorable consideration. Moreover, the CWA's argument ignores the fact that funding for explicit universal service subsidies has already reached significant levels.[32] CWA's argument that the Commission should withhold approval of the merger because it will hasten the arrival of the competitive local exchange market envisioned by the 1996 Act turns the Act completely on its head.

III. THE MERGER WILL NOT HARM, AND CAN ONLY ENHANCE, VIGOROUS COMPETITION IN THE INTEREXCHANGE MARKET.

As demonstrated in the Application, the merger will produce procompetitive synergies and efficiencies resulting in better services at lower prices in interexchange as well as local markets. The expanded and accelerated local reach of the merged company will benefit its long distance customers, by producing significant access charge savings that will result in lower long distance prices, and by enabling MCI WorldCom to provide integrated packages of innovative services including local, long distance, data, wireless, and international telecommunications services. Moreover, integration of the long distance operations will permit MCI WorldCom to achieve savings in designing and operating its long distance network and in procuring the equipment and facilities needed to run it. Lower costs, including lower costs of capital, mean lower prices and increased ability to make the investments needed for further innovation and continued growth.[33] Moreover,

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[32] The Commission has established contribution factors for the first quarter of 1998 at a level designed to produce a total universal service contribution of $884.4 million. *First Quarter 1998 Universal Service Contribution Factors Revised and Approved*, CC Docket No. 96-45 (rel. Dec. 16, 1997).

[33] The tremendous potential for cost savings belies BellSouth's suggestion that the "astronomical" WorldCom is paying for MCI reflects the possibility of anticompetitive market

because MCI's and WorldCom's retail businesses are largely complementary, with MCI stronger in direct residential and larger business sales and WorldCom stronger with small and mid-sized business customers, the merger of these two companies will blend and reinforce their respective strengths.[34]

Against these important sources of improved efficiency and complementarity, only three principal petitioners -- GTE, Bell Atlantic, and BellSouth -- suggest that the proposed merger will have anti-competitive effects in the long distance market. It is notable who has not weighed in to oppose the merger, especially -- given these petitioners' purported concerns about the competitiveness of the wholesale market -- the large number of sophisticated resellers that are both customers of and competitors to MCI and WorldCom. Moreover, consumer representatives have agreed that the merger will not harm long distance competition.[35] Instead of knowledgeable

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power. *See BellSouth Petition* at 1. In fact, the premium paid reflects both the opportunity for significant savings described above and, more importantly, the recognition that the merged company will be a more formidable competitor in the efforts to break the local monopolies currently possessed by the BOCs and other ILECs. *See* Carlton/Sider Decl. ¶ 6 ("[a]vailable evidence suggests the transaction creates potentially large benefits to consumers by enhancing the likelihood of timely and significant entry into the provision of local exchange services").

[34] *See, e.g.*, *GTE Petition* at 25 (noting that "[WorldCom's] own brand name is largely unrecognized in the retail mass market"); *Petition to Deny the Application of WorldCom or in the Alternative To Impose Conditions* of Bell Atlantic in CC Docket No. 97-211, at 14 (filed Jan. 5, 1998) ("*Bell Atlantic Petition*") and AuBuchon Aff. ¶4 (discussing MCI's strength in value-added business services).

[35] Protest of the Office of Ratepayer Advocates, at 4 ("While the combined company will have a greater market share in the interexchange market, WorldCom/MCI will have to continue to price aggressively to maintain or to increase its market share."), *In re Application of WorldCom, Inc. and MCI Communications Corporation for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.*, Docket No. A.97-12-010 (filed Jan. 7, 1998, Public Utilities Commission of the State of California). Some advocacy groups have, of course, filed petitions opposing the merger. These petitions, however, generally reflect particularized concerns about the

customers without any axe to grind, the primary opponents of the long-distance aspect of the merger are GTE, a disappointed bidder and competitor that still hopes to acquire MCI if it can torpedo the merger, and a pair of BOCs, BellSouth and Bell Atlantic, which misuse this proceeding primarily to advance their agenda to provide in-region interexchange services without having to comply with the requirements of Section 271. The general acceptance of the merger by consumers with no ulterior motive speaks more eloquently than the self-serving submissions from GTE and the BOCs ever could.

