same. *See* Carlton/Sider Decl. ¶ 62. According to the latest available FCC figures, in the market for long distance services, WorldCom has only 2.7% of presubscribed lines,[60] and the merger would thus raise the merged company's share of such lines only from 14.5% to 17.2%. The merger will thus not alter MCI's position as the number two firm in the industry either in absolute terms[61] or relative to AT&T, which maintains a market share of 50 percent based on revenue (and an even greater percentage of presubscribed lines), which will still be twice the size of MCI WorldCom. Nor will the merger affect the existence and importance of the most notable element of the industry's structure, the "other" category, which accounts for upwards of 20 percent of interexchange revenues and is growing at an annual rate of over 40 percent. *See supra* pp. 29-30. In sum, the market structure post-merger is unlikely to differ in significant ways from the competitive pre-merger market structure.

Moreover, to the extent that long distance services are becoming a commodity bought and sold at publicly available prices, any attempted price increase through tacit collusion (pre- or post-merger) would simply attract additional entry that would bring prices back to competitive levels. *See* Hall Decl. ¶¶ 68-69. To the extent that long distance services are highly differentiated products sold to large customers at non-published prices, tacit coordination would be impossible to achieve and enforce. In fact, both retail and wholesale customers often purchase interexchange services under long-term contracts tailored to their individual needs. Wholesale contracts are not publicly filed,

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[60] *Long Distance Market Shares-Third Quarter 1997*, Table 2.2.

[61] Bell Atlantic's concern that "WorldCom and MCI together will be the second largest long distance company in the United States,"*Bell Atlantic Petition* at 13, is hard to understand. MCI is *already* the second largest long distance company in the United States, and thus the merger will not affect its position.

and the terms and conditions of retail contracts are published only after the fact. *See* Hall Decl. ¶¶ 21, 24. Tacit collusion in these circumstances is extremely difficult, and in fact the Commission has acknowledged the intense competition that occurs to provide these services.[62]

Nor will the likelihood of tacit collusion be enhanced by the elimination of any pricing "maverick." First, there is no basis for GTE's and the BOCs' portrayal of WorldCom as a "maverick" compared to MCI. WorldCom does pride itself as a vigorous competitor on both price and service. But MCI's prices are competitive with WorldCom and other large and small interexchange carriers, and MCI has taken the initiative on several major price reductions. And, as discussed in Section D, MCI sells service to resellers on a scale comparable to WorldCom. In sum, both MCI and WorldCom were forged in the same crucible of competition, and MCI WorldCom will carry on the maverick traditions that each company has epitomized and continues to epitomize.

The structure, performance, and dynamics of the industry thus confirm that no tacit collusion occurs now, and none will emerge post-merger.

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[62] *See, e.g.*, In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier, 11 FCC Rcd. 3271, 3318 (1995) ("*AT&T Domestic Non-Dominant Carrier Order*"); In the Matter of Competition in the Interstate Interexchange Marketplace, 8 FCC Rcd. 3668, 3671 (1993); In the Matter of Competition in the Interstate Interexchange Marketplace, 6 FCC Rcd. 5880, 5887, 5991 (1991). There is no merit to BellSouth's suggestion that the *Bell Atlantic/NYNEX Order* announces a general rule that the merger of two of the five most significant market participants necessarily increases the potential for collusion. *BellSouth Petition* at 16. Instead, the Commission found it "not unreasonable to conclude" that there was a high risk of coordinated interaction in local markets, relying heavily on the ILEC's control over essential inputs that give it the power to discipline uncooperative firms. *Bell Atlantic/NYNEX Order, supra* note 3, ¶ 122. This factor is wholly absent from the interexchange market.

D. The merger will not reduce residential competition.

The FCC has found that the long distance business includes several segments, including one segment that includes residential consumers.[63] Perhaps the clearest example of the internal inconsistencies and implausible arguments that mark GTE's and the BOCs' petitions involves this residential market. GTE and the BOCs argue both (1) that residential markets are uncompetitive, with the prices charged far exceeding the costs of serving the customers, *see GTE Petition* at 18-19; *BellSouth Petition* at 23-24, and (2) that the merged company is likely to abandon the residential market, *see BellSouth Petition* at 17-18. Petitioners never attempt to explain how both of these propositions can be true -- why MCI and WorldCom would abandon a business that in petitioners' view is returning oligopoly profits. *See* Hall Decl. ¶ 100; Carlton/Sider Decl. ¶ 39.

In fact, neither proposition is true. First, the residential market is vigorously competitive, and second, MCI and WorldCom have absolutely no intention of abandoning this market. In fact, the merged company has compelling reasons to continue to compete in this market, none of which

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[63] *See Bell Atlantic/NYNEX Order, supra* note 3, ¶ 53. The Commission also included small businesses in this segment, but because the petitions focus on residential customers, so will we, although the same analysis applies to both groups. The Commission's approach to market definition focuses on demand-side substitutability, but supply-side substitutability must, at a minimum, be considered in determining the number and significance of competitors in a market defined only in terms of demand. *See* Hall Decl. ¶ 4. As explained above, the retail businesses of MCI and WorldCom are generally complementary. In any event, to the extent that MCI and WorldCom have higher combined shares in some segments than in others, the merger will not produce anticompetitive effects for the reasons discussed above, including entry from competitors who compete primarily in other segments but who can easily compete in additional new segments, from existing competitors expanding capacity, and from new facilities-based entrants. The merger of MCI and WorldCom will thus not permit the merged company to profitably increase prices above competitive levels in any segment.

has anything to do with the existence of oligopoly profits and which instead have everything to do with effective and efficient competition.

