

Telstra inexplicably seeks a regulatory solution -- mandated unbundling and tariffing of traditionally unregulated enhanced services -- where there is no evidence of a competitive concern. In fact, Telstra has already shown that there are commercial solutions to its alleged problems. For example, Telstra recently entered into an agreement with Teleglobe which addresses Telstra's concern that it was incurring the costs of two-way submarine cable circuits even though most of its Internet traffic is one way (U.S.-outbound). Telstra and Teleglobe have announced that together they will provide "high-speed international Internet connectivity via the world's first megabit-per-second hybrid cable/satellite asymmetric link."¹³⁸ The connection will use Telstra's existing transoceanic capacity for the U.S.-inbound link and 45 megabit simplex satellite circuit for the return link to Australia.

Telstra's own actions confirm that the marketplace is working and that regulation would be both unnecessary and inappropriate. Telstra's arguments and its proposed regulatory "solution" are, therefore, completely without merit and should be rejected.

VI. OTHER ISSUES.

A. The allegation of redlining ignores MCI's numerous efforts to assist low-income, minority, and immigrant communities.

ICP/COM and Rainbow oppose the merger on the basis that the merged companies would be likely to target business customers and affluent households and to avoid or delay marketing of services to low-income and minority customers ("redlining"). *ICP/COM Petition* at 3; *Rainbow/PUSH Petition* at 22. In the operation of their long distance and nascent local businesses,

¹³⁸ Teleglobe Press Release, "Teleglobe, Telstra Launch First High-Speed Internet Link Combining Simplex Satellite and Fiber Cable Facilities," (Jan. 15, 1998), <http://biz.yahoo.com/bw/980115/teleglobe_1.html>.

both MCI and Worldcom have demonstrated a strong commitment to serve consumers of all socioeconomic levels. Among other things, MCI was the first carrier to voluntarily create a long distance “lifeline” program. The program, known as MCI Family Assist (MCI-FA) is available to low-income consumers across the country.¹³⁹ MCI has also introduced 5 cent Sundays, which is available to every MCI customer as well.

With respect to the local service, the fact that MCI and WorldCom network and switching facilities to date tend to be in and around city centers is important. In effect, this means that those low-income and minority communities located in and around these cities will be well positioned to receive the benefits of local competition as MCIWorldCom builds out its networks. This competitive choice could be accelerated if the pricing of the incumbents loops and other network elements are brought down to economically reasonable levels. In addition, in areas where MCI is currently providing local residential service, it is offering and serving Lifeline customers.

While Rainbow/PUSH has asked the Commission to take action to address prospective issues including future redlining, *Rainbow/PUSH Petition* at 22, it is important to note that no allegations of past impropriety have been made.¹⁴⁰ Thus, there is no record evidence that either MCI or

¹³⁹ MCI Family Assist offers a discount on all Interstate calls to qualifying low-income customers. To qualify, a customer must be participating in a state Lifeline plan through their local exchange carrier. In states without a Lifeline program, consumers can qualify through participation in any one of six public assistance programs. These programs include AFDC, Food Stamps, Home Relief, Medicaid, SSI and Temporary Assistance to Needy Families. Family Assist customers receive service at a flat rate of 9 cents per minute for up to 60 minutes per month. Additional minutes are priced at 15 cents. There are no fees or minimums associated with this service.

¹⁴⁰ Regarding the dispute with TMB Communications, Inc., discussed below in Section VI.D, this is a private contractual dispute and negotiations are ongoing.

WorldCom has ever engaged or would engage in objectionable behavior. There is no precedent in a common carrier merger for the Commission to adopt a prospective remedy to guard against a theoretical future concern about potential discrimination. In fact, in the *Bell Atlantic/NYNEX Order*, the Commission expressly rejected such an approach.¹⁴¹

Rainbow expresses concern that the merger would result in layoffs that would disproportionately target minorities, but does not present any evidence to support this concern. MCI and WorldCom are fully committed to equal employment opportunities.