Unsurprisingly, the arguments against the merger set forth in these petitions are internally inconsistent, *see, e.g.*, *BellSouth Petition* at 17-18, 23-24 (arguing both that the long distance market is characterized by excess profits and that the merged company will nonetheless abandon large segments of the business), and wholly baseless. The GTE and BOC submissions begin with the false premise that the long distance market is not vigorously competitive, and end with the equally flawed conclusion that the merger will further reduce competition. Section III.A sets forth the facts that make clear that competition is already intense in this market, where growth opportunities and declining costs have attracted and continue to attract substantial facilities-based entry. Section III.B demonstrates that the merger will not reduce competition because the merger will not change the basic structure and dynamics of the market, including low barriers to entry. Sections III.D and III. E. demonstrate that the merger will not reduce competition for residential consumers or for facilities-based and switchless IXCs that purchase interexchange service for resale.

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effects of the merger, including its effect on the minority community. These issues are important, but, as demonstrated below, *see infra* Section VI.A, the merger creates no cause for concern.

A. **The long distance market is currently competitive.**

The fundamental premise of the GTE/BOC oppositions is that the long distance market is not competitive. *See, e.g., GTE Petition*, at 16 ("The long distance market already is beset by cooperative rather than competitive pricing"); *BellSouth Petition* at 7 ("Long distance market is highly concentrated and not performing competitively"). That premise is false.

As Robert E. Hall, Professor of Economics at Stanford University, has concluded, "the long distance industry is substantially competitive," *See* Declaration of Robert E. Hall ¶ 32, attached hereto as Attachment C, resulting in "benefits to the consumer in the form of substantial reductions in the price of long-distance service as well as numerous technical improvements and the development of new services," Hall Decl. ¶33. Real average revenue per minute for long distance carriers has declined substantially since the divestiture of AT&T, and it continues to fall. *See* Hall Decl. ¶38. More importantly, and contrary to the assertions of BellSouth and GTE, *see BellSouth Petition* at 13; *GTE Petition* at 18-19, real long distance prices have fallen even when access charges are netted out. *See* Hall Decl. ¶¶40-43.[36]

In an effort to refute these compelling indicia of competition, GTE and the BOCs rely heavily on the concentration in the industry. *See GTE Petition* at 12-13; *BellSouth Petition* at 8-9. This reliance is misplaced. First, the analysis of GTE and the BOCs focuses insufficient attention on the

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[36] Nor is there any merit to the argument that, to the extent that low-volume purchasers pay more for long distance service, it is an indication of a lack of competition. Instead, any higher price reflects the economic reality that the costs of obtaining and serving these customers are higher. *See* Hall Decl. ¶ 57; *see also id.* ¶¶ 57-60. Professor Hall also conclusively refutes the contentions of Professors Hausman and Schmalensee in the affidavits attached by petitioners. *See generally* Hall Decl. ¶¶ 115-116 (responding to Prof. Hausman); *id.* ¶¶ 117-122 (responding to Prof. Schmalensee); *cf.* Carlton/Sider Decl. ¶ 30.

"other" carriers category, a category that BellSouth even affirmatively excludes from consideration, *see BellSouth Petition* at 10 n.19. According to the most recent figures from the Commission, this category accounted for over 12.1% of presubscribed lines in 1996. *See* J. Zolnierek & K. Rangos, *Long Distance Market Shares-Third Quarter 1997*, Table 2.2 (FCC Common Carrier Bureau, Industry Analysis Division, Jan. 1998). This category comprises over 600 competitors, at least 20 of whom have annual revenues over $100 million, and several of whom have revenues exceeding $1 billion, including LCI, Excel, Frontier, and GTE. *See id.* at 4 and Table 3.1. Smaller companies, too, can and do compete cost-effectively against larger carriers.