1. Residential competition is vigorous.

The suggestion of GTE and the BOCs that the market for residential customers is not competitive is meritless. As Professor Hall establishes, residential consumers enjoy as much competition as other types of long distance purchasers. *See supra* Sectin III.A. One indicator of dog-eat-dog competition for residential consumers is the tremendous rate at which residential customers change interexchange carriers: this Commission has noted that there were expected to be some 30 million carrier changes in 1995 alone,[64] and this number has only grown in the ensuing years. *See* Carlton/Sider Decl. ¶ 46. Moreover, these numbers substantially understate the true level of competition because they do not account for the recent surge in "dial around" services, which permit customers to use alternative carriers without having formally to change carriers.[65] Numerous interexchange carriers -- both facilities-based carriers and non-facilities-based resellers -- market to residential customers, and those that have chosen to focus on business customers, which buy the same services that residential consumers buy, could easily make these services available to residential customers. *See* Carlton/Sider Decl. ¶ 38. In fact, this ease of entry is demonstrated by the extremely rapid growth that new entrants to this market have achieved. For example, between December 1994 and December 1996, the number of Excel subscribers rose from roughly 75,000 to

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[64] *See AT&T Domestic Non-Dominant Carrier Order*, *supra* note 62, ¶ 63 (1996).

[65] *See, e.g.*, *Orange County Register*, "Off the Hook," Oct. 12, 1997 (quoting estimates that 11.2% of households used "dial around" services for some or all of their long distance calls last year).

3.8 million. *See* Carlton/Sider Decl. ¶ 37. And Telco, a provider of dial-around services, increased its annual income from $1 million in 1993 to $428 million in 1996. *See id.*

In fact, by their words and deeds, the BOCs and GTE make clear their recognition that the residential market is competitive. First, a close reading of the petitions themselves confirms that residential competition is intense. Despite all the BOC rhetoric about neglected and abused residential customers that only they (subsidized) will serve, Bell Atlantic and BellSouth say that they really want to compete for the allegedly "lucrative business customers," *BellSouth Petition* at 4, because long distance business markets are "where the real profits are," *Bell Atlantic Petition* at 15. This strategic focus on business customers belies their rhetoric that the residential market is non-competitive (although the BOCs will eventually learn, if they do not already know, that business consumers benefit from competition every bit as cut-throat as do residential consumers).

Second, if GTE and the BOCs truly believed that residential long-distance consumers are looking for a better choice and that excess profit margins exist, they would presumably compete for such customers outside their home regions, where the BOCs are as free as GTE to provide long distance service.[66] The fact that these ILECs have shown no significant interest in competing for customers outside their local monopoly territories demonstrates how effective residential (and, for that matter, other types of) interexchange competition has been. Moreover, if excess profits truly existed, the BOCs would have had even greater incentive to open their local markets to real competition so that they could take advantage of the opportunities created by the 1996 Act to

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[66] For example, Bell Atlantic's wholesale rate is reportedly 1.5 cents per minute ("Bells, GTE Lay Out Marketing Strategies, Swap Success Stories at New York Conference," *Telecommunications Reports*, Sept. 23, 1996, at 8 - about a 90 percent discount from the standard retail rates the BOCs claim residential customers are paying.

compete in long distance markets. That the BOCs have chosen to try to protect their monopoly profits in the local market rather than enter the long distance market provides further evidence that there are no excess profits to be made in the latter market.

2. The merged company will retain its residential focus.

Despite this intense competition, both MCI and WorldCom are strongly committed to remaining in the residential markets. The residential market has constituted a cornerstone of MCI's and WorldCom's business for years. As petitioners themselves concede, both MCI and WorldCom have been dedicated to serving the residential market, and only their strategies differ: "MCI has focused on the residential market for many years and has millions of residential customers," *BellSouth Petition* at 6, and "WorldCom has followed a strategy of distributing its services through resellers with known brands, such as GTE." *GTE Petition* at 25-26. Indeed, given the tremendous time and expense that has gone into attracting these residential customers, it is hard to understand the logic of petitioners' assertion that the merged company would want to abandon them. *See* Hall Decl. ¶ 94 ("It would be economically irrational for the merged entity not to capture the value of that reputational capital by failing to continue the business.").

In fact, there is no conceivable reason why the merger would diminish this commitment to serving the residential market, and it will not. If it makes sense for MCI and WorldCom individually to pursue residential consumers, it makes sense for MCI WorldCom to do so. It should be obvious that as publicly traded corporations, MCI and WorldCom would not compete so vigorously for residential consumers unless they were making money,[67] and the merged company will have no

[67] Of course, as noted above, if the residential market were characterized by oligopoly prices and profits, see *BellSouth Petition* at 12 -- which it is emphatically not -- MCI and WorldCom would

desire to "jettison," *see BellSouth Petition* at 18, a business that continues to provide reasonable rates of return -- and certainly not to turn over a profitable business to its major competitors, such as AT&T. *See* Carlton/Sider Decl. ¶ 40 ("If it is now profitable to serve such customers, there is no reason to expect that this situation would change as a result of the transaction."); Hall Decl. ¶107 ("if MCI is currently maximizing profits, raising prices or shedding customers would lower, not raise profits").[68]