B. There is no legal or policy basis for linking the merger to BOC interLATA entry.

BellSouth predictably argues that approval of the merger should be conditioned on BOC entry into the in-region interLATA market under Section 271 of the 1996 Act. *BellSouth Petition* at 20-25. This rather transparent and tiresome effort to create pressure for granting Section 271 applications should be summarily rebuffed. The statutory procedures for BOC entry could not be more clear. Much like Pavlov's dog, BellSouth appears conditioned to respond with pleas of Section 271 relief to any external stimulus. The BOCs should be allowed to enter the in-region interLATA market when they comply with the competitive checklist and the other requirements of Section 271. There is no statutory or policy basis for linking their compliance with Section 271 to this merger or any other extrinsic event.

¹⁴¹ *Bell Atlantic/NYNEX Order*, *supra* note 3, at ¶ 226 (“We conclude that our review of the Bell Atlantic and NYNEX merger, which is focused on the loss of a precluded competitor in LATA 132, is not the appropriate forum for determining whether Bell Atlantic-NYNEX as a merged entity should allocate a certain portion of its contracts to small and minority businesses.”)

BellSouth argues that the merger will have an anticompetitive effect on the interLATA market, unless the BOCs themselves are also in that market. *BellSouth Petition* at 16-19. We have previously shown that the merger will not have an anticompetitive effect on interexchange service, but will actually promote long distance service and end-to-end telecommunications services, more generally.

Moreover, BellSouth's argument is flatly contrary to the *Bell Atlantic/NYNEX Order*, where the Commission stated that "[i]n defining the relevant product markets, . . . we will examine not just the markets as they exist today, but as we expect they will exist after a Bell Company receives authorization to provide in-region interLATA services pursuant to Section 271 of the Communications Act." *Bell Atlantic/NYNEX Order*, *supra* note 3, ¶ 7. In other words, for purposes of its competitive analysis, the Commission may assume that at some unspecified future date the BOCs will obtain Section 271 authorization. But it is up to the BOCs themselves to comply with Section 271. The keys for interLATA entry are entirely in BellSouth's hands. It may not short-circuit compliance by creating "pressure" for approval or seeking to condition approval to the instant merger. Nor may it obtain through a "linkage" proposal what it sought but could not obtain from Congress in Section 271 -- entry into the long-distance market at the same time that competitors entered the local market, regardless of whether the prerequisites for effective local competition were in place.

The "linkage" argument is a recipe for gridlock. BOC entry into the interLATA market is not likely to happen, and should not happen, until the local exchange markets become competitive. This merger will enhance the prospect for a competitive local exchange market, and when that is achieved, the BOCs will be able to obtain interLATA entry. To hold up this merger through a

linkage to BOC interLATA entry will ultimately delay both the arrival of competitive local exchange markets and the interLATA entry that the BOCs seek.

C. The Commission has ample information to resolve the public interest issues without a hearing.

Several commenters suggest that there should be a hearing on the application.¹⁴² However, these commenters have not identified any “substantial and material question of fact,” which is the statutory prerequisite for a hearing. 47 U.S.C. § 309(d)(2). As the Commission explained in *McCaw*, “the arguments and allegations presented by the parties in this proceeding do not reflect disputes over material facts but focus primarily on inferences and conclusions to be drawn from the facts, namely, the competitive impacts of the merger. No persuasive showing has been made that a full evidentiary hearing would produce additional facts that would assist us in any meaningful way to resolve the various claims and arguments raised by the parties.” *McCaw*, *supra* 9 FCC Rcd. at 5927-5928, ¶ 173. In that case, as here, all the disputes involved “just the sort of ‘legal and economic conclusions concerning market structure, competitive effect, and the public interest’ that ‘manifestly do not’ require a live hearing. . . . [A]n ‘evidentiary hearing would less promote reasoned decisionmaking in this case than it would delay and impede’ the Commission’s decision.” *SBC Communications, Inc. v. FCC*, 56 F.3d 1484, 1497 (D.C. Cir. 1995) (affirming the Commission’s approval of the AT&T - McCaw Cellular merger), quoting *United States v. F.C.C.*, 652 F.2d 72, 89-90 (D.C. Cir. 1980) (*en banc*). A hearing would be particularly inappropriate here since the Commission is certainly familiar with the dynamics of the local and long distance markets,

¹⁴² *ICP/COM Petition* at 17; *Rainbow/PUSH Petition* at 2; *Petition to Deny and Request for Hearing of Simply Internet, Inc.*, in CC Docket No. 97-211, at 1 (filed Jan. 5, 1998); *Petition to Deny of TMB Communications, Inc.*, in CC Docket No. 97-211, at 7 (filed Jan. 5, 1998) (“*TMB Petition*”).