Second, and more important, GTE's and the BOC's static view obscures the increasing competitive importance of this "other" category. This group is the fastest growing segment of the industry with annual growth rates *exceeding 40 percent* (*see id.* at Table 2.3) -- and this growth does not include the several carriers that began building huge new national networks within the last few years and are now beginning to carry revenue-generating traffic. *See infra* pp. 35-37. These statistics are not surprising to anyone familiar with the industry. As explained below, all IXCs have access to long-distance capacity at competitive prices, dozens of long distance carriers own facilities and can expand their facilities-based networks at relatively low and decreasing cost, and new competitors can become important market participants virtually overnight.[37]

[37] As Professor Hall makes clear, the fact that AT&T's dwindling market share has not yet dropped below 50% provides no reason to doubt the competitiveness of the industry. *See* Hall Decl. ¶¶ 63, 66-67.

B. The merger will not reduce -- and will in fact enhance -- competition in the long distance market as a whole.

As WorldCom demonstrated in its initial application, the merger will not reduce -- and will in fact enhance -- competition in the already vibrantly competitive long distance market. Approval of the proposed transaction will enhance competition by "increasing the resources, facilities, and personnel available to the combined company and [by] allowing it to take optimal advantage of operational synergies, cost savings, and complementary service offerings." Application at 29-30. The merger will enable MCI and WorldCom to "create a preeminent provider of one-stop-shopping advanced communication services." *Id.* at 29; *see also* Hall Decl. ¶ 95 (noting efficiencies resulting from the merger); Carlton/Sider Decl. ¶12-14 (discussing financial market's endorsement of savings projections).

In their oppositions, GTE and the BOC petitioners nevertheless suggest the merger will reduce competition in the long distance market. It bears emphasis that although the sole issue in this proceeding is the effect of the merger, these petitioners offer no economic testimony addressing that issue, and instead recycle affidavits submitted in another proceeding not involving the instant merger.

Instead of evidence, petitioners rely primarily on a mechanical analysis of market concentration measured by the HHI. Even on its own terms, the flaws of GTE's static analysis of HHI are immediately obvious. Under GTE's analysis of the interexchange market, the merger of the second- and fourth-largest long distance carriers presumptively creates or facilitates the exercise of market power. In fact, just such a merger has already occurred, and at time when concentration measured by HHI was higher: in 1990, MCI (which was then the second-largest interexchange carrier) acquired Telecom*USA (which was then the fourth-largest IXC).[38] Despite this acquisition, the market for long distance services remained vibrantly competitive, and indeed the HHI of the industry declined, as it has in every year since 1984. *See Long Distance Market Shares-Third Quarter 1997*, Table 3.2; Hall Decl. ¶66.

More important, petitioners' approach, with its slavish reliance on HHIs, is facially deficient. Neither the Commission nor the U.S. Department of Justice ("DOJ") has ever suggested that mergers that do not fall within the Merger Guidelines' safe harbor are necessarily anticompetitive. *See, e.g.*, *Bell Atlantic/NYNEX Order, supra* note 3, ¶ 136. Instead, the Commission and the DOJ have consistently made clear that calculation of market concentration based on HHI is the first, not the last, step in the analysis. *See* Carlton/Sider Decl. ¶ 31, 32; Hall Decl. ¶¶ 2, 61. Only by fully considering the economic realities of the market can the Commission make any realistic assessment of the anticompetitive effect of any proposed merger.[39] *See* Carlton/Sider Decl. ¶¶ 32-33. For example, even if the HHIs are high, a merger may be unlikely to create or enhance market power or facilitate its exercise when understood in the context of "recent or ongoing changes in the market" and of merger-generated efficiencies that enhance competitiveness.[40] The context is particularly

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[38] *See In re Applications of Telecom*USA, Inc., Transferor and MCI Communications Corporation, and MCI Capital, Inc., Transferees, For Consent to the Transfer of Control of SouthernNet Systems, Inc., SouthernNet of South Carolina, Inc., Teleconnect Long Distance Services & Systems Company, TS Communications, Inc., Teleconnect Company, and Southland Telephone Company*, FCC DA 90-1018, 5 FCC Rcd. 4857 (1990).