Moreover, the residential customers are important users of network capacity that would otherwise be idle. Because business customers are heavier users of long distance services than residential customers, interexchange networks are generally designed to handle the peak demands of business customers. As a result, the greatest utilization of the network's capacity comes during business hours on business days. In contrast, the greatest utilization by residential customers generally occurs on evenings and weekends. Residential traffic therefore fills up the network when capacity would otherwise remain idle. MCI and WorldCom are like other IXCs in this respect. MCI WorldCom will therefore have a strong incentive to continue to serve residential customers in order to remain competitive and to spread the fixed costs of its network over a larger customer base, thereby enabling MCI WorldCom to charge lower prices to all customers and to invest more in keeping its network state-of-the-art.

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have even greater incentives to continue to serve it.

[68] Given these reasonable rates of return, there is simply no evidence to support BellSouth's suggestion that Wall Street would want the merged company to spin off long distance service. *See BellSouth Petition* at 17. To the contrary, as long as the residential business continues to generate a reasonable rate of return, one would expect the pressure from Wall Street to be to hold on to this business and to make it grow.

Finally, the residential market provides MCI and WorldCom a broader market for innovative products that may be developed in the first instance for the large volume high-end business customer. These services require substantial up-front investment, and it is more efficient to recover these costs from a broader base of customers. For example, the same research and development efforts that led to advanced 800 services for business customers support personal 800 numbers for residential consumers. By expanding the potential market for each new service, the availability of a significant residential customer base increases the potential returns for new services and encourages and facilitates product innovation and development.[69]

For all these reasons, MCI WorldCom will continue to serve residential consumers as aggressively and competitively as MCI does directly and as WorldCom does through its own direct sales as well as through resellers. The management of both companies is firmly committed to continuing their companies' present commitment to residential service, following the merger.

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[69] Like MCI, MCI WorldCom will also be able to use residential services to meet the needs of its larger business customers. Business customers are more often asking bidders to provide service not only to business locations but to their employees as an employee benefit. By offering residential service to a business customer's employees, MCI can better provide the total package of services sought by the business customers.

In addition, with the expansion of telecommuting and the increasing reliance on the home as place of business, the lines between residential service and business services are blurring. MCI WorldCom will thus have to serve both sectors so as to avoid losing market share in either sector.

E. The merger will not reduce wholesale competition.

GTE and the BOCs also argue that the proposed merger will reduce competition in the "wholesale market."[70] This contention is meritless.

At the outset, it is important to emphasize that, despite petitioners' discussion of wholesale services as if such services constituted a distinct market, no bright line separates wholesale and retail "markets." Wholesale customers buy the same services as retail customers. The clear reason for this is that long distance transmission capacity is fungible (a DS-3 is a DS-3 whether a wholesale or retail customer buys it) and switches perform the same function whether the service is marketed by the owner of the switch or by a reseller. Switch-based and switchless resellers simply buy dedicated and switched services in the volumes that qualify them for the same discounts that large retail customers obtain for basically the same services.[71] The Commission's long-standing prohibition against unreasonable restrictions on the resale of interexchange services complements market pressure to make interexchange services available to resellers on nondiscriminatory terms and conditions.[72]

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[70] Here, as elsewhere, GTE's comments must be taken with a grain of salt. While portraying itself as an exploitable reseller, GTE neglects to mention that it has acquired a large nationwide long distance network of its own. *See supra* p. 35 and note 48. One is left to wonder whether GTE fears the merger will threaten it as a vulnerable customer or instead make MCI WorldCom an even more formidable competitor.

[71] Market definition focuses on demand substitution factors or, simply put, whether consumers could react (by either switching to other products or switching to the same product offered by firms at other locations) if a hypothetical monopolist raised the price of its product. Merger Guidelines ¶ 1.0. GTE offers no economic analysis for the proposition that services offered to interexchange customers are in a different market from the identical services offered to end-user customers by the same interexchange carriers.

[72] *See* In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Domestic Public Switched Network Services, 83 F.C.C.2d 167 (1980), *aff'd sub nom., National Association of Regulatory Utility Commissioners v. FCC*, 746 F.2d 1492 (D.C. Cir. 1984);

In short, from the demand side, resellers have ready access to retail services, including those retail services with large volume driven discounts, and from the supply side, facilities-based carriers that market to retail customers can easily market to resellers. The upshot is that any attempt by MCI or WorldCom to increase prices for wholesale services to a level that produces greater-than-competitive profits would fail. Carriers that do not currently market to resellers would jump at that opportunity, and they can easily increase wholesale sales because the same capacity that is used for retail services can be used for wholesale services and that capacity can be expanded at relatively low cost.

In any event, even if there were a separate "wholesale" market (and there is not), it is a highly competitive business with multiple suppliers.[73] And it is growing more competitive with the entry of significant new carriers that have positioned themselves as carriers' carriers catering to IXC customers. *See supra* p. 35-36 (discussing Qwest, IXC, Williams, and Level 3).[74]

Moreover, any attempt to raise prices to resellers would fail because resellers themselves can build or purchase their own facilities rather than pay inflated prices. A typical path for interexchange carriers -- successfully followed by MCI and WorldCom among others when the market was

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see also In the Matter of Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities, 60 F.C.C.2d 261 (1976), *motion for reconsideration granted in part and denied in part*, 62 F.C.C.2d 588 (1977), *aff'd, AT&T v. FCC*, 572 F.2d 17 (2d Cir. 1978).