Internet considerations raise issues beyond the scope of this proceeding, and both merging parties are non-dominant firms with no market power in any geographical or product market.

The Commission can fairly accurately predict what a hearing in this matter would entail. A lengthy prehearing conference and resolution of scoping issues¹⁴³ would be followed by the customary plethora of discovery forays, disputes, and law and motion hearings. When the hearings themselves actually commenced, the Commission would be treated to the usual battle of expert witnesses whose opinions would fill volumes of transcripts. And at the end of this long, laborious process, the ultimate questions will be issues of law and policy which the Commission can resolve now. A hearing would serve only to “‘delay and impede’ the Commission’s decision.” *SBC Communications, Inc.*, 56 F.3d at 1497.

D. This is not the appropriate forum for the contractual dispute with TMB

TMB Communications, Inc., a former independent agent of MCI, opposes the merger on the grounds that MCI has failed to resolve to TMB’s satisfaction a private contractual dispute. *TMB Petition* at 2-3. The dispute between TMB and MCI relates to the termination of TMB’s written contract with MCI and the payment of certain commissions allegedly owed thereunder. TMB’s dispute with MCI is also referenced in the petition to deny filed by the Rainbow/PUSH Coalition. *Rainbow/PUSH Petition* at 30. Contrary to TMB’s allegations, MCI has acted fairly and responsibly in addressing TMB’s allegations, and TMB’s allegations of wrongdoing are ill-founded. MCI is committed to continue to work with TMB in an effort to resolve this private contractual dispute. Neither TMB nor Rainbow has shown that this dispute is representative of problems that others have

¹⁴³ 47 C.F.R. § 1.248.

with MCI, or that any such problems would be aggravated were the Commission to consent to the merger. In such instances, the Commission routinely allows mergers to go forward, and encourages parties to resolve their contractual disputes in appropriate fora. *See, e.g., MFS Communications, Co. Inc.*, 11 FCC Rcd. 21164, 21169, ¶ 16 (Int'l Bur. 1996) Neither TMB nor Rainbow/PUSH has demonstrated that any other action is warranted in this proceeding.

E. Transfer of the DBS Authorization is being considered in a separate proceeding.

Media Access Project ("MAP"), on behalf of the Office of Communication of the United Church of Christ, Consumers Union, and the National Association for Better Broadcasting ("NABB"), urges the Commission to dismiss or deny the application for transfer of control of the direct broadcast satellite ("DBS") authorization held by MCI Telecommunications Corporation to WorldCom.¹⁴⁴ MAP incorporates by reference its petition to deny and related motions regarding the pending application for assignment of the MCI DBS authorization to Primestar, LHC, Inc.¹⁴⁵

The crux of MAP's argument, raised in NABB's application for review of the MCI DBS Order,¹⁴⁶ is that the Commission's International Bureau erred in awarding a DBS license to MCI without determining MCI's qualifications to hold a broadcast license. MCI and WorldCom submit

¹⁴⁴ *Petition to Dismiss or Deny Transfer of Control of Non-Final Direct Broadcast Satellite Authorization and for Referral to the Full Commission for Action of Media Access Project* in CC Docket No. 97-211, at 1-2 (filed Jan. 5, 1998) ("*MAP Petition*").

¹⁴⁵ *See In re Application of MCI Telecommunications Corporation and Primestar LHC, Inc.*, File No. 106-SAT-AL-97.