[39] The Merger Guidelines explicitly warn against GTE's approach: "Because the specific standards set forth in the Guidelines must be applied to a broad range of possible factual circumstances, mechanical application of those standards may provide misleading answers to the economic questions raised under the antitrust laws." Merger Guidelines, ¶ 0.

[40] *See* Merger Guidelines ¶¶ 1.52, 1.521, and 4.0.

crucial in a dynamic industry such as telecommunications, where companies that stand in place can quickly lose market share to more agile competitors.[41]

Despite this, petitioners present no evidence other than their HHI figures to support their claim that competitive conditions would change so as to reduce competition after the proposed merger. *See* Carlton/Sider Decl. ¶ 31.[42] A complete understanding of the marketplace makes clear that the MCI WorldCom merger will have no anticompetitive effect. In particular, as we explain below, (1) the merger will not affect the ability of firms easily to enter and expand in this market, and (2) the merger will cause no increased likelihood of collusion.

1. Significant entry will continue with or without the merger.

Under the Merger Guidelines on which the FCC and petitioners have relied, it is necessary to examine the ease and likelihood of entry. As the Merger Guidelines indicate, "[i]n markets where

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[41] *See Bell Atlantic/NYNEX Order*, *supra* note 3, ¶ 136 ("Because the telecommunications industry has a relatively unique history and is characterized by economic, legal, and technical circumstances that are not shared by many other industries, we generally conduct our own expert analysis developed through our experience dealing with telecommunications and competition policy. We still use tools of general application, but we are not bound by rigid adherence to their results where our independent expert analysis produces differing outcomes.")

[42] GTE professes concern about the impact of the merger on competition to provide bundled services. *GTE Petition* at 47-48. As the Commission has recognized, any market consisting of bundled local and long-distance services "is still nascent in most markets and nonexistent in many others" *Bell Atlantic/NYNEX Order, supra* note 3, ¶ 52, so competition in any such market can only increase. GTE's concern is expressly predicated on "a growing local presence," *GTE Petition* at 48, and the merger will indeed permit that presence to grow faster than it otherwise would. *See supra* Section II. And as MCI WorldCom's local presence expands, so too will that of its competitors, and when local competitors have broken the BOCs' current bottlenecks, the BOCs will be able -- as GTE is now -- to offer bundles themselves. Able now to offer bundled local and long-distance service to a large local customer base without meaningful competition, GTE is trying to lengthen its head start, and its real concern is that the merger will help increase, not decrease, competition against it on equal terms.

entry is easy . . . , the merger raises no antitrust concern and ordinarily requires no further analysis."[43] Indeed, the principle that such entry completely forestalls any anticompetitive concerns is the linchpin of the BOCs' submissions.[44] Despite the centrality of entry analysis to the assessment of the competitive impact of the merger, the BOCs and GTE omit any substantive discussion of the large-scale entry and dramatic increases in wholesale capacity in the United States. *See* Carlton/Sider Decl. ¶ 50.

In the long distance market, additional entry is both easy and certain to occur. As shown below, competition at the wholesale level to provide services to interexchange carriers is robust and will not be affected by the merger. Interexchange carriers will therefore continue to purchase interexchange services -- including switched services purchased by switchless resellers, and transmission capacity (private lines) purchased by carriers to use with their own switching capacity -- at cost-based rates that entail little or no sunk cost. New entrants can therefore quickly acquire the facilities they need to compete.

Significant new facilities-based entry thus will continue to occur as the interexchange market continues to grow and the costs of constructing capacity continue to decline; any merger-related (or non-merger-related) decrease in wholesale competition would only cause facilities-based entry to

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[43] Merger Guidelines ¶ 3.0.