[73] Bell Atlantic claims that it "has seen very little wholesale price competition." AuBuchon Aff. at 7. The fact that Bell Atlantic is purchasing long distance services for a 90 percent discount off retail prices is evidence enough of the absurdity of this claim. *See supra* note 66.

[74] GTE's claim that "only the Big 4 IXCs can effectively compete to provide nationwide wholesale long distance capacity for resale," *GTE Petition* at 27, is refuted by GTE's own decision to obtain significant capacity for its nationwide network from Qwest. *See supra* p. 35 and note 48.

dominated by AT&T and much more concentrated than it is today -- was to go into business primarily as a reseller and then, over time, to add their own facilities. In fact, most carriers that buy services for resale own at least some of their own switching and transmission facilities, including significant regional networks, and the cost to these carriers to expand the capacity of their transmission networks through enhanced electronics may be lower than the cost of constructing new networks from scratch, although the per-unit costs of laying fiber are also decreasing as carriers join together to share these costs. *See supra* p. 36. Facilities-based carriers thus could not overcharge significant wholesale customers because many of those customers would simply accelerate construction of their own facilities. Then, having built these facilities, the former wholesale *customer* would be likely to become a wholesale *competitor*, since carriers that choose to build their own facilities often include sufficient capacity to supply not only their own needs but also those of other carriers. The fact that many carriers are currently choosing to build or purchase rather than lease in a competitive wholesale market demonstrates that the option of building and purchasing new facilities constrains wholesale prices.[75]

Given these market conditions, tacit collusion among wholesale providers is out of the question, and petitioners' purported concern about such collusion is misguided. Even putting aside the inducement to new entry that increased prices resulting from hypothetical collusion would create, tacit collusion could not occur as a practical matter because wholesale services are sold under carrier-to-carrier contracts that are not publicly filed and that are often customized. Moreover, as petitioners

[75] The BOCs also reportedly plan to be facilities-based carriers for a large part of their traffic. Any delay in Bell Atlantic's construction of its own network because of its frivolous misinterpretation of section 272, *see Bell Atlantic Petition* at 15, is entirely Bell Atlantic's own fault and has no relevance to these proceedings. *See also infra* pp. 93-94.

acknowledge, *see BellSouth Petition* at 16, purchasers of wholesale services are sophisticated consumers experienced in playing competing providers against each other. *See* Hall Decl. ¶ 20. In this context, it bears repeating that *none* of these sophisticated customers, but GTE, has protested the proposed merger.

Against this overwhelming evidence that the wholesale market is and will remain competitive, petitioners offer two primary arguments. First, they suggest that MCI WorldCom will not compete aggressively for fear of "cannibalization." This notion -- that a facilities-based interexchange carriers with capacity to support a successful retail business would not use that capacity to support a successful wholesale business -- lacks any factual or theoretical basis. The lack of factual basis is demonstrated by the fact that *both* WorldCom *and* MCI (like other facility based carriers) sell on a substantial scale to *both* wholesale *and* retail customers. In addition to direct sales to residential customers, WorldCom's interexchange customers use services obtained from WorldCom to compete for WorldCom's business customers, and WorldCom has not limited, and could not limit, its interexchange customers to the business segment of the market. If WorldCom is a maverick, so too are MCI and other competitors that offer competitive, nondiscriminatory prices to both wholesale and retail customers.

The lack of theoretical basis for the cannibalization theory results from the fact that interexchange carriers with retail customers (whether residential or business) understand that the interexchange carriers that want to purchase interexchange services from them have competitive alternatives. If the facilities-based interexchange carriers with a large retail customer base do not sell to the resellers, the resellers can follow the familiar path of constructing their own facilities, or they can obtain capacity on favorable terms from wholesale-oriented competitors like Qwest, Williams and IXC. GTE itself is a good example of an interexchange carrier that began by reselling intercity services and is now rapidly becoming a substantial facilities-based provider. Facilities-based interexchange carriers therefore face a simple choice: (1) get no revenue from a competitor because the competitor obtains capacity from other facilities-based interexchange carriers or constructs its own; or (2) get some revenue by selling available capacity to the competitor on nondiscriminatory terms. It is not surprising that many facilities-based interexchange carriers, including MCI and WorldCom, choose the second option -- which incidentally also complies with their Commission-enforced resale obligations. And of course, if MCI and WorldCom each individually has an incentive to compete for wholesale as well as retail customers, so too will the merged company.