¹⁴⁶ *In Re Application of MCI Telecommunications Corporation*, File No. 73-SAT-P/L-96, Order, DA 96-2165 (rel. Dec. 20, 1996).

that the International Bureau correctly applied Commission precedent (the “Subscription Video” decision)¹⁴⁷ in awarding MCI a DBS authorization, and urge the Commission to act promptly to reject the NABB application for review. In the event that the NABB application for review has not been acted upon by the time the Commission completes its review of the MCI WorldCom merger, the parties would be willing to accept a transfer of control “specifically conditioned on whatever action the Commission may conclude is appropriate in connection with the pending applications for review.” *BT/MCI II Order*, *supra* note 85, at ¶ 279.

¹⁴⁷ In Re Matter of Subscription Video, *Report and Order*, Gen. Docket No. 85-305, 2 FCC Rcd. 1001 (1987), *aff'd*, *National Ass'n for Better Broadcasting v. FCC*, 849 F.2d 665 (D.C. Cir. 1988).

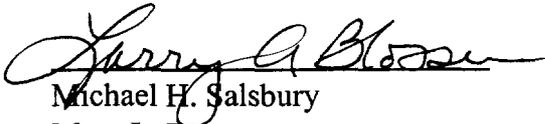
VII. CONCLUSION

WorldCom and MCI respectfully request that the Commission grant the applications, as amended.

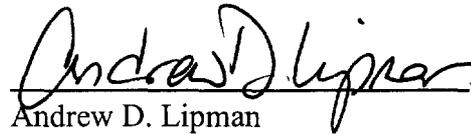
Respectfully submitted,

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Dated: January 26, 1998

CERTIFICATE OF SERVICE

I, Mark T. Pasko, hereby certify that on January 26, 1998 a copy of the foregoing "JOINT REPLY OF WORLDCOM, INC. AND MCI COMMUNICATIONS CORPORATION TO PETITIONS TO DENY AND COMMENTS" was sent by First Class United States Mail, postage prepaid, to the following:

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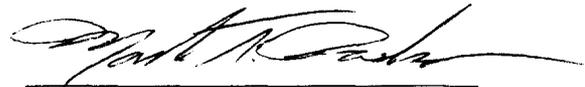
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DE PRODUCTS

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STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

January 15, 1998

TO: All Parties
FROM: Kevin Schwenzfeier
SUBJECT: **Case 97-C-0271** -- Results of Competitive Analysis

The results contained in the following analyses have been aggregated so as to protect company-specific information.

Please note that the information provided by the responding carriers was not always presented in a consistent or complete manner. In addition, the only carriers responding were those present at the Technical Conference held in December. Therefore, the analyses do not represent a precise picture of the competitive landscape throughout New York, but provide a reasonable estimate of the competitive activities of the responding carriers.

If you have any questions concerning the summaries, I can be reached at (518) 486-2814.

ACCESS LINES (1)

	<u>NY Metro</u>	<u>Upstate</u>	<u>Total</u>	<u>NY Metro</u>	<u>Upstate</u>	<u>Total</u>
CLEC Facilities-Based						
Res	3,438	0	3,438	2.4%	0.0%	2.2%
Bus	142,476	8,659	151,135	97.6%	100.0%	97.8%
Tot	<u>145,914</u>	<u>8,659</u>	<u>154,573</u>			
CLEC Resale						
Res	13,866	2,053	15,919	23.3%	9.4%	19.6%
Bus	45,759	19,743	65,502	76.7%	90.6%	80.4%
Tot	<u>59,625</u>	<u>21,796</u>	<u>81,421</u>			
CLEC FB + Resale						
Res	17,304	2,053	19,357	8.4%	6.7%	8.2%
Bus	188,235	28,402	216,637	91.6%	93.3%	91.8%
Tot	<u>205,539</u>	<u>30,455</u>	<u>235,994</u>			
NYT						
Res	5,148,590	1,980,331	7,128,921	63.2%	72.3%	65.5%
Bus	2,995,644	758,588	3,754,232	36.8%	27.7%	34.5%
Tot	<u>8,144,234</u>	<u>2,738,919</u>	<u>10,883,153</u>			

	<u>CLEC MARKET SHARE</u>		
Residential	0.3%	0.1%	0.3%
Business	5.9%	3.6%	5.5%
Total	<u>2.5%</u>	<u>1.1%</u>	<u>2.1%</u>

Note: Results based upon information provided by 15 CLECs.