[44] The BOCs acknowledge that new entry will eliminate any alleged competitive problem that the merger would create, but suggest that they are the only potential entrants that will provide the competitive cure. Of course, new entry does not have to be by the BOCs to have procompetitive effects. In fact, as Professor Hall makes clear, contrary to the BOCs' claims, *see, e.g.*, *BellSouth Petition* at 24, entry by the incumbent LECs (like SNET) at this stage is unlikely to have a significant procompetitive impact on the long distance market. *See* Hall Decl.¶83-86. The DOJ confirms that the BOCs significantly overstate the benefits of their entry. *See* Supplemental Affidavit of Marius Schwartz (submitted by DOJ in South Carolina Section 271 proceeding).

accelerate. In the last twelve months alone, a number of carriers -- including Qwest, IXC, Williams Co., and Level 3 Communications ("Level 3") -- have started to construct national fiber networks, or announced plans to expand significantly. *See*, *e.g.*, Hall Decl. ¶ 12.

- Qwest, with a market capitalization of nearly $6 billion, is constructing a 16,000 mile nationwide fiber optic transmission network, to be completed by early 1999, and has already acquired 94 percent of the necessary rights-of-way for this network. The Qwest network is expected to reach 125 cities throughout the United States.[45] Qwest's proposed network will be about 30 percent longer than the existing WorldCom network.[46] Qwest states that its network is "designed to be the highest-capacity digital infrastructure in the world" and "can carry more than any other U.S. long-distance network."[47] Qwest has entered into long-term contracts to provide substantial amounts of capacity on its nationwide network to other carriers, including GTE. (Indeed, GTE conveniently omits any mention of the capacity it will own on the Qwest network even though it is the foundation of its national network that it claims will be "100 times bigger than today's Internet."[48]) *See generally* Carlton/Sider Decl. ¶ 53-57.

- IXC is another recent facilities-based entrant into the market. IXC has achieved a market capitalization of over $1 billion based on its plans to construct a 20,000 mile digital (fiber optic and microwave) network by 1998-99, a significant portion of which has already been

[45] *See* Qwest's website at <http://www.qwest.net/networkframe.html> for a map of the network. Additional details on network construction, arrangements with other carriers, and the company's plans are available at <http://www.qwest.net/pressframe.html>.

[46] As of 1996, WorldCom operated 12,060 route-miles of fiber optic lines. *See* J. Kraushaar, *Fiber Deployment Update End of Year 1996*, Table 1 (FCC Common Carrier Bureau Industry Analysis Division, 1997) <http://www.fcc.gov/ccb/stats>.

[47] *See* <http://www.qwest.net/whoframe.html>.

[48] Qwest has leased 24 dark fibers along its entire route to GTE and 24 fibers to other carriers, and intends to retain 48 fibers (plus a spare conduit for future expansion) for its own use. Press Release, "Qwest announces major fiber sale to GTE; GTE Corp. to acquire dark fiber in new Qwest network," May 5, 1997, <http://www.businesswire.com/>. *See* advertisement of GTE, appearing in *The New Yorker*, Oct. 20 & 27, 1997, at pp. 22-23. *See also* advertisement of GTE, appearing in *The Washington Post*, Jan. 7, 1998, at A11.

constructed. IXC has already entered into a number of facility leases with major carriers assuring it of a substantial revenue stream.[49] *See generally* Carlton/Sider Decl. ¶ 53-57.

- Williams currently has an 11,000-mile system (which it claims makes it the fifth largest fiber optic network in the country) and has announced plans to expand that network to 18,000 miles by the end of the year and ultimately to 25,000 miles. Williams has also announced some $1 billion worth of long-term customer agreements for capacity on that network.[50]

- Level 3 recently announced plans to spend $3 billion to build a global Internet-based local and long-distance network. Level 3's network is expected to encompass 20,000 route miles. Completion is planned in late 1999.[51]

The competitive significance of these new networks is further magnified by the number of firms that will own and operate significant capacity on them. *See* Carlton/Sider Decl. ¶ 56. Qwest has sold significant portions of its network to Frontier and GTE, and IXC has sold capacity to WorldCom, LCI, Vyvx, Inc., MCI, DTI, Consolidated Communications Telecom Services, and GST. *See* Carlton/Sider Decl. ¶ 41. Nor are these national facilities-based carriers the only significant new entrants. Significant facilities-based entry is also occurring at the regional level, where companies such as Norlight Telecommunications, Minnesota Equal Access Network, Iowa Network Services, KIN Network and others have banded together. *See* Carlton/Sider Decl. ¶ 43.