Petitioners fare no better with their second argument -- that the possibility of anticompetitive conduct is revealed by their experience with the value-added interexchange services that petitioners want to buy even more cheaply from MCI. S*ee Bell Atlantic Petition* at 14. MCI's and WorldCom's advanced services are provided under tariffs that make them as available for resale as any other services, and they will remain so after the merger.[76] GTE and Bell Atlantic, of course, are not really contending that MCI and WorldCom refuse to make any advanced capabilities available for resale or that either is refusing to provide the same discount that other customers receive. Instead, they

[76] Even if post-merger MCI and WorldCom were inclined to unreasonably restrict resale (which they emphatically would not be), such restrictions would violate the Commission's regulations, and resellers with legitimate complaints would then have the same remedies that they now have prior to the merger.

want MCI and WorldCom to give them larger discounts.[77] They are no different from any retail customer in this respect, and Bell Atlantic acknowledges that it has no right to wholesale discounts beyond those retail customers receive. *Bell Atlantic Petition* at 15 n.36.[78]

In sum, the proposed merger poses not the slightest threat to wholesale competition -- which helps to explain, as noted above, that not a single one of all the sophisticated wholesale consumers filed a petition opposing the merger, except three (GTE, Bell Atlantic, and BellSouth) pursuing a different agenda, which is all too clear. MCI WorldCom will continue to have strong incentives to continue to aggressively market wholesale services to compete with existing and new entrants, including carriers' carriers, and to maximize the use of the network.

F. Conclusion.

At times, a page of history is worth a volume of logic. In 1990, MCI, the number two interexchange carrier, acquired Telecom*USA, a facilities-based carrier that was then the fourth-largest interexchange carrier, and overall concentration of the long distance market nonetheless

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[77] Given that ILECs have established wholesale discounts for local service (from the most simple to the most advanced) that are a fraction of the discounts available from interexchange carriers and that make local resale completely unprofitable, it is (to say the least) ironic that the ILECs, of all carriers, are complaining that long-distance wholesale discounts are too low.

[78] Bell Atlantic asserts that MCI was willing to provide services to Bell Atlantic for resale "but only if Bell Atlantic did *not* use resold MCI capacity to compete against it." *Bell Atlantic Petition* at 14. This assertion is false. Bell Atlantic was completely free to use an MCI service designed for switchless resellers ("Carrier Network Services" or "CNS") to compete against MCI at the retail level. It could also use CNS for sales to existing MCI customers and get the maximum CNS discount. The discount would be smaller, but still substantial, only if the reseller discriminatorily targets existing MCI customers because of disproportionate costs this strategy imposes on MCI and the standard practice of providing larger discounts to attract new business. Moreover, resellers that wish to target MCI customers can purchase MCI services other than CNS on exactly the same terms as any other wholesale, or retail, customer.

continued its steady decline in 1990 and thereafter. *See supra* pp. 31-32. Other carriers continued to gain market share, including WorldCom which competed so successfully that GTE says it turned the so-called Big 3 into the Big 4. *See GTE Petition* at 14. The merger of WorldCom and MCI -- which is likewise between the number two and number four carriers -- will not harm competition any more than the MCI-Telecom*USA merger did. The interexchange market is vibrantly competitive for all consumers, including residential and wholesale purchasers, and the merger will not change this fact. Indeed, the merged company will take advantage of the significant efficiencies and savings described above to compete even more effectively in all portions of the long distance market.

IV. THE PROPOSED MERGER WILL PROMOTE COMPETITION AND WILL NOT HAVE ANTICOMPETITIVE EFFECTS IN ANY INTERNATIONAL END USER OR INPUT PRODUCT MARKET.

A. The merger will have significant procompetitive effects.

MCI and WorldCom believe that the merger will yield significant benefits for the companies' customers and U.S. consumers generally. A driving force behind the merger of MCI and WorldCom is the desire to create the first truly global end-to-end competitive carrier. As a fully integrated company, MCI WorldCom will offer a complete range of local, long distance, wireless, and international communications services. The merged company plans to move as aggressively as regulatory conditions permit to offer competitive choices to consumers on a global scale. By combining the expertise and resources of the two companies, MCI WorldCom will be a strong and efficient competitor to incumbent carriers world-wide.

WorldCom and MCI have complementary international competitive operations, which the combined company will expand upon. WorldCom has constructed and operates metropolitan fiber optic networks in London, Frankfurt, Paris, Stockholm, Amsterdam, and Brussels. WorldCom is now connecting those city networks through the construction of its high capacity, pan-European network, Ulysses. The imminent entry into force of the WTO Agreement will present even further competitive opportunities for MCI WorldCom, particularly in Asia, where WorldCom's operations are already rapidly expanding. Likewise, MCI currently is an active participant in competitive operations abroad, including "second operators" in Mexico and New Zealand. Together, MCI WorldCom will become a potent competitor to incumbent carriers world-wide and help fulfill the promise of the WTO Agreement. U.S. consumers will be among the primary beneficiaries of this new competition.

B. The merger will not have anticompetitive effects in the international services market.

Only one party, GTE, asserts that the merger will have anticompetitive effects in any international telecommunications product market.[79] GTE makes the implausible argument that the merger will have anticompetitive effects in international end user and transport product markets and thus is contrary to the public interest. *GTE Petition* at 30.

As an initial matter, GTE erroneously asserts that International Message Telephone Service (IMTS) and non-IMTS (primarily international private line services) currently comprise separate end user product markets. *Id.* The Commission has previously noted that a relevant product market is a service or group of services for which there are no close demand substitutes.[80] GTE's assertion

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[79] Telstra's Comments raise issues concerning international Internet access that indirectly relate to the international services market. *See Comments of Telstra Corporation Limited* in CC Docket No. 97-211 (filed Jan. 5, 1998), ("*Telstra Comments*"). Telstra's Comments are addressed in Section V., *infra*, concerning the Internet.