(1) CLEC access lines as of 10/97. NYT access lines as of 12/31/96.

CLEC LOCAL SWITCH LOCATIONS AND CAPACITY

<u>Location</u>	<u># Switches</u>	<u>Capacity Access Lines</u>
Upstate	6	43,953
NY Metro	<u>14</u>	<u>289,080</u>
Total	20	333,033

Note: Results based upon information provided by 9 facilities-based CLECs.

COMPETITIVE CHECKLIST ITEMS PURCHASED FROM NYT

	<u>i</u>	<u>ii</u>	<u>iii</u>	<u>iv</u>	<u>v</u>	<u>vi</u>	<u>vii</u>	<u>viii</u>	<u>ix</u>	<u>x</u>	<u>xi</u>	<u>xii</u>	<u>xiii</u>	<u>xiv</u>
Number of CLECs														
Purchasing Item:	7	2	2	4	4	1	9	7	6	4	7	4	4	8

Note: Results based upon information provided by 15 CLECs.

Description of Checklist Items

- i Interconnection
- ii Nondiscriminatory access to network elements
- iii Nondiscriminatory access to poles, ducts, conduits, and rights-of-way
- iv Local loop transmission from the C.O. to the customer's premises, unbundled from switching or other services
- v Local transport from the trunk side of a wireline LEC switch, unbundled from switching or other services
- vi Local switching unbundled from transport, local loop transmission, or other services
- vii Nondiscriminatory access to (1) 911 and E911 services; (2) DA services; (3) Operator call completion services
- viii White pages directory listings
- ix Nondiscriminatory access to telephone numbers
- x Nondiscriminatory access to databases and associated signaling for call routing and completion
- xi Interim number portability through remote call forwarding, DID trunks, or other comparable arrangements
- xii Nondiscriminatory access to such services or information to allow local dialing parity
- xiii Reciprocal compensation arrangements
- xiv Telecommunications services are available for resale

DECLARATION OF DENNIS W. CARLTON AND HAL S. SIDER

January 25, 1998

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I. INTRODUCTION AND OVERVIEW

1. I, Dennis W. Carlton, am Professor of Business Economics at the Graduate School of Business of The University of Chicago. I received my B.A. in Applied Mathematics and Economics from Harvard University and my M.S. in Operations Research and Ph.D. in Economics from the Massachusetts Institute of Technology. I have served on the faculties of the Law School and the Department of Economics at The University of Chicago and the Department of Economics at the Massachusetts Institute of Technology. I specialize in the economics of industrial organization, which is the study of individual markets and includes the study of antitrust and regulatory issues. I am co-author of the book Modern Industrial Organization, a leading text in the field of industrial organization, and I also have published numerous articles in academic journals and books. In addition, I am Co-Editor of the Journal of Law and Economics, a leading journal that publishes research applying economic analysis to industrial organization and legal matters. I have served as an Associate Editor of the International Journal of Industrial Organization and Regional Science and Urban Studies, and have served on the Editorial Board of Intellectual Property Fraud Reporter. A copy of my curriculum vitae is attached as Appendix 1 to this affidavit.

2. In addition to my academic experience, I am President of Lexecon Inc., an economics consulting firm that specializes in the application of economic analysis to legal and regulatory issues. I have served as an expert witness before various state and federal courts, and I have provided expert witness testimony before the U. S. Congress and a variety of state and federal regulatory agencies. I also have served as a consultant to the Department of Justice on the Merger Guidelines of the Department of Justice and Federal Trade Commission, as a general consultant to the Department of Justice on antitrust matters, and as an advisor to

the Bureau of the Census on the collection and interpretation of economic data. I have also provided testimony on telecommunications matters before Congress, Federal Courts, state agencies and the F.C.C. and have published academic articles on telecommunications issues.