These new facilities-based competitors take advantage of the decreasing unit cost of constructing new fiber networks or expanding existing ones. Arrangements like that used by Qwest in which a number of carriers share the costs of laying large quantities of fiber have significantly

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[49] *See* <http://www.ixc-investor.com/press.html>.

[50] *See* Fiber Optics News, "Williams Reincarnates Carrier's Carrier Business," Jan. 12, 1998. Williams' reentry followed the expiration of the non-compete agreement it entered into following the January 1995 sale of much its fiber network to WorldCom. *See id.*

[51] *See* Carlton/Sider Decl. ¶ 59.

reduced the costs to individual interexchange carriers of laying cable to create national networks. Moreover, new and existing competitors can dramatically expand their network capacity without acquiring an additional mile of fiber. Rapid improvements in electronics, including developments in multiplexing and laser technology, enable new and existing competitors to increase exponentially the amount of traffic that a single strand of fiber can carry, allowing rapid expansions of a carrier's network capacity. The rapid growth of interexchange usage for voice and data services spurred by dramatic declines in price has created an enormous market more than sufficient to support multiple carriers, including multiple facilities-based carriers. *See* Hall Decl. ¶ 16.[52] In sum, there is no shortage of facilities-based contenders -- and no shortage of capital for those contenders to draw on, *see* Hall Decl. ¶¶ 14, 24 -- competing for market share in the burgeoning telecommunications industry.

The same factors that have produced such significant entry in past years make it inevitable that new entry will continue to occur for the foreseeable future. The Commission's implementation of the World Trade Organization ("WTO") Agreement will make it easier for foreign carriers, attracted by the size and openness of the burgeoning long-distance market in the United States, to pursue their global expansion plans.[53] The Commission indicated in the *Bell Atlantic/NYNEX Order*

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[52] GTE's contention that new entry is likely to be deterred by excess capacity in the long distance industry is frivolous. *See GTE Petition* at 23, 14 n.31. Rather than deterring entry, such excess capacity *encourages* entry by providing a means of rapid expansion that keeps the market competitive. *See* Carlton/Sider Decl. ¶ 60. Moreover, the suggestion that entry is being deterred simply cannot be seriously maintained in light of the significant new entry described above that has characterized the industry in the last decade.

[53] *See* Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, *Report and Order and Order on Reconsideration*, IB Docket No. 97-142, FCC 97-398 (rel. Nov. 26, 1997) ("*Foreign Carrier Participation Order*").

that merger analysis should "examine not just the markets as they exist today, but as [the Commission] expect[s] they will exist after a Bell Company receives authorization to provide in-region interLATA services" -- in addition to the out-of-region and specified in-region services they currently provide.[54] The Commission is well acquainted with the BOCs' relentless desire to offer in-region interexchange services.[55] The *Wall Street Journal* recently reported that "[t]he Bells plan a jihad in long distance."[56] In addition, non-traditional competitors such as electric power companies and gas companies (some of whom are constructing and operating their own networks) will also be able enter and exploit any competitive opportunity left open by existing competitors.[57]

The experience of MCI and WorldCom confirms the absence of significant entry barriers. When MCI broke into the long-distance business, it proved wrong the then-conventional wisdom that high entry barriers and economies of scale precluded competition. Five years ago, few had

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[54] *Bell Atlantic/NYNEX Order, supra* note 3, at ¶ 7.

[55] BellSouth's suggestion that the merger should somehow accelerate BOC entry into in-region long-distance services is bizarre. Having failed to persuade the courts, Congress, or the Commission to permit them to enter long distance markets while their local bottlenecks remain intact, the BOCs now try to delay a merger that promises to accelerate the pace and scope of local competition. Moreover, as the BOCs well know, they control the timing of their entry in the interexchange market: when the BOCs open up local markets to competition and local competition takes root, they will be able to meet the requirements of Section 271. ICP/COM argues that it is anticompetitive for parties like MCI and WorldCom to urge this Commission and state commissions to keep the BOCs out of long distance until they comply with the requirements of the 1996 Act. *Petition to Deny* of Inner City Press/Community on the Move in CC Docket No. 97-211, at 6 (filed Jan. 5, 1998) ("*ICP/Com Petition*"). The appropriateness of MCI's and WorldCom's advocacy cannot seriously be questioned, especially since the Commission has agreed in the three applications on which it has ruled that the BOCs have not satisfied the statutory requirements.