[80] *See, e.g.,* Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Areas and Policy and Rules Concerning the Interstate, Interexchange

that IMTS and international private line services constitute separate product markets is, at best, outdated given market trends and regulatory developments in recent years. There is no longer any meaningful distinction among end-users between switched voice circuits and a private line circuits. The purpose of IMTS, electronic messaging, packet-switched services, fax, switched data services, and virtual private network services is to transport information electronically between two points. These services can be provided over an international private line circuit or a switched message circuit. The choice between a switched or private line circuit is generally an economic one, as there is a cross-over point in usage when private circuits become cheaper than switched circuits. Customers simply want to transport voice or data information on the most cost-effective basis.

International private lines are increasingly used to provide switched services, whether through international simple resale (ISR) or virtual private networks. For example, where permitted, carriers often use international facilities-based or resold private lines to bypass high IMTS settlement rates on the foreign end.[81] Carriers can also use a combination of ISR and foreign IMTS tariffed rates -- known as "switched hubbing" -- to provide switched voice services to nearly every country

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Marketplace, *Second Report and Order*, CC Docket No. 96-149, and *Third Report and Order*, CC Docket No. 96-61, FCC 97-142, at ¶ 40 (rel. Apr. 18, 1997); *Bell Atlantic/NYNEX Order*, *supra* note 3.

[81] Under the new foreign carrier participation rules, carriers will be permitted to provide switched services over international facilities-based or resold private lines from the United States to WTO member countries when either the settlement rate for at least 50 percent of the settled U.S.-billed traffic on the route is at or below the relevant FCC settlement rate benchmark, or when the foreign market affords equivalent ISR opportunities. *Foreign Carrier Participation Order, supra* note 53, at ¶¶ 79-85. The practical effect is that ISR will be immediately available between the U.S. and almost all of Europe, as well as Australia and New Zealand.

in the world.[82] As a result, switched voice services provided over international private lines are substitutable with IMTS.[83]

Thus, there is no separate, distinguishable world-wide international private line end user product market for purposes of competitive analysis. The Commission has recognized this fact. Indeed, in *BT/MCI II*, the FCC identified the end user market for U.S.-U.K. outbound international services as a relevant market, making no distinction between IMTS and international private line services.[84]

In addition, there is no basis for concluding that MCI WorldCom's market position will vary substantially by geographic market. MCI WorldCom will not be affiliated with any dominant foreign carrier, nor will it be the exclusive U.S. facilities-based provider on any international route.[85] Thus, as in the *AT&T International Non-Dominance Order*, the Commission should examine MCI

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[82] Section 63.17(b) of the Commission's rules permits a U.S. carrier to route U.S.-outbound traffic over U.S. international private lines that terminate in equivalent countries and then to forward that traffic to a third, non-equivalent country by taking service at the published rates and reselling the IMTS of a carrier in the equivalent country. 47 C.F.R. § 63.17(b).

[83] Otherwise, international private lines are simply part of the wholesale international transmission capacity market. As demonstrated in the next section, the merger will not have any anticompetitive effects in the U.S. wholesale market for international transport.

[84] The Merger of MCI Communications Corporation and British Telecommunication plc, *Memorandum Opinion and Order*, GN Docket No. 96-245, FCC 97-302, at paras. 54-55 (rel. Sep. 24, 1997) ("*BT/MCI II Order*").

[85] *See* Federal Communications Commission, *1995 Section 43.61 International Telecommunications Data* (Oct. 31, 1996) ("*1995 FCC International Traffic Data Report*"). As the Commission is aware, MCI and WorldCom have agreed with BT to redeem BT's current share ownership in MCI.

WorldCom's market position on a world-wide basis rather than making specific route-by-route findings.[86]

Turning to GTE's specific allegations, the contention that the merger will have anticompetitive effects is grossly inaccurate. First, GTE bases its arguments almost solely on its analysis of the HHI. As we explained previously, however, the Commission has clearly recognized that market concentration measured by the HHI is only the starting point of the analysis, and a competitive analysis must take into account the dynamic nature of the growing telecommunications industry. *See supra* pp. 32-33.67.

Second, GTE fails to account for the competitiveness of the international services market. This market is characterized by growing competition and steadily declining prices. This competition is driven not just by the larger interexchange carriers, but also by hundreds of other carriers, including substantial carriers with strong capital resources.[87] Among these competitors is GTE, which is free to provide international services and own international facilities, even to and from geographic markets where GTE controls bottleneck local facilities on both the U.S. and foreign end.

This competition is even more vigorous because new carriers -- including foreign carriers -- can enter and compete in the international services market relatively easily. For example, the Commission recently granted Telstra global Section 214 authority to provide facilities-based service

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[86] In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Service, *Order*, FCC 96-209, 11 FCC Rcd. 17976-17977, at ¶ 35 (rel. May 14, 1996) ("*AT&T International Non-Dominance Order*").