3. I, Hal S. Sider, am a Senior Economist and Principal of Lexecon Inc. I received a B.A. in Economics from the University of Illinois in 1976 and a Ph.D. in Economics from the University of Wisconsin (Madison) in 1980. I have been with Lexecon since 1985, having previously worked in several government positions. I specialize in applied microeconomic analysis and have performed a wide variety of economic and econometric studies relating to industrial organization, antitrust and merger analysis. I have published a number of articles in professional economics journals on a variety of economic topics and have testified as an economic expert on matters relating to industrial organization, antitrust, labor economics and damages. In addition, I have directed several studies of competition in telecommunications industries and have testified as an expert on telecommunications matters. I have also published an academic article (with Kenneth Arrow and Dennis Carlton) on telecommunications issues.

4. We have been asked by counsel for WorldCom and MCI to evaluate competitive conditions in the provision of local exchange service, long distance services and Internet services and to assess the likelihood that the proposed transaction will adversely affect competition in the provision of these services. We have also been asked to review and to address the concerns raised in recent comments filed before the Federal Communications Commission by BellSouth, Bell Atlantic, GTE and others (hereafter, petitioners) that the proposed merger of WorldCom and MCI will result in harm to competition.¹ While our analysis is

1. See: Petition to Deny of GTE Service Corporation and its Affiliated Telecommunications Companies; Bell Atlantic's Petition to Deny the Application of WorldCom or, in the Alternative, To Impose Conditions; BellSouth Corporation's Petition for Conditional Approval of the Application of WorldCom, Inc. for Transfers of Control of MCI Communications (continued...)

ongoing, the evidence that we have analyzed convinces us that: (i) the transaction creates potentially large benefits to consumers; and (ii) it is highly unlikely that the proposed transaction will adversely affect competition in light of the rapid entry, expansion and technological changes now taking place in the telecommunications industry.

5. This declaration also addresses the significant shortcomings in the competitive analysis presented by petitioners. Among others, these include petitioners' failure: (i) to provide evidence supporting their claims that the transaction will result in harm to competition; (ii) to address the effect on competition of the rapid changes now taking place in the telecommunications industry; and (iii) to recognize the significant gains to consumers that are likely to result from the proposed transaction.

6. Our major conclusions are as follows:

- Available 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. There is no basis for claims by some petitioners that local competition will be harmed as a consequence of the transaction. The transaction also promises to yield other savings in operating and overhead costs that enable MCI WorldCom to more efficiently provide network services.
- There is extensive entry of new competitors and expansion in capacity of fiber optic networks now taking place. Several new high capacity fiber optic networks are now being deployed with yet others recently announced. Within two years or so, it is likely that there will be seven national fiber optic networks and an even larger number of independent firms supplying services along these networks.

1.(...continued)

Corporation; Simply Internet's Petition to Deny and Request for Hearing; Comments of the Communications Workers of America; all dated January 5, 1998.

Such conditions make it highly unlikely that the proposed transaction will adversely affect competition in the provision of wholesale long distance services.

- It is highly unlikely that the proposed transaction will adversely affect retail long distance competition. As petitioners acknowledge, WorldCom has relatively little brand name recognition among residential customers. Hence, there are many firms that could readily replicate WorldCom's presence in the provision of retail residential service. For retail business customers, even the experts cited by petitioners generally do not claim that competition is inadequate. There is also no economic basis to petitioners' claims that MCI WorldCom will harm long distance competition by abandoning profitable residential customers.
- The unprecedented growth and entry now taking place in the provision of Internet services, as well as the rapid entry and expansion of firms providing fiber optic capacity that can readily be used to provide Internet services, make it highly unlikely that the transaction will adversely affect competition.
- The evidence presented by petitioners fails to address the relevant question in the analysis of the competitive effect of a merger: whether a proposed transaction will adversely affect competition. Petitioners present no evidence that the market share and concentration figures they cite are relevant to the question of how prices will change as the result of the proposed transaction. The economic studies cited by petitioners fail to address how long distance competition is affected by changes in concentration resulting from this transaction. Instead, these studies, which were generally submitted in previous proceedings, address whether entry by local telephone companies into long distance is desirable. Petitioners ignore the rapid changes now occurring in telecommunications industries.