[56] *Wall Street Journal*, Jan. 16, 1998, at C2.

[57] *See* Carlton/Sider Decl. ¶ 61.

heard of WorldCom (then LDDS), and no one included it in the top tier of interexchange carriers. As recently as 1994, WorldCom was one of "a handful of companies running neck-and-neck for fourth place in the competitive long distance market."[58] Since that time, WorldCom has distinguished itself from the pack so successfully that GTE now describes WorldCom as part of "the Big 4." *See GTE Petition* at 14; *see also Long Distance Market Shares - Third Quarter 1997*, at 9, Table 2.2, (showing WorldCom's share of presubscribed lines growing from 0.1% in 1991 to 2.7% by the end of 1996).

Petitioners point to nothing to indicate that it is more difficult today than it was in the recent past to follow a strategy of initial entry through resale followed by increasing investment in switching and transmission capacity. *See* Hall Decl. ¶ 69. As shown by the success of MCI, WorldCom, and myriad other interexchange carriers that began as switchless resellers and now have substantial networks, it is becoming easier, not harder, to become a facilities-based interexchange carrier. *See* Hall Decl. ¶¶ 70-72 (discussing the absence of barriers to entry). Indeed, even a cursory glance at the current market reveals the rapidity with which new competitors can emerge as significant market forces. The annual operating revenue of VarTec Telecom, for example, grew from virtually zero in 1993 to $470 million in 1996; LCI's annual operating revenues grew from $317 million in 1993 to over $1.1 billion in 1996. *See Long Distance Market Shares - Third Quarter 1997*, at 13 (Table 3.1). Experience shows that the long distance business can easily support a large number of national facilities-based carriers, and several substantial new entrants obviously believe that it can support even more. *See also* Hall Decl. ¶18.

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[58] *Washington Post*, "Long-Distance Firm Bids to Grow," Aug. 23, 1994, at D1.

In sum, there is simply no basis for GTE's claim that MCI WorldCom will have the ability or incentive to raise long-distance prices and restrict output. Even if MCI WorldCom tried to do so (and no such attempt would occur), existing competitors would seize the opportunity to capture business; and if the attempt were even partially successful (and it could not be) the increased profitability of the long distance business would only induce more of the facilities-based entry that experience demonstrates is, and continues to be, feasible.[59] *See* Carlton/Sider Decl. ¶ 51. Indeed, the only way GTE can come to the contrary conclusion is to completely ignore in its petition any mention of Qwest, IXC, and Williams, an omission that is particularly striking given GTE's affiliation with Qwest described above.

C. The merger will not increase the likelihood of collusion.

GTE and the BOC petitioners raise concerns that the merger will effect a significant change in the structure of the market for long distance services and thereby "aggravate the tendency toward coordinated interaction." *GTE Petition* at 19; *see also BellSouth Petition* at 11-12. Both the premise and the conclusion are unfounded. *See generally* Carlton/Sider Decl. ¶¶ 48-62.

The competitive performance and easy entry of the current interexchange market demonstrate that no such coordinated interaction occurs today notwithstanding the concentration levels emphasized by GTE and the BOCs. And none would occur post-merger both because the continued ease of entry and because the market structure pre- and post- merger will remain substantially the

[59] The BOCs suggest that the movement in stock prices of all interexchange carriers after the merger announcement demonstrates that the merger is bad for competition. *See, e.g.*, *BellSouth Petition* at 18. The BOCs cite no evidence or analysis to support this suggestion. Nor could they because "the general pattern of changes gives no support to the hypothesis that Wall Street viewed the merger as anticompetitive." Hall Decl. ¶¶ 100, 113.