[87] For example, Qwest recently announced that it has acquired two transatlantic circuits from Teleglobe to give it up to 600 megabits of transatlantic capacity. *See* Press Release, "Qwest Extends Network to the United Kingdom," Jan. 12, 1998, <http://www.qwest.net/pressframe.html>.

from the United States and all international points, including Australia, where Telstra is the incumbent services provider.[88] Foreign carriers such as Cable & Wireless plc (C&W), British Telecommunications plc (BT), and Telia AB (Telia), among others, have also been authorized to serve their home markets from the United States on a facilities basis. Entry by foreign carriers into the U.S. market is expected to increase significantly after the WTO Agreement enters into force. To facilitate such new entry, the FCC recently adopted new rules that generally afford open entry to foreign carriers from WTO member countries.[89]

Third, GTE places great reliance on historical market share data, which do not necessarily reflect the competitiveness of a market. Yet, even GTE's reference to historical market share data, which do not account for recent entry into the market, confirms that the merger of MCI and WorldCom will not have anticompetitive effects.[90] Based on the FCC's preliminary revenue data for 1996, MCI and WorldCom combined have only a 24.7 percent share of the total U.S.-billed revenues for international toll service.[91] AT&T's 48.3 percent market share is nearly twice as large as MCI and WorldCom's combined market share.[92] In fact, the Commission found that AT&T was

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[88] Telstra, Inc., *Memorandum Opinion, Order and Certificate*, File No. ITC-97-320 (rel. Jan. 2, 1998).

[89] *See generally Foreign Carrier Participation Order, supra* note 53.

[90] In assessing AT&T's market power in 1996 in the U.S. international market, the Commission concluded that a high market share, although not determinative of market power, is indicative of dominance. *See AT&T International Non-Dominance Order, supra* note 87, at ¶ 34.

[91] MCI has a 20.3 percent market share; WorldCom's market share is 4.4 percent. *See Long Distance Market Shares-Third Quarter 1997*, at 24.

[92] *Id.*

non-dominant for the provision of IMTS services when AT&T had a 59 percent market share.[93] The combined market share of other carriers, 27 percent, would also exceed MCI WorldCom's market share. GTE does not provide a citation for its claimed IMTS revenue and market share percentages, but its figures are wrong at best and deceptive at worst. For example, GTE claims that WorldCom has a 10.8 percent IMTS market share, while Sprint has only a 2.6 percent IMTS market share. *GTE Petition* at 33. These figures are obviously inaccurate; yet they form the basis for GTE's arguments.

Finally, even if the provision of international private line services at the retail level were to be examined separately from other international services, as GTE suggests, it is clear that the merger would not have anticompetitive effects. As an initial matter, the provision of U.S. international private line services has long been considered substantially competitive by the Commission.[94] The merger of MCI and WorldCom will not affect this competitiveness. A recent FCC circuit status report demonstrates that most international private lines are owned by carriers other than a combined MCI and WorldCom.[95] For example, in the transatlantic region, carriers other than MCI and WorldCom own a combined 65.4 percent of all active international private line and idle circuits.[96] MCI and WorldCom would together own 34.6 percent. Moreover, of the international

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[93] *See AT&T International Non-dominance Order, supra* note 87, at ¶ 37.

[94] *See* International Competitive Carrier Policies, *Report & Order*, 102 F.C.C. 2d 812, paras. 51-56 (1985), *recon. denied*, 60 R.R.2d 1435 (1986).

[95] *See* Federal Communications Commission, *1996 Section 43.82 Circuit Status Report* (Dec. 1997)

[96] These idle circuits are available for use to provide international private line services. GTE claims that for nine international routes, MCI WorldCom would have 100 percent of the revenues from international private line services. GTE fails to reveal, however, that the combined revenues on these routes represent a tiny fraction -- 0.35 percent ($2.3 million) -- of the total U.S. international

private line and idle circuits owned by carriers other than MCI and WorldCom, a large amount of these circuits -- 65.0 percent -- are idle, and thus available to MCI's and WorldCom's competitors for the provision of international private line services.[97]

C. The proposed merger would not have anticompetitive effects in the international transport market.

GTE argues that the merger will give MCI WorldCom power over the price and availability of a dominant share of undersea cable capacity through the combination of each company's existing facilities. *GTE Petition* at 35-36. GTE is wrong. A number of other international carriers own the substantial majority of existing capacity, and this capacity is distributed broadly enough to sustain the current vigorous competition in the retail services supported by this capacity. For example, in the transatlantic region, MCI and WorldCom combined would own only 16.6 percent of the total cable capacity (*i.e.*, including both western and eastern ends), and only 22.6 percent of the "western" (*i.e.*, U.S.) end of transatlantic capacity.[98] By comparison, AT&T would remain the carrier with the largest amount of capacity, owning 19.4 percent of total transatlantic cable capacity, and 25.8 percent of the western end. BT owns 13.8 percent of total transatlantic cable capacity, and 8.2 percent of

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private line revenues ($656.4 million). *See FCC Preliminary 1996 International Traffic Report.* The average number of voice grade private line circuits provided on each of these routes is only nine. Moreover, in no case would MCI WorldCom be the only carrier serving a route. Other carriers serve each of these routes on a switched message basis.

[97] *Id.* These figures also demonstrate that there are a large number of international private line and idle circuits owned by MCI's and WorldCom's competitors that may be used as wholesale international private line transmission capacity.

[98] The transatlantic facilities included in these figures are TAT-8, TAT-9, TAT-10, TAT-11, CANTAT-3, and TAT 12/13 (including the 1998 wave division multiplexing (WDM) upgrade). PTAT ownership and indefeasible rights of user acquired from other cable owners are not reflected because these figures are not publicly available.

the western end. Global One partners Sprint, France Telecom, and Deutsche Telekom (DT) together own 14.5 percent of total transatlantic cable capacity, and 11.1 percent of the western end.

In addition, new systems that will dramatically increase the available capacity will be operational in the next few months. For example, the Gemini system, a 50/50 joint venture of WorldCom and C&W, will increase transatlantic capacity by 192 whole STM-1s by the end of 1998.[99] This capacity is far more than WorldCom and C&W can use, and thus is actively being marketed to other carriers. Indeed, a primary goal of the Gemini cable system is to recover construction and maintenance costs through the sale of capacity at market-based prices.

The Atlantic Crossing transatlantic cable system, which is expected to begin service in May 1998, will add 128 whole STM-1s of capacity. MCI and WorldCom have no way of knowing how much of this capacity has been pre-sold to other carriers. But even if GTE is correct that 70 percent has been sold already, 30 percent (38.4 STM-1s or 77,414 voice grade circuits) remain available. This is a huge amount of capacity, and almost twice MCI's and WorldCom's current combined transatlantic capacity.[100]

Given the diversity of current cable systems and imminent deployment of new, high-capacity cable systems, GTE is wrong to use TAT-12/13 as a proxy for all transatlantic cable systems. Moreover, GTE's figures regarding TAT-12/13 cable ownership are misleading because they fail

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[99] Each STM-1 equals 63 E-1s. Thirty-two of these STM-1s are expected to be available by March 31, 1998; another thirty-two STM-1s are expected to be ready for service by September 30, 1998. The remaining 128 STM-1s are expected to be available by the end of 1998.

[100] In addition, MCI and WorldCom understand that not all competing international service providers use voice compression techniques, which can quadruple the amount of transmission capacity available for voice services. To the extent competitors are underutilizing these techniques, there is substantial additional capacity in these cables that could readily be made available.

to account for capacity increases as a result of the TAT-12/13 WDM upgrade that is due to be completed in the third quarter of 1998. But even assuming, *arguendo,* that TAT-12/13 may be used as a proxy for all transatlantic cable capacity, there is no reason to believe that the combination of MCI's and WorldCom's U.S.-end capacity in TAT-12/13, totaling 27.9 percent, will have anticompetitive effects. Fully 72.1 percent of the U.S.-end of TAT-12/13 will be owned by other carriers. These include AT&T (27.5 percent), Sprint, BT, C&W, DT, KDD, Teleglobe, Tele2, and Telia, each of which owns at least one whole STM-1 circuit. Each of these carriers currently hold, or will soon be eligible to hold (under the FCC's new foreign carrier participation rules), a Section 214 authorization to provide facilities-based U.S. international services.

Indeed, the proposed merger of MCI and BT involved a greater concentration of capacity than in this case. In the *BT/MCI II Order*, the FCC appropriately recognized that, although the merger would have resulted in a short-term increase in concentration, the supply of transport capacity would increase significantly in the near future.[101] As described above, the same market developments that the FCC relied upon in the *BT/MCI II Order* exist today, except that the significant increase in cable capacity is now that much closer and only a few months away. Moreover, the MCI WorldCom merger will not result in any significant increase in capacity concentration on an end-to-end basis as was the case with the proposed BT/MCI merger.

Finally, GTE incorrectly asserts that merger will have anticompetitive effects on the provision of connecting facilities between the cable landing points and the public switched network.

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[101] *See BT/MCI II Order, supra* note 85, at paras. 136-141.

GTE Petition at 41. In fact, the merger will have no effect in this market segment because WorldCom does not own backhaul facilities to the current undersea cables.[102]

V. THE MERGER WILL NOT HARM STRONG COMPETITION IN THE PROVISION OF INTERNET SERVICES, AND WILL DO NOTHING TO ALTER THE VIBRANT, EXPLOSIVE GROWTH OF THE INTERNET.

As the Supreme Court of the United States noted last year, the "growth of the Internet has been and continues to be phenomenal."[103] The Internet consists of thousands of interconnecting networks which link millions of computers and tens of millions of users, all joined by a common communications protocol, TCP/IP ("Transmission Control Protocol/Internet Protocol"). Virtually every communications company in the world is participating, or is preparing to participate, in the unprecedented explosion of Internet-based services. Based on the experience of WorldCom and MCI, the demand for Internet services appears to be more than doubling every year. New companies are being established monthly to exploit the opportunities offered by the emergence of new applications and capabilities that are facilitated by the connectivity of IP-based networks. The number of Internet service providers ("ISPs") in North America has tripled in twenty months, from 1,447 in February 1996 to 4,354 in October 1997.[104] Current and future providers of Internet

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[102] As a point of clarification, it is important to note that in the BT/MCI proceeding, MCI voluntarily agreed to make available to a defined set of IRU holders a limited number of U.S. backhaul circuits, under circumstances that are completely different from those presented by the merger of MCI and WorldCom. Letter from Mary L. Brown, Senior Policy Counsel, MCI to Peter F. Cowhey, Chief, International Bureau, FCC (Jul. 7, 1997). There is absolutely no basis to infer from the commitment made in the BT/MCI proceeding that the merger of MCI and WorldCom would have any impact whatsoever on the availability of U.S. backhaul circuits.

[103] *Reno v. American Civil Liberties Union*, 117 S. Ct. 2329, 2351 (1997).

[104] *Boardwatch Magazine*, Fall 1997.